

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Indigenous Affairs

Corporations (Aboriginal and Torres Strait Islander) Act 2006
Corporations (Aboriginal and Torres Strait Islander) Regulations 2017

General outline

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) received Royal Assent on 4 November 2006 and commenced on 1 July 2007. The CATSI Act provides for the incorporation and regulation of Aboriginal and Torres Strait Islander Corporations. It is intended as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.

Subsection 633-1(1) of the CATSI Act provides that the Governor-General may make regulations prescribing matters required or permitted by the CATSI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the CATSI Act.

Background

The *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (the 2007 Regulations) commenced on 1 July 2007 and are due to sunset on 1 October 2017.

The purpose of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (the Regulations) is to remake the 2007 Regulations, essentially in their current form, but incorporating changes in drafting styles and legislative changes that have taken place over the past 10 years since they came into effect.

The Regulations provide for matters necessary for the effective operation of the CATSI Act. The Regulations contain a range of machinery provisions, as well as provisions dealing with certain substantive matters not dealt with in detail in the CATSI Act. For example, the Regulations set out in detail the manner in which Aboriginal and Torres Strait Islander corporations registered under the CATSI Act (CATSI corporations) are required to report on their financial position and operations.

The Regulations are divided into 12 parts, each of which corresponds to a chapter number in the CATSI Act. There are also five schedules to the Regulations.

The Regulations do not increase, or have the effect of increasing, the maximum penalty for any offence; or widen, or have the effect of widening, the scope of any offence. The Regulations do not contain provisions that are inconsistent with the Native Title legislation obligations.

The CATSI Act specifies no conditions that need to be satisfied before the power to make regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

The Regulations commence on 1 October 2017.

Consultation

No consultation was undertaken as the Regulations have been remade substantially in the same form as the 2007 Regulations and there is no impact on stakeholders.

Compatibility with Human Rights

A Statement of Compatibility with Human Rights has been completed for the Regulations in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Regulations are compatible with human rights as they do not raise any human rights issues. The Statement appears at the end of this Explanatory Statement.

Regulatory Impact Analysis

A regulatory impact statement has not been prepared as the Regulations have been remade substantially in the same form as the 2007 Regulations.

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Regulations is the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 October 2017, the date of the sunset of the 2007 Regulations.

Section 3 – Authority

This section provides that the Regulations are made under the CATSI Act.

Section 4 – Schedules

This section clarifies that any instrument that is referred to in one of the relevant schedules to the Regulations is amended or repealed as specified in the particular item in the relevant schedule. It also clarifies that any other item referred to in a particular schedule has effect as intended.

Section 5 – Definitions

This section defines a number of terms used in the Regulations.

Note 1 in this section advises that a number of expressions used in the Regulations are defined in section 700-1 of the CATSI Act. Note 2 provides a list of the sections in the CATSI Act that apply various provisions of the *Corporations Act 2001* (the Corporations Act) and the *Corporations Regulations 2001* (the Corporations Regulations) to CATSI corporations.

Part 2 – Aboriginal and Torres Strait Islander corporations

Section 6 – Registration - Indigeneity requirement

In order to be registered as a CATSI corporation, a body must meet a number of requirements, including the Indigeneity requirement, set out in the CATSI Act. Under paragraph 29-5(a) of the CATSI Act, a corporation that has 5 or more members meets the Indigeneity requirement if at least the percentage of the corporation's members prescribed in the Regulations are Aboriginal and Torres Strait Islander persons. Section 6 of the Regulations specifies that the relevant percentage of members is 51%. The effect of section 6 of the Regulations is that at least 51% of the members of such CATSI corporations must be Aboriginal and Torres Strait Islander persons. This ensures that Aboriginal and Torres Strait Islander people will always form the majority of the corporation's members.

Paragraphs 29-5(b) and (c) of the CATSI Act set out the Indigeneity requirements for corporations of between 1 and 4 members, which cannot be modified by regulations. These provisions also ensure a majority of Aboriginal and Torres Strait Islander members for those corporations.

Section 7 – Registration - creditor notice requirement

Under section 23-1 of the CATSI Act, an application can be made for registration of a CATSI corporation (called 'the amalgamated corporation') to replace 2 or more existing CATSI corporations (called 'the amalgamating corporations'). Subsection 29-18(1) of the CATSI Act requires certain steps to be taken to notify any substantial creditors of the amalgamating corporations of the proposed amalgamation. Under subsection 29-18(3) of the CATSI Act, a substantial creditor of any of the amalgamating corporations can lodge with the Registrar a written objection to the grant of the application for registration of the amalgamated corporation.

Subsection 29-18(3) of the CATSI Act enables regulations to be made that specify the information that must be contained in any written objection to a proposed amalgamation. Subsection 7(1) of the Regulations sets out these requirements, which include the name of the person claiming to be a substantial creditor of an amalgamating corporation, and the name of that corporation. In addition, a written objection must also contain a signed statement that the sum of the unsecured debts owed to the person by the amalgamating corporation exceeds the amount mentioned in subsection 7(2) of the Regulations.

Under subsection 29-18(3) of the CATSI Act, the only person who can make an objection to the amalgamation of CATSI corporations is a 'substantial creditor'. Under subsection 29-18(5) of the CATSI Act, a person is a 'substantial creditor' of an amalgamating corporation – and thus a person who can object to its amalgamation with another corporation – if the sum of the unsecured debts owed to the person by the amalgamating corporation is more than the amount set by the regulations. Subsection 7(2) of the Regulations sets this amount at \$2,000.

Section 8 – Registration as a small, medium and large corporation

Division 37 of the CATSI Act requires CATSI corporations to be registered as small, medium or large according to their income, assets and number of employees, and those of any entities that the CATSI corporation controls. (There is a similar regime in subsections 45A(2) and (3) of the Corporations Act for small and large proprietary companies.)

Under subsections 37-10(1), (2) and (3) of the CATSI Act, the specific amounts of consolidated gross operating income (CGOI) and value of consolidated gross assets (CGA) and the number of employees, which determine registered size, are prescribed by regulations. Section 8 of the Regulations prescribes those amounts of consolidated gross operating income and value of consolidated gross assets and the number of employees.

A CATSI corporation registered as small is required to satisfy at least two of the following criteria:

- (a) the consolidated gross operating income for the financial year of the corporation and the entities it controls (if any) is less than \$100,000;
- (b) the value of the consolidated gross assets at the end of the financial year of the corporation and the entities it controls (if any) is less than \$100,000;
- (c) the corporation and the entities it controls (if any) have, at the end of the financial year, fewer employees than 5 employees.

A CATSI corporation registered as large is required to satisfy at least two of the following criteria:

- (a) the consolidated gross operating income for the financial year of the corporation and the entities it controls (if any) is equal to or more than \$5,000,000;
- (b) the value of the consolidated gross assets at the end of the financial year of the corporation and the entities it controls (if any) is equal to or more than \$2,500,000;
- (c) the corporation and the entities it controls (if any) have, at the end of the financial year, a number of employees that is equal to or more than 25 employees.

All other CATSI corporations are corporations registered as medium.

Section 9 – Counting employees

Section 9 of the Regulations prescribes a method for calculating the number of employees of CATSI corporations for paragraphs 37-10(1)(c), (2)(c) and (3)(c) of the CATSI Act. The method is to count each full-time employee and to count each part-time employee on a pro rata basis relative to the weekly hours of work of a full-time employee. This method is based on subsection 45A(5) of the Corporations Act.

Note that ‘employee’ is defined in section 700-1 of the CATSI Act to include a contact person for the corporation (regardless of the basis on which the person is appointed as a contact person).

Section 10 – Modification of Corporations Act arrangements and reconstructions provisions

Subsection 45-1(1) of the CATSI Act applies a number of the arrangements and reconstructions provisions of the Corporations Act (which relate to external administration) to CATSI corporations, with the modifications set out in subsection 45-1(1) and the applicable provisions set out in subsection 45-1(4). Subsection 45-1(2) of the CATSI Act allows regulations to specify further modifications. Section 10 of the Regulations modifies one of the applied provisions of the Corporations Act, namely subsection 425(5), by adding a new paragraph (ba) after paragraph (b), inserting a reference to a “special administrator”.

The effect of this is that a special administrator appointed to a CATSI corporation under section 490-1 of the CATSI Act may also apply to have an order under section 425 of the Corporations Act to be made, varied or set aside. Section 425 of the Corporations Act provides a court with the power to order the amount to be paid by way of remuneration to a

person appointed as receiver of the property of a corporation. This provision is applied to CATSI corporations by paragraph 45-1(4)(b) of the CATSI Act.

