OFFICIAL

OFFICIAL

 

Guide to the exposure draft

CATSI Amendment Bill

Guide to the exposure draft for the Corporations (Aboriginal and Torres Strait Islander) (CATSI) Amendment Bill

We are seeking feedback on the exposure draft of the CATSI Amendment Bill for clarity, readability and complexity of the proposed amendments, including any practical barriers or unintended consequences associated with implementation.

The changes outlined in the exposure draft are based on the recommendations in the [final report](https://www.niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-final-report) for the review of the CATSI Act that was undertaken in 2019-20. In December 2019 the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, announced a comprehensive review of the CATSI Act to be led by the National Indigenous Australians Agency (NIAA) (CATSI Act Review).

**The 2019-2020 Comprehensive Review of the CATSI Act**

This CATSI Act Review built on the findings of the [Technical Review of the CATSI Act](http://www.oric.gov.au/sites/default/files/TechnicalReviewCATSIAct_DLAPiper.pdf) that was conducted in 2017. The CATSI Act Review had an expanded scope to include an assessment of the effectiveness of the CATSI Act as a special measure under the *Racial Discrimination Act 1975*, including whether it can better support economic and community development opportunities for Aboriginal and Torres Strait Islander people.

Two consultation phases were undertaken during the review including a first phase where feedback was sought in relation to the aspects of the CATSI Act that should be considered as part of the review. A [summary report](https://www.niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-survey-summary-report) outlining the feedback received during this phase is available on the NIAA’s website.

The second phase of consultation sought feedback in relation to a [draft report](https://www.niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-draft-reporthttps%3A/www.niaa.gov.au/resource-centre/indigenous-affairs/catsi-act-review-draft-report) which included suggested changes to the CATSI Act. Feedback on the draft report was collected through virtual consultation sessions, and email, web based form and written submissions. The [written submissions](https://www.niaa.gov.au/indigenous-affairs/economic-development/review-catsi-act/catsi-act-review-second-phase-written-submissions), where permission was provided to publish them, are also available on the NIAA’s website.

The purpose of this guide is to explain any variations between the draft legislation and the 72 recommendations included in the CATSI Act Review final report.

Forty recommendations are being taken forward as proposed in the final report (Table 1). Of the remaining 32 recommendations:

* four are being taken forward along the lines of the 2018 Strengthening Governance and Transparency Bill (2018 Bill) (Table 2);
* 17 are being taken forward based on the same principle of the recommendation but in a different way (Table 3);
* three have been further clarified in drafting the amendment bill (Table 4); and
* eight are not being taken forward (Table 5).

There are also a number of minor technical amendments that have been included in the draft legislation. Most of these amendments were also included in the 2018 Bill and were considered sufficiently minor that further consultation was not considered necessary. Some amendments correct errors and provide clarification on matters in the Act (Table 6).

## Recommendations being taken forward as proposed

Table 1 outlines the 40 recommendations that are being taken forward as they were recommended in the CATSI Act Review final report.

