

## **Attachment B: Advantages of CATSI Bill for corporations**

### *Aims and Purpose*

The constitutional base for the Bill is found under the ‘races power’ (s51 (xxxvi)). The Bill is a special measure for the advancement and protection of Aboriginal and Torres Strait Islanders in accordance with International law and the *Racial Discrimination Act 1975*.

The Bill aligns with modern corporate governance standards and corporations law, however maintains a special statute of incorporation for Aboriginal and Torres Strait Islander peoples that takes account of the special risks and requirements of the Indigenous corporate sector.

The Bill provides a statutory basis for ‘front end’ work that is provided by the Registrar to support corporations. For example, the Bill provides that the functions of the Registrar include providing non-binding factual and procedural advice, to assist with the resolution of disputes and to provide complaints assistance, and also to conduct public education programs about the operation of the Bill and about governance of corporations.

The Bill also sets out the aims of the Registrar which include that the Registrar must facilitate and improve the effectiveness, efficiency, sustainability and accountability of Aboriginal and Torres Strait Islander corporations. The Registrar must also have regard to Aboriginal and Torres Strait Islander tradition and circumstances in performing his or her functions and exercising powers under the Bill.

### *Flexibility*

The review recommended ensuring that Indigenous people are able to design corporate structures and rules which best suit their specific needs. The Bill has implemented this through the Internal Governance Framework which aims to balance an improved flexibility of corporate design with improved internal accountability. This is achieved through the Internal Governance Framework which sets up a system of replaceable rules coupled with mandatory rules that enhance member participation.

The Bill also gives the Registrar more flexibility to grant exemptions from many of the requirements that relate to internal governance.

### *Accountability*

At the same time, the review also recommended that greater emphasis should be placed on ‘internal accountability’. To implement this the provisions relating to directors and directors duties are modernised and brought into line with the Corporations Act with some modification for the circumstances of the CATSI corporations.

The review recommended that reporting requirements should match the size and activity level of the corporation. Corporations will be streamed into small, medium and large for reporting purposes. Maximum flexibility is built into the reporting requirements to ensure that reporting can be tailored to the circumstances of particular corporations or classes of corporations. For example, the default position is that corporations will only have to provide a minimal general report under s330-1 of the Bill. This applies to all corporations and may be the only report that small corporations need to prepare. Large corporations may be required to also prepare financial or other reports under Division 333.

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### *Members rights and remedies*

The review recommended providing means for the Registrar to assist with the protection of members' rights, where members are unable to or lack the capacity to take action themselves for example, in the case of an oppressed minority. This is achieved through section 169-1. Members' remedies are aligned with Part 2F of the Corporations Act and the Registrar is allowed to seek these remedies on behalf of members.

The Bill also has numerous provisions which strengthen members' capacity to participate in managing the corporation, such as being able to request information about director remuneration and approving related party transactions. In many of these areas the Registrar can intervene to support members.

### *Merits review*

Discretionary decisions of the Registrar that will or are likely to affect the interests of a person are reviewable under the Bill and therefore are subject to possible merits review by the AAT. The Bill provides a table of decisions in section 617-1 of decisions that are to be reviewable. Merits review is not currently available under the ACA Act.

### *Procedural Irregularity*

To assist in ensuring the transactional certainty of acts of corporations, the Bill provides a power of the Court to determine whether procedural irregularities should invalidate the outcome of a proceeding. This provision is based on the Corporations Act provision.

### *Employee entitlements*

Under the Bill, the Corporations Act employee entitlement provisions operate independently of winding up. This provides certainty ensuring that the employees of CATSI corporations will have their entitlements protected. This obligation does not apply under the ACA Act.

### *Whistleblowers provisions*

When an employee or officer of a corporation makes a disclosure of information regarding a suspected breach of the Bill, they are protected under Part 10-5. Protection afforded by the Bill includes protection against criminal and civil liability, liability for defamation and termination of contract. These protections do not exist under the ACA Act.

### *Minutes of meetings*

The Bill provides flexibility for recording of minutes in language in an audio format as an alternative to written minutes. This is broader than the Corporations Act in that the Bill specifically enables minutes to be kept either in writing or by means of an audio or audiovisual recording and the process for authenticating written minutes and audio or visual recordings.

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### *Protected Information*

Part 15-2 of the Bill relates to protection of information. This clarifies in what context information can or cannot be released. For example, information given to the Registrar in confidence and in connection with the performance of the Registrar's powers and functions is protected information. However the Registrar may share information and is authorised to use or disclose information if the disclosure is made in a way that is consistent with the Bill or is required by a law of the Commonwealth, a state or territory.

### *Applying Corporations Act*

By aligning with the Corporations Act, many provisions are available which were either not available or were uncertain under the ACA Act. For example, the business judgement rule that enables reasonable business decisions and actions to be taken which otherwise might not meet the high standards of diligence required of directors now specifically applies, as does a provision enabling directors to reasonably rely upon professional or technical advice in making decisions affecting the corporation.