Part 3 – Basic features of Aboriginal and Torres Strait Islander corporations

Section 11 – Available names

Paragraphs 85-5(1)(a) to (c) and 85-5(2)(b) of the CATSI Act provide for regulations to be made concerning names that are either identical to another name or unacceptable for registration under the regulations.

Subsection 11(1) of the Regulations provides that the rules for ascertaining whether a name is identical to another name are the rules set out in clause 1 of Schedule 1 to the Regulations.

Subsection 11(2) of the Regulations provides that a name is unacceptable for registration if it is unacceptable under the rules set out in clause 2 of Schedule 1 to the Regulations. This regulation mirrors regulation 2B.6.01 of the Corporations Regulations.

Section 12 – Consent required for use of certain unacceptable names

Under subsection 85-5(4) of the CATSI Act, regulations may be made to allow an otherwise unacceptable name to be used if the relevant instrumentality or agency of the Crown in right of the Commonwealth consents to the use of the name. Section 12 of the Regulations make provision for the written consent of the relevant Minister specified in Column 2 of the table in section 12 to the use of the name in Column 1 of that table. Column 1 of the table lists 7 such names, including ‘Anzac’, ‘Red Cross’ and ‘United Nations’, and Column 2 specifies the Minister administering the relevant Act in relation to that name. This regulation mirrors sub-regulations 2B.6.02(1), (2) and (4) of the Corporations Regulations.

Part 4 – Meetings

Section 13 – Rules concerning general meetings

Under subsection 201-5(4) of the CATSI Act, the directors of a CATSI corporation must call and arrange to hold a general meeting on request by at least the required number of members, being the greater of 5 members of the corporation or 10% of the corporation’s members.

Under subsection 201-40(4) of the CATSI Act, members of a CATSI corporation may move a resolution at a general meeting if notice of the resolution is given to the corporation by at least the required number of members, being the greater of 5 members of the corporation or 10% of the corporation’s members.

Under subsection 201-50(8) of the CATSI Act, members may request a CATSI corporation to give all its members a statement provided by the members making the request if the request is made by the required number of members, being the greater of 5 members of the corporation or 10% of the corporation’s members. The statement must relate to a resolution to be moved at a general meeting or any other matter that may be properly considered at a general meeting.

Subsections 201-5(5), 201-40(5) and 201-50(9) of the CATSI Act respectively enable regulations to be made prescribing a different number of members for the purposes of sections 201-5(4)(a), 201-40(4)(a) and 201-50(8)(a). Section 13 of the Regulations makes particular provision for this number of members for corporations of between 2 and 29

members. For a CATSI corporation with between 2 and 10 members, the prescribed number of members is 1. For a CATSI corporation with between 11 and 29 members, the prescribed number of members is 3.

Section 14 – Exercise of proxies at general meetings

Section 201-95 of the CATSI Act sets out the rights of proxies appointed to attend and vote for a member at a general meeting. A person must not exercise proxies for more than the number of members prescribed in the regulations (CATSI Act, subsection 201-95(4)).

Section 14 of the Regulations prescribes that number as 3.

Section 15 – Members’ access to minutes of meetings

Subsections 220-10(1), (2) and (3) of the CATSI Act provide members with rights of access to the minute books of a CATSI corporation and to resolutions of members passed without meetings free of charge. Under subsection 220-10(4), a member is also entitled to receive a copy of these documents free of charge. However, subsections 220-10(5) and (6) enable a corporation to require payment for a copy and if the corporation decides to require such payment, this cannot exceed the amount prescribed by regulations.

Section 15 of the Regulations prescribes that amount as \$1 per page. This means that the corporation may not charge more than \$1 per page for providing these copies, but has the discretion to charge less if it so chooses.

Part 5 – Officers

Section 16 – Members may obtain information about directors’ remuneration

Members may direct a CATSI corporation to disclose the remuneration and expenses paid to each director, or a subsidiary (if any), by the corporation or by an entity controlled by the corporation, if the direction is made by the required number of members (CATSI Act, subsection 252-5(1)). The required number set out in subsection 252-5(7) of the CATSI Act is the greater of 5 members or 10% of members.

Subsection 252-5(8) of the CATSI Act provides that the regulations may prescribe a different number of members. Section 16 of the Regulations makes particular provision in respect of this number of members for corporations of between 2 and 29 members. For a CATSI corporation with between 2 and 10 members, the prescribed number of members is 1. For a CATSI corporation with between 11 and 29 members, the prescribed number of members is 3.

Part 6 – Record keeping and reporting

Division 1 – General reports

Unless exempted under Part 7-4 or 7-5 of the CATSI Act, all CATSI corporations are required to prepare a general report for each financial year (CATSI Act, section 330-1), and lodge it with the Registrar (CATSI Act, Division 348). Subparagraphs 330-5(1)(a)(i) to (vi) of the CATSI Act specify the details that need to be included in a general report.

Section 17 – Contents of general report

A general report must also contain any other information required by the regulations (CATSI Act, paragraph 330-5(1)(b)). Section 17 of the Regulations prescribes the other information to be contained in the general report.

The general report must contain certain income, asset and employee information. Paragraphs 17 (a) to (c) of the Regulations specify that a corporation must report its total CGOI for the financial year, the value of its total CGA at the end of the financial year, and the number of its employees at the end of the financial year. This information will help the Registrar determine the registered size of a CATSI corporation (see also section 8 of the Regulations with respect to registration as a small, medium or large corporation).

Paragraph 17(d) of the Regulations specifies that the general report must contain the ABN of the corporation if it has one. This information will allow for data matching between Commonwealth agencies. Non-payment of Goods and Services Tax (GST) is a factor that may lead to the failure of CATSI corporations. Information sharing between Commonwealth agencies, such as the Registrar and the Australian Taxation Office, provides systemic solutions for improved compliance and support to corporations. This information is publicly available and is consistent with information publicly available under the Corporations Act.

The general report must indicate whether the corporation is a deductible gift recipient under Division 30 of the *Income Tax Assessment Act 1997* (paragraph 17(e) of the Regulations). This information provides the Registrar with information about a corporation's tax status and also facilitates improved information sharing arrangements.

Under paragraphs 17(f) to (h) of the Regulations, the general report must indicate whether any of the directors, secretary or contact person of the corporation were also employees at the end of the financial year being reported on. This information is required for the Registrar to check whether the corporation is complying with the requirement that a majority of the directors not be employees of the corporation (CATSI Act, subsection 246-5(4)).

Section 18 – General report to be lodged with Registrar

Section 18 of the Regulations prescribes a longer period of 6 months after the end of the financial year for the general report to be lodged with the Registrar. This period better aligns with subsection 201-150(1) of the CATSI Act, which provides CATSI corporation must hold an AGM within 5 months after the end of its financial year (see also section 42 of the Regulations with respect to annual reports).

Division 2 – Financial and other reports

Financial and other reporting requirements are determined by a corporation's registered size and CGOI.

CATSI corporations registered as small, and having a CGOI in the financial year of less than \$100,000, are not required under the regulations to prepare an annual financial report or directors' report. However, these small corporations must report their CGOI and CGA to the Registrar in their general report. Also, a corporation which controls one of these small corporations must consolidate the small corporation in its consolidated financial report if required by the accounting standard (see below for the defined meaning of 'accounting standard').

All other CATSI corporations are required by Division 2 of Part 6 of the Regulations to prepare a financial report and directors' report, and obtain an audit report, within six months of the end of the financial year.

CATSI corporations registered as large, and any other CATSI corporation having a CGOI of \$5 million or more for the financial year, must report under Subdivision A in Division 2 of Part 6 of the Regulations.

CATSI corporations registered as medium, and having a CGOI of less than \$5 million, and CATSI corporations registered as small, and having a CGOI of \$100,000 or more but less than \$5 million, must report under Subdivision B in Division 2 of Part 6 of the Regulations. For corporations in this category which derive most of their income from public funding and are already reporting the use of those funds, there is an alternative financial reporting option available to them designed to reduce the administrative burden associated with financial reporting. For corporations using this option, the Registrar will recognise the financial reports prepared for public funding bodies.

The Registrar has capacity by written exemption to provide relief from financial, directors' and audit reporting obligations (CATSI Act, Parts 7-4 and 7-5).