Table 1. Recommendations being taken forward as proposed

|  |  |  |
| --- | --- | --- |
| Rec. no. | Recommendation | Description of approach forward |
| 2 | It is recommended the CATSI Act be retained as a special measure. | The CATSI Act is to be retained and the CATSI Amendment Bill is expected to bring it in line with the expectations of Aboriginal and Torres Strait Islander peoples. |
| 7 | It is recommended section 453-5 be amended to provide the Registrar with the power to specify a reasonable time within which to produce books. | Item 4 in the CATSI Amendment Bill reflects this recommendation with the insertion of subsections 453-2(3)(c) and 453-2(4) which enable the Registrar to specify a time for the production of books which must be reasonable, including providing for the immediate production of books. Items 8 and 10 complement this change by introducing a similar requirement to section 453-5 which is now proposed to deal with requesting a person to provide information or answer questions. These amendments will separate the provisions for the production of books from the ability to request a person to provide information or answer questions.  |
| 8 | It is recommended the Registrar’s powers to issue notices to produce books be aligned with that of the Australian Securities and Investments Commission to require a person or entity to produce books relevant to a corporation’s affairs.  | Item 4 in the CATSI Amendment Bill is in line with this recommendation and confers powers upon the Registrar to request the production of books and remove the current limitations imposed by the CATSI Act, including that the Registrar can only request the production of books from a person who he or she believes to have some knowledge of the examinable affairs of a CATSI corporation. Items 5 to 12 and 20 amend section 453-5 to reflect that this section relates only to giving information and answering questions, as the production of books will be dealt with in the proposed section 453-2. |
| 9 | It is recommended the CATSI Act be amended to:* provide the Registrar with the same powers as authorised officers; and
* expand the sections of the CATSI Act that enable an authorised officer to inspect a corporation’s books and request a person to explain the material in those books, to model the rights currently granted to an auditor of a corporation under the CATSI Act.
 | Items 12 to 19 in the CATSI Amendment Bill give effect to this recommendation by conferring the same powers held by an authorised officer upon the Registrar, and enabling the Registrar or an authorised officer to request a person to explain the material in those books.  |
| 12 | It is recommended corporations be required to record alternative contact details, and be able to use those contact details when contacting members where available.  | Part 3 reflects this recommendation which amends various parts of the Act. Items 55, 65, 66, 74, 75 and 78 give effect to this recommendation and require corporations to record alternative addresses for members where they are available and to use those addresses when trying to contact members.  |
| 15 | It is recommended the CATSI Act be amended to require corporations to make a determination of membership applications within six months, and that the Registrar can extend or exempt this consideration period for a corporation or class of corporations. | Item 56 introduces a requirement for directors to make a decision on an application for membership within six months of the application date. Item 57 provides for the circumstances when a membership application may be refused, and item 58 provides the Registrar with the power to extend or remove the six month timeframe for considering applications. The changes introduced by the *Native Title Legislation Amendment Act 2021* are reflected in these proposed changes by preventing directors of a Registered Native Title Body Corporate (RNTBC) from refusing a membership application from an applicant who meets the eligibility criteria and has applied in the required manner. Further, only CATSI corporations that are not RNTBCs can introduce rules in relation to considering membership applications. Item 84 adds to the list of reviewable decisions in section 617-1, the Registrar’s refusal to make a determination extending the six month timeframe for considering a membership application, or exempting a corporation from the period for making a decision. It also adds the Registrar’s decision to vary, revoke or suspend a determination to extend the timeframe for considering applications or exempt a corporation from the timeframe, as a reviewable decision.  |
| 18 | It is recommended the membership and directorship provisions in the CATSI Act be changed to make it easier for corporations to establish subsidiaries and joint ventures. | Items 86 to 92 and 96 in the CATSI Amendment Bill address this recommendation by changing the directorship provisions to remove the requirement that the majority of directors of the corporation are members if the CATSI corporation only has body corporate members, and changing membership provisions to facilitate corporations with only body corporate members. This change will support Aboriginal and Torres Strait Islander peoples to take advantage of different business structures.  |
| 19 | It is recommended the CATSI Act be changed to allow for the incorporation of two-member corporations where only one member is Indigenous as long as that member has the deciding vote. | Items 93 to 95 supports the establishment of a two-member corporation where only one member is an Aboriginal or Torres Strait Islander person as long as that person has the deciding vote. |
| 20 | It is recommended CATSI corporations be required to include in their annual reports to the Registrar details of their:* corporate structure, including any subsidiaries or trusts; and
* key management personnel within that structure.
 | This recommendation will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017.  |
| 21 | It is recommended a subsequent targeted review be undertaken to consider establishing a special class of CATSI corporation in relation to for-profit entities. | This recommendation is a non-legislative change which may lead to legislative change in the future. The National Indigenous Australians Agency is working to implement this recommendation.  |
| 22 | It is recommended the CATSI size classification framework be aligned with that of the *Australian Charities and Not-for-profits Commission Act 2012* size classification framework. | Items 97 to 99 makes changes to the size classification structure. The definition of the threshold for each classification will be prescribed in the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017. |
| 27 | It is recommended provisions be incorporated into the CATSI Act that reflect the special rules introduced by the Registrar in response to COVID-19 that have enabled corporations to hold their meetings virtually, particularly voting. | Items 104 and 105 in the CATSI Amendment Bill implement this recommendation by enabling corporations to use technology to hold a meeting and to hold a vote in another manner if a show of hands is not possible. Item 101 is a consequential amendment that sets out what information a notice of meeting should contain including when a meeting is conducted virtually. Item 103 changes the structure of the paragraph to allow another subsection. |