Subdivision A – Large corporations and small and medium corporations

Section 19 – Application of this Subdivision

This section clarifies that Subdivision A of Division 2 of the Regulations applies to all corporations registered under the CATSI Act as large corporations, as well as to corporations registered as small or medium corporations with a CGOI of \$5 million or more (including any entities they may control) in a given financial year.

Section 20 – Requirement to prepare reports

Subsection 333-5(3) of the CATSI Act provides for regulations to be made requiring a CATSI corporation to prepare a financial report and a directors' report for a financial year. Section 20 of the Regulations makes provision for this requirement.

Section 21 – Financial reports

This section specifies the content of the annual financial report for CATSI corporations registered as large, and any other corporation having a CGOI of \$5 million or more, for the purposes of section 333-10 of the CATSI Act.

The financial statements for the year, the notes to the financial statements, and the directors' declaration about the statements and the notes are collectively labelled the financial report for the purposes of subsection 333-10(1) of the CATSI Act (subsection 21(1) of the Regulations). This mirrors subsection 295(1) of the Corporations Act.

Specific procedures and rules for the preparation of financial statements and consolidated financial statements are not set out in the Regulations. These matters of accounting detail are more appropriately dealt with in the accounting standards. As indicated in the note to section 23 of the Regulations, the expression “accounting standard” is defined in section 700-1 of the CATSI Act to mean ‘a standard in force under section 334 of the Corporations Act, or a provision of such a standard as it so has effect’. Section 334 of the Corporations Act makes provision for the making of accounting standards. An accounting standard is a legislative instrument for the purposes of the *Legislation Act 2003* and appears in electronic form on the Federal Register of Legislation.

Accordingly, the financial statements for the financial year are the financial statements for the CATSI corporation that are required by the accounting standards (Regulations, paragraph 21(2)(a)), or if compliance with the accounting standards would require the corporation to include other entities in its financial statements, the consolidated financial statements for the consolidated entity are required (Regulations, paragraph 21(2)(b)). This is based on subsection 295(2) of the Corporations Act.

Section 23 of the Regulations further deals with the application of the accounting standards to financial reports of CATSI corporations.

Subsection 21(3) of the Regulations provides that the notes to the financial statements of a CATSI corporation are the notes required by the accounting standards and any other information necessary to give a true and fair view of the financial position and performance of the corporation or consolidated entity. This is based on subsection 295(3) of the Corporations Act.

Subsection 21(4) of the Regulations provides that the financial statements and notes to the financial statements must give a true and fair view of the financial position and performance of the corporation or the consolidated entity (as the case may be). This ensures that the financial statements and notes give a true and fair view of the corporation’s whole operations. It does not affect the primary obligation to comply with the accounting standards. If compliance with the accounting standards would not produce financial statements that give a ‘true and fair view’, additional information necessary to give the true and fair view must be included in the notes to the financial statements. This is based on section 297 of the Corporations Act.

Under subsection 21(5) of the Regulations, as part of the annual financial report, the directors are required to make a declaration about several matters, including the corporation’s solvency. The directors’ declaration in the financial report of a CATSI corporation is a declaration by the directors of the corporation whether, in the directors’ opinion, there are reasonable grounds to believe that the corporation will be able to pay its debts when they become due and payable, and whether, in the directors’ opinion, the financial statements for the financial year and the notes to the financial statements are in accordance with the Regulations, including compliance with the accounting standards, and provision of a true and fair view of the financial position and performance of the corporation or the consolidated entity (as the case may be). This is based on subsection 295(4) of the Corporations Act.

The directors’ declaration about the statements and notes referred to in subsection 21(5) of the Regulations must be made in accordance with a resolution of the directors, mention the

date when the resolution was made and be signed by a director of the corporation (Regulations, subsection 21(6)). This mirrors subsection 295(5) of the Corporations Act.

Aligning the regulations providing for the preparation of financial reports by CATSI corporations with the provisions of the Corporations Act and the accounting standards provides a uniform standard of financial reporting that is well understood in Australia. It also promotes mainstream standards being applied to CATSI corporations.

Section 22 – Directors’ reports

Section 22 of the Regulations specifies the content of the annual directors’ report which must be prepared by CATSI corporations registered as a large, and any other CATSI corporation having a CGOI of \$5 million or more, for the purposes of section 333-10 of the CATSI Act.

The directors’ report must contain the general information specified in paragraphs 22(1)(a) to (f) of the Regulations. This provides a framework for directors to give a detailed overview of a corporation’s business performance and the factors underlying the corporation’s results and financial position, and benefits members by requiring that they be given information about the corporation’s business that they can understand. The table below sets out the general information required to be given in the directors’ report and indicates the provision in the Corporations Act on which it is based.

Section	General information required	Corporations Act
Paragraph 22(1)(a)	A review of operations of the Aboriginal and Torres Strait Islander corporation during the financial year and the results of those operations.	299(1)(a)
Paragraph 22(1)(b)	Details of any significant changes in the corporation’s state of affairs during the financial year.	299(1)(b)
Paragraph 22(1)(c)	A statement of the corporation’s principal activities, and any significant changes in the nature of those activities, during the financial year.	299(1)(c)
Paragraph 22(1)(d)	Details of any matter or circumstance that has arisen since the end of the financial year that has significantly affected, or may significantly affect: (i) the corporation’s operations in future financial years; or (ii) the results of those operations in future financial years; or (iii) the corporation’s state of affairs in future financial years.	299(1)(d)
Paragraph 22(1)(e)	Likely developments in the corporation’s operations in future financial years and the expected results of those operations.	299(1)(e)

Paragraph 22(1)(f)	If the corporation's operations are subject to any particular and significant environmental regulation under a Commonwealth, State or Territory law — details of the corporation's performance in relation to environmental regulation.	299(1)(f)
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The directors' report must also contain the specific information specified in paragraphs 22(1)(g) to (r) of the Regulations, including a copy of the auditor's independence declaration under section 339-50 of the CATSI Act. The table below sets out the specific information required to be given in the directors' report and indicates the provision in the Corporations Act on which it is based.

Section	Specific information required	Corporations Act
Paragraph 22(1)(g)	Details of distributions paid to members during the financial year.	300(1)(a)
Paragraph 22(1)(h)	Details of distributions recommended or declared for payment to members, but not paid, during the financial year.	300(1)(b)
Paragraph 22(1)(i)	The name of each person who has been a director of the corporation during the financial year and the period of the director's tenure.	300(1)(c)
Paragraph 22(1)(j)	Details of each director's qualifications, experience and special responsibilities.	300(10)(a)
Paragraph 22(1)(k)	The number of meetings of the board of directors held during the financial year and each director's attendance record at those meetings.	300(10)(b)
Paragraph 22(1)(l)	The number of meetings of each board committee held during the financial year and each director's attendance record at those meetings.	300(10)(c)
Paragraph 22(1)(m)	The name of each person who has been a secretary of the corporation during the financial year.	300(10)(d)
Paragraph 22(1)(n)	Details of each secretary's qualifications and experience.	300(10)(d)
Paragraph 22(1)(o)	The name of each person who: (i) was an officer of the corporation at any time during the financial year; and (ii) was, when an audit firm or audit company that is an auditor of the corporation undertook an audit of the corporation, a partner in the audit firm or a director of the audit company.	300(1)(ca)
Paragraph 22(1)(p)	A copy of the auditor's declaration under section 339-50 of the CATSI Act for the audit for the financial year.	298(1AB)(b)
Paragraph 22(1)(q)	For any application for leave to bring or intervene in proceedings made during the year under section 169-5 of the CATSI Act: (i) the applicant's name; and (ii) a statement whether leave was granted.	300(14)

Paragraph 22(1)(r)	For any proceedings that, during the year, a person has brought or intervened in for the corporation with leave under section 169-5 of the CATSI Act: (i) the person’s name; and (ii) the names of the parties to the proceedings; and (iii) sufficient information to enable members to understand the nature and status of the proceedings (including the cause of action and orders made by the Court). (‘Court’ for these purposes is defined in sections 694-35 and 700-1 of the CATSI Act)	300(15)
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The directors’ report must be prepared for the corporation. However, if consolidated financial statements are required by the accounting standards, the directors’ report must be prepared for the consolidated entity (Regulations, subsection 22(2)). This is based on subsection 299A(2) of the Corporations Act.

If a financial report for a financial year includes additional information under paragraph 21(3)(b) of the Regulations, the directors’ report must also mention the directors’ reasons for forming the opinion that the inclusion of the additional information was necessary to give the true and fair view, and where the additional information can be found in the financial report (Regulations, subsection 22(3)). This mirrors subsection 298(1A) of the Corporations Act.

Subject to subsection 22(6) of the Regulations, a directors’ report may omit material that would otherwise be included under paragraph 22(1)(e) of the Regulations, if it would be likely to result in unreasonable prejudice to the corporation or consolidated entity (Regulations, subsection 22(4)). This mirrors subsection 299A(3) of the Corporations Act.

Subject to subsection 22(6) of the Regulations, directors may omit information from their report that was included in their corporation’s financial report in the relevant financial year (Regulations, subsection 22(5)).

Subsection 22(6) of the Regulations provides that if any material has been omitted under subsections 22(4) or (5), the directors’ report must specify why this material was not included and, if the information omitted is included in the corporation’s financial report for the financial year, the directors’ report must state where in the financial report this information may be found. This mirrors subsection 300(2) of the Corporations Act.

A directors’ report must be made in accordance with a resolution of the directors, mention the date when the report is made and be signed by one of the directors (Regulations, subsection 22(7)). This mirrors subsection 298(2) of the Corporations Act.

Section 23 – requirement for financial report to be prepared in compliance with the accounting standards

Subsection 333-15(1) of the CATSI Act provides for the making of regulations in respect of other requirements for reports. Sections 23 and 24 of the Regulations set out these other requirements.

Subsections 333-15(1) and (2) of the CATSI Act allow regulations to be made covering respectively the manner in which reports are prepared. Paragraph 23(a) of the Regulations

requires financial reports to comply with the accounting standards (as defined in section 700-1 of the CATSI Act).

Paragraph 23(b) ensures that the accounting standards apply to the corporation, regardless of whether or not it would be regarded as a reporting entity under the accounting standards. However, paragraph 23(a) does impose a limit on the application of these standards by specifying they only apply to the extent to which they are capable of applying to a CATSI corporation.

Section 24 – requirement for financial reports to be audited

Subsection 24 sets out the auditing requirements for financial reports for the purposes of paragraphs 333-15(2)(a), (b) and (d) of the CATSI Act for the purposes of a CATSI corporation covered by Subdivision A. Under subsection 24(2), the financial report of a corporation must be audited and the corporation must obtain an auditors' report.

Subsection 24(3) provides that the auditor of the financial report must be a registered company auditor, or an audit firm that has at least one member who is a registered company auditor who is ordinarily resident in Australia, or an authorised audit company.

A registered company auditor is defined in section 700-1 of the CATSI Act as a person registered as an auditor under Part 9.2 (Registration of Auditors and Liquidators) of the Corporations Act. An authorised audit company is defined in section 700-1 of the CATSI Act as a company registered under Part 9.2A (Authorised Audit Companies) of the Corporations Act.

Subsection 24(4) provides that the audit must be conducted in accordance with the auditing standards as defined in section 700-1 of the CATSI Act. Section 700-1 of the CATSI Act defines auditing standard as a standard in force under section 336 of the Corporations Act or a provision of such a standard as it so has effect. An auditing standard is a legislative instrument for the purposes of the *Legislation Act 2003* and appears in electronic form on the Federal Register of Legislation.

Subdivision B – Certain small and medium corporations

Section 25 – Application of this Subdivision

This section clarifies that Subdivision B of Division 2 of Part 6 of the Regulations applies to all corporations registered under the CATSI Act as small corporations with CGOI of between \$100,000 and \$5,000,000, as well as medium corporations with CGOI of less than \$5,000,000, in a given financial year.

Section 26 – Requirement to prepare reports

This section requires CATSI corporations registered as medium, and having a CGOI of less than \$5 million, and CATSI corporations registered as small, and having a CGOI of \$100,000 or more but less than \$5 million, to prepare a financial report (but, unlike corporations under Subdivision A, not a directors' report) for the financial year.

Section 27 – Financial reports

Subsection 27(1) of the Regulations requires a corporation covered under Subdivision B of Division 2 of Part 6 of the Regulations to prepare and lodge a financial report for a financial year which contains information required by 21 of the Regulations, and is prepared in accordance with the requirements of section 23 of the Regulations, unless it is covered under the *alternative reporting requirements* of subsections 27(2) and (3). For the auditing requirement for financial reports prepared under subsection 27(1), see section 28.

Subsection 27(2) of the Regulations provides for the *alternative reporting requirements* of subsection 27(3) of the Regulations to apply, subject to meeting the three conditions set out in paragraphs 27(2)(a)-(c). This financial reporting option is designed to reduce duplication of reporting and provide administrative relief to CATSI corporations that fall within this category.

The first condition is that the accounting standards, if applied to the financial report, would not require the corporation to provide consolidated financial statements (paragraph 27(2)(a)). The second condition is that at least 90% of the gross operating income of the corporation in the financial year consists of funding provided by one or more funding bodies (paragraph 27(2)(b)). The expression “funding body” is defined in section 5 of the Regulations. The third condition is that as a condition of the provision of funding, the corporation is required (by legislation or otherwise) to prepare and submit to the funding body or bodies, one or more annual reports accounting for the expenditure of the funding by the corporation over the full financial year (paragraph 27(2)(c)).

For the purposes of subsection 27(2), subsection 27(3) of the Regulations specify that the content of a financial report of a corporation based on public funders’ reports must include the financial reports prepared for the funding bodies along with any auditor’s reports of those reports to funders. The financial report must also report on the income and expenditure, and assets and liabilities, of the corporation not already covered by the reports to funders.

Under paragraph 27(3)(e), a financial report prepared under subsection 27(2) must also include a declaration by the corporation’s directors that it is made in accordance with a resolution of the directors, states whether in the directors’ opinion there are reasonable grounds to believe that the corporation will be able to pay its debts when they become due and payable, specifies the date when the resolution was made, and is signed by a director of the corporation.

Section 28 – Requirements for certain financial reports to be audited

Subsection 28(1) of the Regulations provides that a corporation that prepares a financial report under subsection 27(1) must have the financial report audited and must obtain an auditor’s report. The auditor must be a registered company auditor, or an audit firm that has at least one member who is a registered company auditor who is ordinarily resident in Australia, or an authorised audit company, a chartered accountant or an affiliate of Chartered Accountants Australia and New Zealand, a certified practising accountant or a fellow of CPA Australia, or a member of fellow of the Institute of Public Accountants. The audit of a general purpose financial report under subsection 27(1) must be conducted in accordance with the auditing standards.

Division 3 – Auditor independence

Section 29 – Modification of Corporations Act auditor independence provisions

The Corporations Act auditor independence provisions (which are defined in subsection 339-75(4) of the CATSI Act) apply to certain CATSI corporations (CATSI Act, subsection 339-75(1)). Regulations may modify these applied Corporations Act auditor independence provisions (CATSI Act, subsection 339-75(2)). Paragraphs 29(a) and (b) of the Regulations provide that references in those applied provisions of the Corporations Act to ‘ASIC’ are taken to be references to ‘the Registrar’, and references to a ‘small proprietary company’ are taken to be a CATSI corporation ‘registered as a small or medium corporation’.

Section 30 – Alternative independence requirements

The regulations may provide for auditor independence requirements to be met in relation to the audit of a financial report of a CATSI corporation where section 339-75 of the CATSI Act does not apply (CATSI Act, subsection 339-80(2)). Section 30 of the Regulations applies the Corporations Act auditor independence provisions contained in Division 3 of Part 2M.4 to the audit of a financial report covered under subsection 27(1) of the Regulations.

The modifications to the Corporations Act auditor independence provisions covered under section 29 of the Regulations also apply to the audit of a financial report under these auditor independence requirements. However, these auditor independence requirements are further modified in their application by removing any references to imprisonment terms in the penalties in applied items 116CA to 116GC in Schedule 3 to the Corporations Act.

Division 4 – Appointment and removal of auditors

Section 31 – Purpose of this Division

The inclusion of section 31 (which was not included in the 2007 Regulations) is to clarify that Division 4 of the Regulations is made for the purposes of section 339-100 of the CATSI Act, which enables regulations to be made in relation to the appointment and removal of auditors of CATSI corporations.

Section 32 – Nomination

Under subsection 32(1) of the Regulations, a director or member of a CATSI corporation may nominate in writing an individual, firm or company for appointment as auditor of the corporation.

The corporation must send a copy of the notice of nomination to each individual, firm or company nominated, and each auditor of the corporation, and each person entitled to receive notice of general meetings of the corporation (subsection 32(2)). This subsection is based on subsection 328B(3) of the Corporations Act.