| 29 | It is recommended CATSI corporations be required to lay before their Annual General Meeting any reports they have prepared to submit to the Registrar. | Item 121 in the CATSI Amendment Bill introduces a requirement for directors of a corporation to lay any reports prescribed by the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 and prepared for the financial year, before the Annual General Meeting.  |
| 32 | It is recommended a subsequent targeted review be undertaken to consider further streamlining arrangements for CATSI corporations that are also registered charities. | This recommendation is a non-legislative change which may lead to legislative change in the future. The National Indigenous Australians Agency is working to implement this recommendation. |
| 33 | It is recommended senior executive remuneration information be included in annual reporting to the Registrar and that the same information is laid before Annual General Meetings in accordance with Recommendation 29 in Chapter 4. | Items 148 to 158 provide that a remuneration report may be required, and gives a definition of a remuneration report. The details of the report will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations. Item 164 defines key management personnel. |
| 34 | It is recommended the remuneration information of key personnel of associated entities also be reported in annual reports to the Registrar. | Item 151 provides that the Regulations may require a remuneration report to include information about the remuneration of key management personnel of related entities. The details of the report will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017. Items 148 to 158 amend a number of sections that outline reporting requirements to include a remuneration report. Item 164 defines key management personnel. |
| 35 | It is recommended the information provided at Recommendation 33 be used by the Registrar to develop a de-identified sectoral analysis on remuneration benchmarking. | This is a non-legislative change which may lead to legislative change in the future. The Office of the Registrar of Indigenous Corporations will give effect to this recommendation once it begins receiving remuneration information through the implementation of recommendations 33 and 34. |
| 36 | It is recommended the CATSI Act be amended to require corporations to report how much each director is paid in sitting fees in their annual financial reports that are lodged with the Registrar. | This recommendation will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017.  |
| 38 | It is recommended:* Part 6-6 be revised to simplify and align more closely with the needs of Aboriginal and Torres Strait Islander communities; and
* CATSI corporations be required to report any related party provisions in their annual reports to the Registrar.
 | Items 165 to 171 of the CATSI Amendment Bill simplifies existing related party transaction requirements and removes the requirement for member approval of small related party transactions. It also removes the Registrar from involvement in the process of seeking member approval for related party transactions thus streamlining the process. This recommendation will also be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 by requiring reporting of related party provisions in Annual Reports.  |
| 39 | It is recommended the CATSI Act be amended to allow the Registrar to exempt a corporation or class of corporations from the requirement that a majority of directors must not be employees. | Items 172 and 173 in the CATSI Amendment Bill give effect to this recommendation by providing the Registrar with the power to exempt a corporation or class of corporations from the requirement that the majority of directors must not be employees. |
| 40 | It is recommended the CATSI Act be amended to allow corporations to appoint independent directors without an explicit rule in their rule book. | Items 174 to 177 in the CATSI Amendment Bill address this recommendation by allowing directors to appoint independent directors noting that the proposed new section 246-17 is a replaceable rule and corporations can change this rule including to prevent the appointment of independent directors if they so wish. Item 177 restricts the term of independent directors to twelve months, noting that they can be reappointed according to subsection 246-25(3). |
| 41 | It is recommended the CATSI Regulations be updated to prescribe who can receive protected information. | This recommendation will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017.  |
| 43 | It is recommended the CATSI Act be amended to allow the Registrar to contact individuals and corporations using electronic means in addition to in-person or by post. | Items 53 to 54 and 82 in the CATSI Amendment Bill enable the Registrar to contact individuals and corporations using other means than in-person or by post. This will modernise and simplify communication between individuals or corporations and the Registrar.  |
| 48 | It is recommended the CATSI Act be amended to:* include an explanation of what reasonable steps means in the context of providing false and/or misleading information in relation to a corporation’s affairs; and
* align the penalties for providing false or misleading information in relation to a corporation’s affairs to the lower penalty of 100 penalty units or imprisonment for two years or both.
 | Item 217 in the CATSI Amendment Bill reflects this recommendation by aligning the penalties for the similar offences of providing false and/or misleading information. Item 218 also provides an explanation of what ‘reasonable steps’ are as a defence to the penalty provisions in this context.  |
| 50 | It is recommended the CATSI Act be amended to require ORIC to issue a:* finalisation letter at the conclusion of an examination in the absence of issuing a compliance notice or ‘show cause’ notice; and
* compliance outcome letter confirming that issues raised in a compliance notice have been addressed by the relevant corporation.
 | Item 223 in the CATSI Amendment Bill requires the Registrar to provide notice to a corporation if he or she is satisfied with the action taken by a corporation to address issues outlined in a compliance notice. Item 224 provides for the Registrar to issue a letter to a corporation at the conclusion of an examination, where the Registrar determines that he or she will take no further action. |
| 51 | It is recommended CATSI Regulation 23 be amended following consultation with Australian Accounting Standards Board.  | This recommendation will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017.  |
| 52 | It is recommended CATSI Regulations be amended to outline a process for the appointment of a replacement auditor when the incumbent has resigned outside of an Annual General Meeting.  | This recommendation will be given effect through changes to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017. |
| 53 | It is recommended the CATSI Act be amended to provide auditors with qualified privilege consistent with the Corporations Act. | Items 219 to 221 in the CATSI Amendment Bill provide auditors with qualified privilege consistent with the *Corporations Act 2001.*Item 222 provides a definition of qualified privilege (among other things). |
| 55 | It is recommendedcurrent benefit management structures be reviewed to identify and address the impediments to supporting economic development for common law holders, including the extent to which charities can: * engage in economic development activities; and
* act as future funds given the conflicting obligations of paying out benefits and accumulating them for future generations.