The copy of the notice of nomination must be sent at least 7 days before the general meeting, or when notice is given of the meeting at which the nomination is to be considered (subsection 34(3)). This provision is based on subsection 328B(4) of the Corporations Act.

Section 33 – Appointment of auditor

CATSI corporations would normally appoint an auditor for the corporation at a general meeting, whether or not a requirement of section 32 has been complied with. However, if the corporation has not appointed an auditor for the corporation at a general meeting, the

directors may do so (Regulations, subsection 33(2)). This provision mirrors section 325 of the Corporations Act.

Section 34 – Consent of auditor required

The consent of an individual, firm or company to be appointed as an auditor must be obtained by a CATSI corporation, or its directors, before that individual, firm or company can be appointed as auditor of the corporation. The appointment cannot proceed if that consent is withdrawn (subsection 34(1)).

Under subsection 34(2), the consent to be appointed as an auditor, or the withdrawal of that consent, must be given by a written notice to the corporation. In the case of a notice of consent to be appointed as an auditor, or withdrawal of consent, given by a firm, the notice must be signed by a member of the firm in the firm's name, and in that member's own name (subsection 34(3)).

If a corporation must use a registered company auditor, the member of the firm who signs the notice of consent to be appointed as an auditor must be a registered company auditor (subsection 34(4)).

Under subsection 34(5) of the Regulations, the notice of consent to be appointed as an auditor, or withdrawal of consent, given by a company must be signed by a director or senior manager of the company in the company's name, and in that director's or senior manager's own name.

An appointment of an auditor to a corporation that does not comply with subsections 34(1) to (5) has no effect (Regulations, subsection 34(6)).

This section is based on section 328A of the Corporations Act.

Section 35 – Notice of appointment of auditor

This is a new inclusion in the Regulations that was not in the 2007 Regulations. Under section 35, the corporation must lodge with the Registrar a notice, in an approved form, of the appointment of an auditor.

The requirements of an 'approved form' are set out in subsection 638-1(2) of the CATSI Act. This notice must be lodged with the Registrar within 14 days of the appointment having been made.

Section 36 – Resignation

Subsection 36(1) of the Regulations provides that an auditor of a corporation may resign by giving notice in writing to the corporation. This provision is based on subsection 329(5) of the Corporations Act. The consent of the Registrar is not required to resign as auditor.

The resignation of an auditor takes effect on the day specified in the notice of resignation, or, if no day is specified, on the day the notice is received by the corporation (subsection 36(2)). This subsection is based on subsection 329(9) of the Corporations Act.

Under subsection 36(3), the corporation must lodge the notice of resignation with the Registrar within 14 days after receipt of a notice of resignation from an auditor. This subsection is based on paragraphs 329(11)(a) and (c) of the Corporations Act.

Section 37 – Removal of auditor by resolution at general meeting

An auditor of a CATSI corporation may be removed from office only by resolution of the corporation at a general meeting of which at least 2 months' notice prior to the meeting at which the auditor is to be removed has been given (Regulations, subsections 37(1) and (2)).

Under subsection 37(3), if a corporation calls a meeting after the notice of intention to remove an auditor is given, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention was given. However, subsection 201-20(4) of the CATSI Act ensures that, notwithstanding this, there would still need to be at least 21 days notice given of the general meeting at which the resolution to remove an auditor will be moved.

As soon as possible after the notice is received, a CATSI corporation must send a copy of a notice to remove an auditor to the auditor and also lodge a copy of the notice with the Registrar (subsection 37(4)).

Within 7 days after receiving a copy of the notice to remove an auditor, the auditor may make representations to the corporation (subsection 37(5)). Subsection 37(6) specifies that the auditor's representations must be in writing, not exceed a reasonable length and request that, before the general meeting at which the resolution is to be considered, a copy of the representations be sent by the corporation at its expense to every member of the corporation to whom notice of the meeting is sent.

A corporation may apply to the Registrar seeking a determination that the auditor's representations not be sent to every member of the corporation. However, unless the Registrar determines otherwise, the corporation must send a copy of the representations in accordance with the auditor's request (subsection 37(7)).

Under subsection 37(8), an auditor may require the representations be read out at the general meeting held to consider the resolution to remove the auditor without adverse impact on their right to be heard at the general meetings of a CATSI corporation (CATSI Act, paragraph 201-80(3)(b)).

This section is based on subsections 329(1) to (4) of the Corporations Act.

Section 38 – Auditor ceasing to hold office by reason of unresolved conflict of interest

Subsections 38(1) and (2) of the Regulations provide for the auditor conflict of interest provisions in subsections 327B(2A) to (2D) of the Corporations Act to apply to an auditor undertaking an audit of a financial report of a corporation under Division 2 in Part 6 of the Regulations, with the only changes being that references in the applied Corporations Act auditor conflict of interest provisions to a 'company' are taken to be references to a '[CATSI] corporation', and references to 'ASIC' are taken to be references to 'the Registrar'.

Subsection 38(3) provides that, in the case of an audit firm, if that audit firm ceases to be an auditor of a corporation at a particular time because of the applied Corporations Act auditor conflict of interest provisions, each member of the audit firm ceases to be an auditor of the corporation.

Section 39 – Control by another corporation

Under this provision, in the event that a corporation begins to be controlled by another corporation, the auditor of the first corporation must retire at the next AGM. The auditor is, subject to the Regulations, eligible for re-appointment. This regulation mirrors section 327H of the Corporations Act.

Section 40 – Effect of winding up

Under this provision, an auditor of a corporation ceases to hold office if a special resolution is passed for the voluntary winding up of the corporation, or an order is made by the Court (as defined in subsection 694-35(1) of the CATSI Act) for the winding up of the corporation. This regulation mirrors section 330 of the Corporations Act.

Section 41 – Surviving or continuing auditor

This provision ensures that, in the event of a vacancy in the office of auditor of a corporation, any surviving or continuing auditor or auditors may act as auditors of the corporation. This section mirrors section 327I of the Corporations Act.

Division 5 – Lodging reports

Section 42 – Modification – time for lodgement of annual reports with Registrar

This section modifies the CATSI Act and provides for a longer period of six months, after the end of the financial year, for a financial report, a directors' report or an auditor's report to be lodged with the Registrar. This period better aligns with subsection 201-150(1) of the CATSI Act which provides that a corporation must hold an AGM within 5 months after the end of its financial year. (See also under section 18, above, which makes similar provision for the lodgement of a general report.)

Part 7 – Registers

Section 43 – Information and documents to be included in Register of Aboriginal and Torres Strait Islander Corporations

Under paragraph 418-1(a) of the CATSI Act, the Registrar is required to keep the Register of Aboriginal and Torres Strait Islander Corporations (Corporations Register). The Register is publicly accessible, either on the website of the Office of the Registrar of Indigenous Corporations (oric.gov.au), for current documents, or upon request for archived documents. Section 418-10 of the CATSI Act provides that the Corporations Register 'is to include the information or documents specified in the regulations in relation to each Aboriginal and Torres Strait Islander corporation'.

The effect of section 43 is that the information and documents listed in Schedule 2 of the Regulations are required to be included in the Corporations Register. Schedule 2 is divided into four parts. Clause 1 lists the information and documents mentioned in the CATSI Act. Clause 2 lists information and documents mentioned in relevant provisions of the Regulations (sections 20, 24, 26, 28 and 35-37). Clause 3 lists information and documents mentioned in provisions of the Corporations Act that are applied to CATSI corporations by the CATSI Act. Clause 4 lists information and documents mentioned in provisions of the Corporations Regulations that are applied to CATSI corporations by the CATSI Act.

Section 44 – Inspection and production of records

The effect of this provision is that, under paragraph 421-1(1)(b) of the CATSI Act, any person has a right to inspect or search the Corporations Register and the Register of Disqualified Officers for any information or document contained in those registers.

Section 45 – Exempt documents

Paragraph 421-1(1)(a) of the CATSI Act provides that a person may inspect any document lodged with the Registrar, unless it is an exempt document. Exempt documents are those mentioned in paragraphs 421-1(4)(a)-(e) of the CATSI Act, and any documents specified in the regulations for the purposes of paragraph 421-1(4)(f). Under paragraph 421-1(1)(c) of the CATSI Act, a person may also require a copy of, or extract from, any non-exempt document.

Section 45 has the effect that the documents listed in Schedule 3 to the Regulations are exempt documents (which a member of the public will therefore have no right to inspect under paragraph 421-1(1)(a) of the CATSI Act). Schedule 3 is divided into two parts. Clause 1 lists documents that are mentioned in the CATSI Act (these relate to documents such as those required to accompany an application for registration as a corporation under the CATSI Act, relating to changes in a corporation's constitution and requests for appointment of a special administrator). Clause 2 lists documents mentioned in provisions of the Corporations Act that are applied to CATSI corporations by the CATSI Act (these relate to various applied conflict of interest provisions).

Part 8 – Regulation and enforcement

Section 46 – Registrar may call a general meeting (other than an AGM)

The Registrar may call and arrange to hold a general meeting (other than an AGM) of a CATSI corporation if requested to do so in writing by at least the required number of members (CATSI Act, paragraph 439-10(1)(b)). The required number is set out in subsection 439-10(9) of the CATSI Act.

The regulations may prescribe a different number of members than that set out in the Act (CATSI Act, subsection 439-10(10)). Section 46 makes particular provision for this number of members for CATSI corporations of between 2 and 29 members. For a corporation with between 2 and 10 members, the prescribed number of members is 1. For a corporation with between 11 and 29 members, the prescribed number of members is 3.

Section 47 – Authorised officers - identity cards

Under subsection 447-1(1) of the CATSI Act, the Registrar may appoint certain persons to be authorised officers for the purposes outlined under section 450-1 of the CATSI Act (relating to specified compliance and suspected contravention matters). Subsection 447-5(1) of the CATSI Act requires the Registrar to issue an identity card to an authorised officer in the form to be prescribed by the regulations. Section 47 of the Regulations prescribes that the authorised officer's name along with a recent photograph of the authorised officer is to be displayed, as well as the date on which the identity card expires and a statement that the person is an authorised officer for the purposes of the CATSI Act.

Part 9 – External administration

Section 48 – Grounds for special administration

Subsections 487-1(1) and (4) of the CATSI Act provide the Registrar with the power to place a CATSI corporation under special administration, subject to being satisfied that at least one of the grounds specified under section 487-5 is satisfied. One of the grounds for determining that a CATSI corporation is to be under special administration is if at least the required number of members request the Registrar, in writing, to appoint a special administrator (CATSI Act, paragraph 487-5(1)(i)). The required number is set out in subsection 487-5(4) of the CATSI Act.

Under subsection 487-5(5) of the CATSI Act, the regulations may prescribe a different number of members to those set out in the CATSI Act. Section 48 of the Regulations makes particular provision for this number of members for CATSI corporations of between 2 and 29 members. For a CATSI corporation with between 2 and 10 members, the prescribed number of members is 1. For a CATSI corporation with between 11 and 20 members, the prescribed number of members is 3.

Section 49 – Modification of Corporations Act special administration provisions

Subsection 499-10(1) of the CATSI Act applies certain provisions of the Corporations Act to CATSI corporations that are under special administration. The applied Corporations Act provisions may be modified by the regulations (CATSI Act, paragraph 499-10(3)(b)).

Paragraph 49(a) provides that these applied Corporations Act provisions apply to a corporation that is under special administration as if a reference to ‘ASIC’ is a reference to ‘the Registrar’. Paragraph 49(b) provides that further modified applied Corporations Act provisions are in clause 1 of Schedule 4 in the Regulations. Clause 1 of Schedule 4 provides a table of seven relevant modifications.

Section 50 – Modification of Corporations Act receiver provisions

Subsection 516-1(1) of the CATSI Act applies the Corporations Act receiver provisions to CATSI corporations with some modifications and paragraph 516-1(2)(b) enables regulations to be made in relation to these provisions. Section 50 of the Regulations provides further modifications to these provisions as set out in clause 2 of Schedule 4. Clause 2 of Schedule 4 provides a table of three relevant modifications.

Section 51 – Modification of Corporations Act administration provisions

Subsection 521-1(1) of the CATSI Act applies the Corporations Act administration provisions to CATSI corporations with some modifications and paragraph 521-1(2)(b) enables regulations to be made in relation to these provisions. Section 51 of the Regulations provides further modifications to these provisions as set out in clause 3 of Schedule 4. Clause 3 of Schedule 4 provides a table of six relevant modifications.

Section 52 – Grounds for Court ordered winding up

One of the grounds on which a CATSI corporation may be wound up is that the corporation has failed, for a prescribed period, to lodge any financial or other reports required to be lodged by Part 7-3 of the Act (CATSI Act, paragraph 526-5(k)). Section 52 of the Regulations prescribes that period as 2 years.

Section 53 – Modification of Corporation Act winding up provisions

Subsection 526-35(1) of the CATSI Act applies the Corporations Act winding up provisions to CATSI corporations with some modifications and paragraph 526-35(2)(b) enables regulations to be made in relation to these provisions. Section 53 of the Regulations provides further modifications to these provisions as set out in clause 4 of Schedule 4. Clause 4 of Schedule 4 provides a table of 31 relevant modifications.

Part 10 – Administration

Section 54 – Authorised use or disclosure of protected information

The CATSI Act protects information received by the Registrar and other persons under the Act from unauthorised use or disclosure (CATSI Act, Division 604). The CATSI Act authorises particular uses or disclosures of protected information (CATSI Act, sections 604-5 and 604-25), including to certain persons or bodies prescribed by the regulations (CATSI Act, paragraphs 604-25(4)(f) to (l)).

To assist Commonwealth departments responsible for general policy on Aboriginal and Torres Strait Islander affairs or the administration of programs that relate specifically to Aboriginal or Torres Strait Islander persons, and to assist the Australian Securities and Investments Commission (ASIC), the Registrar may disclose protected information to these agencies for the purposes of them performing their functions or exercising their powers (CATSI Act, paragraphs 604-25(4)(a) to (e)). No power for making regulations is provided for in the CATSI Act for these matters.

The disclosure of protected information is an authorised disclosure if made to an agency head of, or an APS employee in, an agency (within the meaning of the *Public Service Act 1999*) that is prescribed by the regulations for the purposes of performing the functions, or exercising the powers, of the agency (CATSI Act, paragraph 604-25(4)(f)). These prescribed agencies are each department of state that is responsible for general policy on Aboriginal and Torres Strait Islander affairs, each department of state that is responsible for the administration of a program that relates specifically to Aboriginal or Torres Strait Islander persons and the Office of the Director of Public Prosecutions (Regulations, subsection 54(1)).

To assist the Australian Federal Police (AFP), the Registrar may disclose protected information to the AFP for the purposes of the AFP performing its functions or exercising its powers. The disclosure of protected information is an authorised disclosure if made to a Chief Executive, or an officer or employee, of a prescribed Agency (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that is prescribed by the regulations for the purposes of performing the functions, or exercising the powers, of the Agency (CATSI Act, paragraph 604-25(4)(g)). The AFP is prescribed under subsection 54(2).

To assist prescribed state or territory departments responsible for general policy on Aboriginal and Torres Strait Islander affairs, the Registrar may disclose protected information to these departments for the purposes of performing their functions. The disclosure of protected information is an authorised disclosure if made to the head (however described), or an officer or employee, of a department of state of a state or territory that is prescribed by the regulations for the purposes of performing the functions, or exercising the powers, of the department (CATSI Act, paragraph 604-25(4)(i)). Each

department of state of a state or territory that is responsible for general policy on Aboriginal and Torres Strait Islander affairs is prescribed under subsection 54(3).

To assist prescribed state or territory departments responsible for the administration of Aboriginal and Torres Strait Islander lands legislation, the Registrar may disclose protected information to these departments for the purposes of the departments performing their functions. The following state and territory departments are expressly prescribed under paragraph 604-25(4)(i) of the CATSI Act:

- the department of state of New South Wales that is responsible for the administration of the *Aboriginal Land Rights Act 1983* (NSW) (Regulations, paragraph 54(4)(a));
- each department of state of Victoria that is responsible for the administration of any of the *Aboriginal Heritage Act 1992*, the *Aboriginal Land (Northcote Land) Act 1989*, the *Aboriginal Lands (Aborigines' Advancement League) (Watt Street, Northcote) Act 1982*, the *Aboriginal Lands Act 1970*, the *Aboriginal Lands Act 1991* or the *Traditional Owner Settlement Act 2010* (Regulations, paragraph 54(4)(b));
- each department of state of Queensland that is responsible for the administration of either the *Aboriginal Land Act 1991* (Qld) or the *Torres Strait Islander Land Act 1991* (Qld) (Regulations, paragraph 54(4)(c));
- the department of state of Western Australia that is responsible for the administration of the *Aboriginal Affairs Planning Authority Act 1972* (WA) (Regulations, paragraph 54(4)(d));
- the department of state of South Australia that is responsible for the administration of the *Aboriginal Lands Trusts Act 2013* (SA) (Regulations, paragraph 54(4)(e));
- the department of state of Tasmania that is responsible for the administration of the *Aboriginal Lands Act 1995* (Tas) (Regulations, paragraph 54(4)(f)).