It is recommended the National Indigenous Australians Agency consult on the viability of the Prescribed Bodies Corporate Economic Vehicle Status model with the Department of Finance, the Treasury, the Australian Taxation Office and the Australian Charities and Not-for-profits Commission.It is recommended the National Indigenous Australians Agency work in consultation with the Office of the Registrar of Indigenous Corporations and the native title sector to develop guidance material on best practice benefit management structures to support good governance of native title benefits for Registered Native Title Bodies Corporate and common law holders. | This recommendation is a non-legislative change which may lead to legislative change in the future. The National Indigenous Australians Agency is working to implement this recommendation. |
| 56 | It is recommended a separate, targeted consultation process be considered to determine the need and appetite to amend the CATSI Act to allow for the creation of registered trusts. Such an option to become a registered CATSI Act trust would be open to anyone and not be restricted to Registered Native Title Bodies Corporate or common law holders. | This recommendation is a non-legislative change which may lead to legislative change in the future. The National Indigenous Australians Agency is working to implement this recommendation. |
| 58 | It is recommended the National Indigenous Australians Agency work with relevant stakeholders, including the Office of the Registrar of Indigenous Corporations, to develop and deliver education and information resources on changes to Registered Native Title Bodies Corporate reporting and compliance obligations arising from this Review, and other reforms currently in train, for use by Registered Native Title Bodies Corporate directors, members and common law holders. | This recommendation is a non-legislative change. The National Indigenous Australians Agency and the Office of the Registrar of Indigenous Corporations are working to implement this recommendation. |
| 59 | It is recommended the National Indigenous Australians Agency lead a targeted design process with key bodies in the native title sector to develop an option for voluntary arbitration to assist in resolving disputes about Registered Native Title Bodies Corporate membership after other internal dispute pathways have been exhausted. | This recommendation is a non-legislative change which may lead to legislative change in the future. The National Indigenous Australians Agency is working to implement this recommendation. |
| 60 | It is recommended the Office of the Registrar of Indigenous Corporations develop a Registered Native Title Bodies Corporate model rule book in consultation with the native title sector. | This recommendation is a non-legislative change. The National Indigenous Australians Agency and the Office of the Registrar of Indigenous Corporations are working to implement this recommendation. |
| 61 | It is recommended the Native Title Act be amended to enable the Registrar of the National Native Title Tribunal to update the National Native Title Register when the Register of Aboriginal and Torres Strait Islander Corporations is updated. | Item 329 in the CATSI Amendment Bill is based on this recommendation. It amends the *Native Title Act 1993* (Cth) to allow the National Native Title Register to reflect changes made to the Register of Aboriginal and Torres Strait Islander Corporations, where relevant. |
| 63 | It is recommended a special account be established under the CATSI Act and any funds in the Unclaimed Money Account which are due to be returned to Consolidated Revenue Fund, be instead directed to this new special account. The purpose of the special account is that the funds be used only for the protection of assets vested with the Registrar. | Items 225 to 234 in the CATSI Amendment Bill reflect this recommendation by creating a new special account, ensuring that the funds deposited in that account are taken from the existing Unclaimed Money Account after six years have elapsed, and restricting the use of those funds deposited in the new special account to paying costs associated with properties vested with the Registrar. |
| 65 | It is recommended the ‘show cause’ notice procedure not be required under the CATSI Act when a majority of directors have requested that a special administrator be appointed. | Items 237 and 238 in the CATSI Amendment Bill remove the requirement for the Registrar to issue a show cause notice when the majority of directors of a corporation have requested the appointment of a special administrator. |
| 69 | It is recommended the CATSI Act be amended to provide that contracts of corporations under special administration cannot be cancelled, unless they are detrimental to the corporation in the opinion of the special administrator. | Items 239 and 240 provide that for a corporation under special administration, sections 451E to 451H of the *Corporations Act* *2001* apply. These sections will apply to prevent the cancellation of contracts for CATSI corporations under special administration.  |
| 70 | It is recommended the CATSI Act be amended to provide that a CATSI corporation be presumed to be insolvent where an authorised officer appointed under the CATSI Act has reported to the Registrar, or a special administrator forms the opinion:* the corporation has failed to keep adequate financial records (with no time period specified); or
* the corporation has failed to retain adequate financial records for a period of seven years.
 | Item 242 in the CATSI Amendment Bill introduces presumptions of insolvency which the Court can rely on for the purposes of finding a corporation insolvent.  |
| 71 | It is recommended the CATSI Act be amended to remove the requirement for the Registrar to apply for leave of the court, before making an application for winding up a corporation on the grounds of insolvency. | Items 235, 241 and 243 to 245 in the CATSI Amendment Bill reflect this recommendation and remove the requirement for the Registrar to seek the leave of the court in advance of making an application to wind up a corporation. |
| 72 | It is recommended the CATSI Act be amended to provide that the Registrar may exempt corporations from satisfying specific criteria required to be met for voluntary deregistration. | Items 246 to 251 in the CATSI Amendment Bill enable the Registrar to exempt a person from particular criteria when making an application to voluntarily deregister a corporation. Item 249 sets out the deregistration procedure, including allowing for publication of the notice of deregistration on the Registrar’s website as well as other channels.  |