To assist state and territory police and prosecutorial agencies, the Registrar may disclose protected information to those agencies for the purposes of the agencies performing their functions. The disclosure of protected information is an authorised disclosure if made to the head (however described), or an officer or employee, of a body prescribed by the regulations and established for a public purpose by or under a law of a state or territory (including a local governing body) for the purposes of performing functions conferred on the body by a law of the state or territory (CATSI Act, paragraph 604-25(4)(j)). The prescribed agencies are the police force or service of a State, the Northern Territory Police Force and an authority of a State or Territory that has functions and powers similar to those of the Director of Public Prosecutions of the Commonwealth (Regulations, subsection 54(5)).

To assist legal and accounting bodies in their disciplinary activities, the Registrar may disclose protected information to assist a prescribed professional legal or accounting body to perform its disciplinary function. Such disclosure is authorised if made to a professional disciplinary body prescribed by the regulations for the purposes of performing one of its functions or exercising one of its powers (CATSI Act, paragraph 604-25(4)(k)). The prescribed professional disciplinary bodies are CPA Australia, Chartered Accountants Australia and New Zealand, the Institute of Public Accountants, the New South Wales Bar Association, the Law Society of New South Wales, the Victorian Bar Incorporated, the Law Institute of Victoria, the Bar Association of Queensland, the Queensland Law Society, the Legal Practice Board of Western Australia, the Law Society of South Australia, the Law Society of Tasmania, the Law Society of the Australian Capital Territory and the Law Society Northern Territory (Regulations, subsection 54(6)).

To assist Indigenous Business Australia (IBA) in its functions of promoting and encouraging Aboriginal and Torres Strait Islander self-management and economic self-sufficiency and creating opportunities for Aboriginal and Torres Strait Islander individuals and communities to build assets and wealth, the Registrar may disclose protected information to IBA for the purpose of performing its functions. Such disclosure is authorised if made to a prescribed person or body for the prescribed purposes of the person or body (CATSI Act, paragraph 604-25(4)(l)). IBA is a prescribed body and the purpose of performing the functions of IBA under the *Aboriginal and Torres Strait Islander Act 2005* is prescribed (Regulations, subsection 54(7)).

To assist the Indigenous Land Corporation (ILC) in its functions of assisting Indigenous Australians to acquire land and manage Indigenous-held land, the Registrar may disclose protected information to the ILC for the purpose of performing its functions. Such disclosure is authorised if made to a prescribed person or body for the prescribed purposes of the person or body (CATSI Act, paragraph 604-25(4)(l)). The ILC is a prescribed body and the purpose of performing the functions of the ILC under the *Aboriginal and Torres Strait Islander Act 2005* is prescribed (Regulations, subsection 54(8)).

Part 11 – Registrar of Aboriginal and Torres Strait Islander Corporations

Section 55 – Functions of the Registrar

The Registrar’s functions are set out in paragraphs 658-1(1)(a) to (j) of the CATSI Act. Other functions may be prescribed by regulation (CATSI Act, paragraph 658-1(1)(k)).

Section 658-10 of the CATSI Act provides the Registrar with the power to do all things necessary or convenient to be done, or in connection with, the performance of these functions.

The additional function provided under section 55 of the Regulations allows the Registrar to make available, to the public, documents or information in documents that were previously held by the Registrar of Aboriginal Corporations under the *Aboriginal Councils and Associations Act 1976* (the ACA Act), which was repealed and replaced by the CATSI Act. This preserves public access to these documents after the commencement of the CATSI Act on a similar basis to that which existed under the ACA Act. The Registrar of Aboriginal Corporations under the ACA Act could permit a person at all reasonable times to inspect all or any of the documents filed or otherwise lodged with the Registrar in respect of an Aboriginal corporation (*Aboriginal Councils and Associations Regulations*, regulation 14).

Part 12 – Application, savings and transitional provisions

Division 1 – Corporations (Aboriginal and Torres Strait Islander Regulations 2017)

Section 56 – Definitions

This section provides definitions for the purposes of this Division. It specifies that “commencement day” is the same as that specified in section 2 of the Regulations. It also indicates that a reference to the “old regulations” is a reference to the 2007 Regulations.

Section 57 – Things done under old regulations

The effect of this section is that anything done or that could be done (including any notices, approvals or other instrument that were given or made) under the 2007 Regulations, prior to

their repeal as provided for under Schedule 5 of the Regulations, will have effect as if it had been done for that purpose under these Regulations.

Section 58 – Application – fee for members’ access to minutes

The effect of this section is that the charge of \$1 per page for providing a member with a copy of a corporation’s minutes, or extracts of the minutes, will come into effect on the date of commencement of the Regulations. These charges will apply to any request made on or after the date of commencement of the Regulations.

Section 59 – Application – required number of members for directions and requests

The effect of this section is to ensure that sections 16 (members’ requests for information about directors’ remuneration), 46 (number of members required to request the Registrar to call a general meeting) and 48 (number of members required to be able to request special administration of their corporation) apply to any directions given or requests made under those sections as of the date of commencement of the Regulations.

Section 60 – Savings – information or documents mentioned in the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*

Although not likely to occur, to minimise the risk of any gaps in the application of relevant provisions, section 60 of the Regulations preserves several provisions contained in the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006* (the Consequential Measures Act) that were preserved under the 2007 Regulations.

The relevant provisions in the Consequential Measures Act relate to information and documents to be kept on the Register referred to under section 43 of the Regulations, which would otherwise have been repealed through the repeal of the 2007 Regulations in Schedule 5 of the Regulations. This is to ensure that there are no gaps in the application of these provisions to documents and information that were on the register established and maintained under the ACA Act.

Schedule 1 – Availability of names and consent required

Clause 1 – Rules for ascertaining whether names are identical

This clause provides rules for ascertaining whether a name is identical to another name for the purposes of subsection 11(1) of the Regulations. It is based on item 6101 and table in Part 1 of Schedule 6 of the Corporations Regulations.

Clause 2 – Names unacceptable for registration

This clause provides rules for ascertaining whether a name is unacceptable for the purposes of subsection 11(2) of the Regulations. This Part mirrors item 6203 of Part 2 of Schedule 6 of the Corporations Regulations.

Under Schedule 1, clause 2 subclause 1(a) of the Regulations, a name will be unacceptable for registration if it is, in the opinion of the Registrar, undesirable or likely to be offensive to members of the public.

Under subclause 1(b), a name is unacceptable for registration if it contains a word, phrase or abbreviation specified in clause 3 (restricted words and phrases) of Schedule 1, or contains a word, phrase or abbreviation with a similar meaning.

Under subclause 1(c), a name is unacceptable for registration if it includes the word ‘Commonwealth’ or ‘Federal’, unless the Registrar is satisfied that the word is used in a geographical context (see further under paragraph 157, below).

Under subclause 1(d), a name is unacceptable for registration if the context in which it is proposed to be used suggests a connection with the Crown or government, where that connection does not exist. In this paragraph, government means the Commonwealth Government, the government of a state or territory, a municipal or other local authority, the government of any other part of the Queen’s dominions, possessions or territories, a department, authority or instrumentality of the Commonwealth Government, a department, authority or instrumentality of the government of a state or territory, or the government of a foreign country.

Under subclause 1(e), a name is unacceptable for registration if the context in which it is proposed to be used suggests a connection with a member of the Royal Family, the receipt of Royal patronage, an ex-servicemen’s organisation, Sir Donald Bradman or Saint Mary MacKillop, where that connection does not exist.

Under subclause 1(f), a name is unacceptable for registration if the context in which it is proposed to be used suggests that the members of an organisation are totally or partially incapacitated, if those members are not so affected.

Under subclause 1(g), a name is unacceptable for registration if it uses in any way a ‘prescribed term’, which is defined under subclause 2 to mean ANZAC, Geneva Cross, Red Crescent, Red Cross or Red Lion and Sun, United Nations or University. However, these prescribed terms may be used if relevant Ministerial consent is obtained as provided under section 12 of the Regulations. This item mirrors Part 4 of Schedule 6 to the Corporations Regulations.