## Recommendations being taken forward in line with the 2018 Bill

As illustrated in Table 2, four recommendations from the final report are being taken forward in line with the 2018 Bill.

Table 2. Recommendations being taken forward in line with the 2018 Bill

|  |  |  |
| --- | --- | --- |
| Rec. no. | Recommendation | Description of approach forward |
| 5 | It is recommended the Registrar’s powers be expanded to be able to accept enforceable undertakings. | Item 2 in the CATSI Amendment Bill addresses this recommendation and the drafting is taken from the 2018 Bill. These changes allow the Registrar to accept enforceable undertakings.  |
| 6 | It is recommended section 453-1 be amended to provide that a suspected contravention of an enforceable undertaking may be the subject of a report following an examination of a CATSI corporation. | Item 3 in the CATSI Amendment Bill addresses this recommendation and the drafting is taken from the 2018 Bill. This change allows an authorised officer to report to the Registrar a suspected breach of an enforceable undertaking.  |
| 23 | It is recommended a CATSI corporation be able to access an automatic 30-day time extension to hold an Annual General Meeting where it notifies the Registrar before the period to hold the Annual General Meeting has expired that there is a death in the community, natural disaster, cultural activity or an unavoidable delay in the audit; and it has not notified the Registrar of an extension of time more than three years in a row. | Items 106 to 109 of the CATSI Amendment Bill are taken from the 2018 Bill. These items have been altered slightly to indicate that there is only one automatic extension in a financial year. Item 120 sets out the grounds for qualifying for an automatic extension.  |
| 28 | It is recommended a CATSI corporation be able to access an automatic 30-day time extension to lodge reports where it has notified the Registrar before the period to lodge reports has expired that there is a death in the community, natural disaster, cultural activity or an unavoidable delay in the audit; and it has not notified the Registrar of an extension of time more than three years in a row. | Items 114 to 120 of the CATSI Amendment Bill are taken from the 2018 Bill. These items have been altered slightly to indicate that there is only one automatic extension in a financial year. |

## Recommendations being taken forward with the same principle but in a different way

Seventeen recommendations are being taken forward based on the principle of the recommendation but in a different way to what was recommended in the final report. The proposed amendments are expected to deliver the intended outcome of the original recommendations and may have been deemed preferable for reasons of practical application, technical requirements or another reason. Table 3 explains how these 17 recommendations are proposed to be taken forward.

Table 3. Recommendations being taken forward with the same principle but in a different way

|  |  |  |
| --- | --- | --- |
| Rec. no. | Recommendation | Description of approach forward |
| 4 | It is recommended the Registrar’s powers be expanded to include the ability to issue penalty notices. | Item 22 sets out the conditions and requirements governing infringement notices including when they can be issued, and what information they should contain. It also provides for the payment period, extensions of the payment period, payment by instalment, and withdrawal of the infringement notice. Item 23 includes relevant definitions for these changes. Item 21 repeals the existing penalty notice arrangements in section 566-5 (which are replaced by the amendments provided for in item 22). |
| 11 | It is recommended corporations be required to collect phone numbers and email addresses of members where available. | Items 55, 65, 66, 75 and 78 in the CATSI Amendment Bill deal with this recommendation by referring to the collection of addresses and ‘other contact details’ in those sections of the CATSI Act that refer to the collection of addresses allowing more flexibility for members and corporations.  |
| 13 | It is recommended members be able to make a request to corporations to have their contact details redacted from a member register and that if a member is dissatisfied with a corporation’s response to such a request, they can have the decision reviewed by the Registrar.  | Items 69, 72, 73 and 79 in the CATSI Amendment Bill give effect to this recommendation. A review mechanism by the Registrar has not been included as corporations will not have a basis to refuse members’ redaction requests as such a refusal will be a breach of the CATSI Act. Item 85 provides a definition for ‘redacted copy’. |
| 14 | It is recommended the CATSI Act be amended to include a proper purpose requirement in relation to section 180-25, inspecting a CATSI corporation’s member register. | Items 67 to 71 in the CATSI Amendment Bill require people to state their purpose when requesting to inspect and/or copy a corporation’s member register or former member register. If any of the purposes provided are prescribed, a corporation is prohibited from allowing the person to inspect, or providing the person with a copy of, either the register of members or register of former members. Item 70 makes a consequential change deleting the reference to a fee as that is now included in the criteria for inspection.  |
| 16 | It is recommended the CATSI Act require corporations to outline a dispute resolution process to deal with membership applications in their rule books. | Item 57 in the CATSI Amendment Bill addresses this recommendation. The CATSI Act currently provides directors of a corporation with complete discretion to accept a membership application. This provision allows CATSI corporations to include a process for considering membership applications in their rule books that may alter the discretion of directors and/or provide a review mechanism for membership decisions. Following the *Native Title Legislation Amendment Act 2021*, which took effect from 25 March 2021, RNTBCs are no longer allowed to refuse a membership where the person meets the eligibility criteria, and must include in their rule books processes to deal with disputes from common law holders. Only CATSI corporations that are not RNTBCs will be able to include a process for considering membership applications in their rule books. Consequently, only CATSI corporations that are not RNTBCs are eligible for the replaceable rule. |
| 17 | It is recommended the provision in the CATSI Act in relation to cancelling memberships based on contact with members and number of contact attempts be a replaceable rule. | Item 59 in the CATSI Amendment Bill implements this recommendation for members of corporations that are not RNTBCs by making replaceable rules for the number of attempted contacts required before a membership can be cancelled and the address at which the corporation is required to attempt to contact a member before cancelling a membership. Other existing provisions relating to membership cancellation, including that the corporation must give notice to the relevant member regarding the cancellation, will remain unchanged as they are considered necessary for natural justice reasons.Items 60 to 64 provide for cancellation of membership of RNTBCs where the members are uncontactable. The *Native Title Legislation Amendment Act 2021* restricts membership cancellation provisions for RNTBCs to those grounds outlined in the CATSI Act. |
| 25 | It is recommended the CATSI Act be amended to allow directors to issue an updated notice of meeting—after one has already been issued—that would defer the meeting for up to 30 days of the original meeting date in the case of death, natural disaster and certain cultural activities in community, which may change one or all of the following: date; time; and place of the meeting. | Item 102 in the CATSI Amendment Bill gives effect to this recommendation. Rather than deferring the meetings for 30 days, this recommendation is being taken forward in a way that allows directors to postpone the date of the meeting up to 30 days from the original meeting date. However, the time or place may also change without any change to the date. This will provide corporations with the flexibility to change the location of a meeting but keep it on the same date and at the same time. This might be necessary if the original meeting location is no longer available, for example as a result of flooding or fire.  |
| 26 | It is recommended the CATSI Act be amended to:* include a replaceable rule in relation to the cancellation of general meetings; and
* allow the Registrar to cancel a general meeting.
 | Item 102 in the CATSI Amendment Bill reflects the intention of this recommendation. The first point of this recommendation is being taken forward as recommended, at Item 102. However, items 122 and 124 provide that the Registrar will only be able to cancel Registrar-initiated general meetings limiting the Registrar’s powers from the proposed recommendation.  |
| 30 | It is recommended the CATSI Act require all replaceable rules, whether replaced or not, to be included in rule books. | Item 125 in the CATSI Amendment Bill addresses this recommendation. Rather than require rule books to include replaceable rules, rule books will need to refer to replaceable rules. This is expected to deliver the same intended outcome of making people aware that the replaceable rules exist while ensuring that rule books remain current if there are any amendments to the CATSI Act.  |
| 31 | It is recommended an explicit provision be included in the CATSI Act to allow the Registrar to reject changes to a rule book that are inconsistent with ones made by a special administrator. | Item 127 of the CATSI Amendment Bill is based on this recommendation. Instead of the Registrar rejecting changes to a rule book that are inconsistent with those made by a special administrator, the Registrar will be able to accept changes to a rule book if he or she is satisfied that the:* change is consistent with the change made by the special administrator when considering the purpose or need for that change; or
* circumstances of the corporation have changed such that the change made by the special administrator is no longer relevant.
 |
| 37 | It is recommended the CATSI Act be amended to require CATSI corporations to notify ORIC within 28 days of a change in Chief Executive Officer, Chief Financial Officer and Chief Operating Officer. | Items 128 to 147 and 159 to 163 of the CATSI Amendment Bill are in line with this recommendation and require corporations to advise ORIC of a change to their Chief Executive Officers and Chief Financial Officers, as well as directors, secretaries and contact persons. This change will **not** apply to Chief Operating Officers.  |
| 42 | It is recommended the CATSI Act be amended to allow the Registrar to publish notices on electronic communication platforms as well as in the *Australian Government Gazette* and/or in newspapers. | Items 178 to 214 of the CATSI Amendment Bill gives effect to this recommendation. These amendments do not refer to electronic communication platforms. Instead, they provide that the Registrar is required to publish notices on at least one of the following platforms: on the Registrar’s website; in the *Gazette*; in a national newspaper; or in a daily newspaper that circulates in each state and territory in which the corporation has a registered office.  |
| 44 | It is recommended the CATSI Act be amended to explicitly enable corporations to store information on modern information storage solutions. | Item 215 of the CATSI Amendment Bill is based on this recommendation and is drafted in a similar manner to the *Corporations Act 2001.* As a result, the section does not refer to modern information storage solutions and instead allows corporations to hold information in a ‘place of storage’ separate from the ‘place of inspection’, modernising information storage requirements.  |
| 46 | It is recommended the CATSI Act be amended to provide for the collection of other contact details, such as email address and phone number, in addition to physical address details. | The collection of other contact details by corporations is dealt with by recommendation 11. These items complement this change and deal with the collection of other contact details by the Registrar. Items 24 to 52, 74, 76, 77 and 83 in the CATSI Amendment Bill implement this recommendation by referring to the collection of addresses and ‘other contact details’ or ‘personal details’ in those sections of the CATSI Act that refer to the collection of addresses which were not addressed by the implementation of recommendation 11. |
| 49 | It is recommended the CATSI Act be amended to incorporate the 2019 whistleblower provisions that were incorporated into the Corporations Act. | Item 216 in the CATSI Amendment Bill responds to this recommendation broadening whistleblower protections under the CATSI Act. Instead of incorporating Part 9.4AAA of the *Corporations Act* *2001*, the CATSI Act will refer to Part 9.4AAA, with relevant substitutions, which will enable the CATSI Act to remain consistent with the Corporations Act. |
| 66 | It is recommended the current ground for appointing a special administrator that the CATSI corporation has traded at a loss for at least six of the last 12 months be changed to identification of an irregularity in the management of a corporation’s financial affairs. | Item 236 in the CATSI Amendment Bill refers to a ‘serious irregularity’ in a corporation’s financial affairs, limiting the scope of the grounds for appointing a special administrator from what was proposed in the recommendation while still giving effect to the intention of the recommendation.  |
| 68 | It is recommended the Registrar be allowed to give notice of the appointment of a special administrator on a modern electronic communication platform as well as in newspapers, but the requirement to give notice in the *Australian Government Gazette* be discontinued. | Similar to implementing recommendation 42, item 208 in the CATSI Amendment Bill provides that the Registrar is required to publish notice of the appointment of a special administrator on at least one of the following platforms: on the Registrar’s website; in the *Gazette*; in a national newspaper; or in a daily newspaper that circulates in each state and territory in which the corporation has a registered office. |