Subclause 3 provides that subclause 1(b) does not apply where the letters ‘ADI’ are used as part of another word, such as for instance in the case of the word “traditional”. This item mirrors sub-regulation 2B.6.02(3) of the Corporations Regulations.

Subclause 4 provides that subclause 1(c) does not apply if the Registrar is satisfied that the word ‘Commonwealth’ or ‘Federal’ is used in a proposed name of a CATSI corporation in a geographical context. This item mirrors item 6205 in Part 2 of Schedule 6 to the Corporations Regulations.

Clause 3 – Words, phrases and abbreviations that are unacceptable for registration

Clause 3 contains a list of 35 words, phrases and abbreviations that are unacceptable for registration in the name of a CATSI corporation for the purposes of subclause 1(b) of Schedule 1. It combines the lists in Parts 3 and 5 of Schedule 6 to the Corporations Regulations.

Schedule 2 – Information and documents to be included in the Register

Clause 1 – Information or documents mentioned in the Act

For the purposes of section 43 of the Regulations, this clause lists 183 items of information or documents mentioned in the CATSI Act. These items include a variety of applications, notices, determinations and certificates provided for under the relevant provisions of the CATSI Act, which are listed in the second column of the table comprising this clause.

Clause 2 – Information or documents mentioned in this instrument

For the purposes section 43 of the Regulations, this Part lists eight items of information or documents mentioned in the Regulations.

Clause 3 – Information or documents mentioned in the Corporations Act

For the purposes of section 43 of the Regulations, this Part lists 47 items of information or documents mentioned in the relevant provisions of the Corporations Act, as it applies to a CATSI corporation.

Clause 4 – Documents mentioned in the Corporations Regulations

For the purposes of section 43 of the Regulations, this Part lists two documents mentioned in a provision of the Corporations Regulations, as it applies to a CATSI corporation.

Schedule 3 – Documents exempt from inspection

For the purposes of section 45 of the Regulations, this Schedule lists the 16 documents exempted under the CATSI Act (clause 1) and the 10 documents exempted under the Corporations Act (clause 2).

Schedule 4 – Modification of applied Corporations Act provisions

Clause 1 – Modification of Corporations Act special administration provisions

This clause lists modifications to particular applied Corporations Act provisions for the purposes of paragraph 49(b) of the Regulations.

Item 1 is a technical modification. It inserts a definition of “CATSI Act” and “Regulations” into the definitions in section 9 of the Corporations Act.

Many provisions in the CATSI Act have corresponding equivalent provisions in the Corporations Act. In cases where applied Corporations Act provisions refer to Corporations Act provisions that have CATSI Act equivalents, the CATSI provision should apply and be referred to instead. Items 2 to 6 modify such applied Corporations Act provisions by changing legislative references to point to the equivalent provision in the CATSI Act.

Item 7 omits section 443D of the Corporations Act from the applied Corporations Act provisions applying to CATSI corporations under special administration. It replaces it with a revised version of section 443D, which has the effect of indemnifying a special administrator of a CATSI corporation out of that corporation’s property in respect of certain debts and liabilities, or damages or losses sustained, arising from the performance or exercise of their powers or functions as special administrator of that corporation.

Clause 2 – Modification of Corporations Act receiver provisions

This clause lists modifications to particular applied Corporations Act receiver provisions for the purposes of section 50 of the Regulations.

Item 1 is a technical modification. It inserts a definition of “CATSI Act” and “Regulations” into the definitions in section 9 of the Corporations Act.

Item 2 modifies the reference to “this Act, the regulations or the rules” in subparagraph 423(1)(a)(iv) of the applied Corporations Act receiver provisions to make it refer to the CATSI Act, the Regulations and any provision of the Corporations Act applied by a provision of the CATSI Act or the rules instead.

Item 3 adds a new paragraph (ba) to subsection 425(5) of the Corporations Act to ensure that special administrators are also included in this applied regime.

Clause 3 – Modification of Corporation Act administration provisions

This clause lists modifications to particular applied Corporations Act administration provisions for the purposes of section 50 of the Regulations.

Item 1 is a technical modification. It inserts a definition of “CATSI Act” and “Regulations” into the definitions in section 9 of the Corporations Act.

Many provisions in the CATSI Act have corresponding equivalent provisions in the Corporations Act. In cases where applied Corporations Act provisions refer to Corporations Act provisions which have CATSI Act equivalents, the CATSI provision should apply and be referred to instead. Items 2 to 6 modify such applied Corporations Act provisions by changing legislative references to point to the equivalent provision in the CATSI Act.

Clause 4 – Modification of Corporations Act winding up provisions

This clause lists modifications to particular applied Corporations Act winding up provisions for the purposes of section 50 of the Regulations.

Item 1 is a technical modification. It inserts a definition of “CATSI Act” and “Regulations” into the definitions in section 9 of the Corporations Act.

Item 2 inserts a definition of “registered liquidator” in section 9 of the applied Corporations Act. The new definition ensures that liquidation of CATSI corporations will be carried out by liquidators registered by ASIC under Part 9.2 of the Corporations Act. The Registrar will not conduct a scheme of registering liquidators.

Some of the applied Corporations Act provisions (if unmodified) would make reference to provisions in the Corporations Act that were not intended to apply to CATSI corporations. Items 3 to 11, 13-19, 22-24 and 28 modify these applied Corporations Act provisions by removing legislative references to provisions in the Corporations Act that do not apply to CATSI corporations.

Item 12 modifies paragraph 532(1)(b) of the applied Corporations Act winding up provisions. The substitution allows the Registrar to approve, in writing, a person to act as a liquidator for a particular CATSI corporation. This provision could be used where a liquidator registered by ASIC is not available to conduct the liquidation of a CATSI corporation.

If applied, some provisions in Part 5.8 of the applied Corporations Act winding up provisions would relate to investigations carried out under the *Australian Securities and Investments Commission Act 2001* or Part VII of the *Companies Act 1981*. CATSI corporations are not subject to these investigations. Items 20, 21, 25 and 27 omit these provisions from the applied Corporations Act winding up provisions.

Item 26 modifies paragraph (e) of the definition of “appropriate officer” in subsection 589(5) of the applied Corporations Act winding up provisions by deleting the reference to the National Companies and Securities Commission (NCSC) and some surrounding words.

Item 29 omits subsection 589(6) of the Corporations Act from the applied Corporations Act winding up provisions. Subsection 589(6) is an application provision for Part 5.8 of the Corporations Act concerning companies first incorporated other than under the Corporations Act. It should not apply to CATSI corporations.

Item 30 limits the application of offence provisions in paragraphs 590(1)(c), (g) and (h) of the applied Corporations Act winding up provisions to conduct or representations after the commencement of the CATSI Act.

Item 31 omits sections 592 to 594 of the Corporations Act from the applied Corporations Act winding up provisions. These sections concern liabilities for debts arising before 23 June 1993 and should not apply to CATSI corporations.

Schedule 5 – Repeals

Schedule 5 repeals the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations (Aboriginal and Torres Strait Islander) Regulations 2017

The *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

The purpose of the Regulations is to remake the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007*, scheduled to sunset on 1 October 2017. The Regulations are made under subsection 633-1(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the Act).

The Act commenced on 1 July 2007 and provides for the incorporation and regulation of Aboriginal and Torres Strait Islander corporations. The Preamble to the Act provides that it is intended, for the purposes of the International Convention on the Elimination of All Forms of Racial Discrimination and the *Racial Discrimination Act 1975*, to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.

The Regulations made under the Act are operative in nature in providing for matters necessary to the effective operation of the Act. The Regulations contain a range of machinery provisions, as well as provisions dealing with certain substantive matters not dealt with in detail in the Act. For example, the Regulations set out in detail the manner in which Aboriginal and Torres Strait Islander corporations registered under the Act are required to report on their financial position and operations. The Regulations do not increase, or have the effect of increasing, the maximum penalty for any offence; or widen, or have the effect of widening, the scope of any offence.

Human rights implications

The Regulations are operative in nature so of themselves do not engage any of the applicable rights or freedoms. However, the Regulations facilitate implementation of the Act as a special measure, and in this respect enable the Act to engage the general prohibition on racial discrimination. The intended characterisation of the Act as a special measure is outlined in the Revised Explanatory Memorandum for the *Corporations (Aboriginal and Torres Strait Islander) Bill 2006*.

Conclusion

The Regulations are compatible with human rights as they facilitate implementation of a special measure and of themselves do not raise any human rights issues.

Senator the Hon Nigel Scullion
Minister for Indigenous Affairs