## Recommendations that have been further clarified

Table 4 identifies three recommendations which have been clarified in the drafting of the CATSI Amendment Bill and explains how they are being taken forward.

Table 4. Recommendations that have been further clarified

|  |  |  |
| --- | --- | --- |
| Rec. no. | Recommendation | Clarification |
| 3 | It is recommended the CATSI Act be amended to include a provision requiring review of the CATSI Act every seven years. | Item 1 in the CATSI Amendment Bill introduces a requirement to review the CATSI Act every seven years. This review must consider the effectiveness of the CATSI Act as a special measure under the *Racial Discrimination Act 1975*, must be completed within 18 months and must be tabled in Parliament by the Minister.  |
| 24 | It is recommended the CATSI Act allow small corporations that generate little or no income from their operations to pass a resolution to not hold an Annual General Meeting for up to two years. | Item 110 in the CATSI Amendment Bill draws on the 2018 Bill to give effect to this recommendation with changes such as limiting this provision to small corporations that are not registered with the Australian Charities and Not-for-profits Commission and had a consolidated revenue of less than $1,000 in the previous financial year. Corporations will be able to pass a special resolution that indicates whether the corporation will not hold an AGM for one or two years, and appoints the directors until the next AGM. The appointment of directors will take effect immediately, however, for the decision not to hold Annual General Meetings to take effect, a copy of the resolution needs to be lodged with the Registrar. Corporations will also be required to notify the Registrar of any material changes to the corporation’s affairs while Annual General Meetings are not being held. Further, the Registrar is provided with the power to direct a corporation that has passed such a resolution, to hold an Annual General Meeting if one is considered necessary. Item 111 prohibits the resolution being passed as a circulating resolution. Items 112 and 113 will ensure that directors’ terms do not expire before the next AGM is held. Item 100 is a consequential amendment to a provision allowing the Registrar to change the registered size of a corporation, noting that where such a change would mean the corporation would have to hold an AGM when they had previously passed a resolution not to, the notice to the corporation must make that clear.  |
| 57 | It is recommended to amend the Prescribed Bodies Corporate Regulations to require reporting to common law holders on the management and use of native title monies and non-monetary benefits negotiated on behalf of common law holders held on trust under external trust arrangements.It is recommended the Registrar give consideration to introducing reporting requirements under section 336-5 of the CATSI Act, consistent with the reporting requirements to be implemented through changes to the Prescribed Bodies Corporate Regulations.It is recommended that should the Registrar decide against additional reporting under the CATSI Act, changes to the Prescribed Bodies Corporate Regulations outlined above be extended to include reporting on all native title benefits held by Registered Native Title Bodies Corporate. | This recommendation includes follow up which may lead to legislative change in the future. The National Indigenous Australians Agency is working to implement this recommendation. |

## Recommendations not being taken forward

On further consideration, eight recommendations from the final report will not be taken forward. Table 5 identifies those recommendations and provides an explanation as to why each recommendation will not be progressed.

Table 5. Recommendations not being taken forward

|  |  |  |
| --- | --- | --- |
| Rec. no. | Recommendation | Reason for not taking recommendation forward |
| 1 | It is recommended the objects of the CATSI Act be amended to better reflect its role by referring to capacity building, promoting modern governance and accommodating Aboriginal and Torres Strait Islander tradition and circumstance. | Capacity building, promoting modern governance and accommodating Aboriginal and Torres Strait Islander tradition and circumstance is already appropriately addressed by the Registrar‘s functions and powers. |
| 10 | It is recommended the CATSI Act be amended to mirror section 84 of the *Australian Securities and Investments Commission Act 2001*, allowing the Registrar to extend any powers exercisable over a body corporate to a person who is, or has been, an officer or employee of the body corporate. | This amendment is not considered necessary as this power is already available to the Registrar regarding relevant provisions in Division 453. |
| 45 | It is recommended the CATSI Act be amended to allow the Registrar to release de-identified information. | Protected information can already be released in certain circumstances including de-identified summaries of protected information or de-identified statistics derived from protected information under section 604-25 of the CATSI Act.  |
| 47 | It is recommended the CATSI Act be amended to allow the Registrar to correct information on directors’ records if he or she is aware that they are incorrect. | This recommendation will be addressed by the introduction of the Director Identification Numbers which will require a person to apply for a Director ID before they are appointed as a director. Director IDs will be searchable and include information on a person’s identity and history. The CATSI Act has recently been amended to introduce Director Identification Number requirements for CATSI Directors, which has not yet commenced.  |
| 54 | It is recommended the CATSI Act be amended to allow the title of the Registrar and that of his or her office to be changed following a public consultation process and with endorsement by the relevant Minister. | This amendment is not considered necessary as the current arrangements are considered to be effective whereby the Registrar and the Office of the Registrar of Indigenous Corporations can use other titles to those set out in the legislation informally and can revert to their formal titles when required. |
| 62 | It is recommended a separate division of the CATSI Act be created that is dedicated to those provisions specific to Registered Native Title Bodies Corporate. | RNTBCs are subject to the general provisions of the CATSI Act and there are few specific stand-alone provisions. Additional guidance that provides a holistic overview of the legislative requirements for RNTBCs is expected to be more useful than a stand-alone chapter in the CATSI Act. |
| 64 | It is recommended the name of special administration be changed to one of the following options:Special Regulatory AssistanceCATSI Special ManagementStatutory Management | There is concern that changing the name of special administration may confuse stakeholders who are familiar with the role, function and purpose of the special administrator and special administration process. |
| 67 | It is recommended the CATSI Act be made explicit in relation to the ability of an authorised officer to report on an irregularity in the management of a corporation’s financial affairs. | This amendment is not considered necessary as an authorised officer can already report on an irregularity in the management of a corporation’s affairs under section 453-1 of the CATSI Act. |

## Minor amendments

Table 6 provides an explanation of some minor amendments to be taken forward that were not outlined in the CATSI Act Review final report or consequential on other amendments.

Table 6. Minor amendments to be taken forward

|  |  |
| --- | --- |
| Part | Explanation of change(s) |
| Part 18 in the CATSI Amendment Bill | These were minor amendments that were included in the 2018 Bill and are aimed at improving the accuracy, consistency and readability of the CATSI Act. |
| Part 19 in the CATSI Amendment Bill | This change was also included in the 2018 Bill and allows medium corporations to have their financial reports reviewed rather than audited. There will also need to be a corresponding change to the CATSI Regulations to support this change.  |
| Items 80 and 81 (in Part 3 of the CATSI Amendment Bill) | These are minor technical amendments broadening the provision for the Registrar to accept changes to the Register notified by email or phone, to be notified orally or in writing. |
| Items 243, 244 and 245 (in Part 17 of the CATSI Amendment Bill) | Minor technical amendments to make existing notes consistent with changes to provisions. |
| Item 123 (in Part 6 of the CATSI Amendment Bill) | Minor change to make Act references consistent with changes to provisions. |
| Item 126 (in Part 7 of the CATSI Amendment Bill) | Minor technical amendment which addresses an error in drafting. |