

2004–2005–2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER)
CONSEQUENTIAL, TRANSITIONAL
AND OTHER MEASURES BILL 2006**

EXPLANATORY MEMORANDUM

(circulated by authority of the Honourable Mal Brough, MP
Minister for Families, Community Services and Indigenous Affairs)

CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) CONSEQUENTIAL, TRANSITIONAL AND OTHER MEASURES BILL 2006

1. Outline

Purpose

1.1. The Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006 supports implementation of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 (CATSI Bill). The CATSI Bill will replace the *Aboriginal Councils and Associations Act 1976* (ACA Act) and was introduced into the Australian Parliament on 23 June 2005. The Bill comprises three parts: consequential amendments, transitional provisions and amendments to the *Native Title Act 1993* (Native Title Act).

Effect of principal provisions

1.2. The consequential amendments change references to the ACA Act and associated terms such as 'Aboriginal Associations' in other legislation. The terminology will be made consistent with the CATSI Bill.

1.3. The transitional provisions provide for the seamless conversion of corporations incorporated under the ACA Act to corporations registered under the CATSI Bill. The Bill will preserve the legal status, office bearers, assets and liabilities of corporations in their pre-commencement form. Transitional corporations will have up to two years to come into compliance with internal governance rules requirements and other relevant provisions of the Bill which gives a significant period of time for the holding of meetings to make necessary changes. The provisions are designed to minimise the administrative burden on corporations to the greatest extent possible while providing certainty of operation for corporations, their members and stakeholders.

1.4. The amendments to the Native Title Act correct a technical problem that prevents replacement agent prescribed bodies corporate, which are a type of corporation that can be formed to hold or manage native title, being recognised as registered native title bodies corporate under the Native Title Act.

Background

1.5. The CATSI Bill, when enacted, will replace the ACA Act to improve governance and capacity in the Indigenous corporate sector. It aligns with modern corporate governance standards and corporations law. At the same time it 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.

Financial impact statement

1.6. There is no financial impact.

2. Contents

| | |
|--|-----------|
| CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) CONSEQUENTIAL, TRANSITIONAL AND OTHER MEASURES BILL 2006 | II |
| 1. OUTLINE | II |
| <i>Purpose</i> | <i>ii</i> |
| <i>Effect of principal provisions</i> | <i>ii</i> |
| <i>Background</i> | <i>ii</i> |
| <i>Financial impact statement</i> | <i>ii</i> |
| 2. CONTENTS..... | III |
| 3. ABBREVIATIONS..... | III |
| 4. NOTES ON CLAUSES—OVERVIEW..... | 1 |
| <i>Schedule 1—Amendment of the Native Title Act 1993</i> | <i>1</i> |
| <i>Schedule 2—Repeal and amendment of other Acts</i> | <i>1</i> |
| <i>Schedule 3—Transitional provisions</i> | <i>1</i> |
| 5. NOTES ON CLAUSES—DETAILS | 2 |
| <i>Schedule 1—Amendment of the Native Title Act 1993</i> | 2 |
| Summary..... | 2 |
| Technical error in the definition of RNTBC | 2 |
| Provisions | 3 |
| <i>Schedule 2—Repeal and amendment of other Acts</i> | 4 |
| Summary..... | 4 |
| Provisions | 4 |
| <i>Schedule 3—Transitional provisions</i> | 16 |
| Summary..... | 16 |
| Provisions | 16 |

3. Abbreviations

| | |
|-------------------------------------|--|
| ACA Act | <i>Aboriginal Councils and Associations Act 1976 (Cth)</i> |
| ASIC | Australian Securities and Investments Commission |
| Corporations Act | <i>Corporations Act 2001 (Cth)</i> |
| CATSI Bill | Corporations (Aboriginal and Torres Strait Islander) Bill 2005 |
| CATSI corporation | corporation registered under the proposed Corporations (Aboriginal and Torres Strait Islander) Bill 2005 |
| Legislative Instruments Regulations | Legislative Instruments Regulations 2004 |
| Native Title Act | <i>Native Title Act 1993 (Cth)</i> |
| ORAC | Office of the Registrar of Aboriginal Corporations |
| PBC | prescribed body corporate |
| PBC Regulations | Native Title (Prescribed Body Corporate) Regulations (Cth) |
| Registrar | Registrar of Aboriginal and Torres Strait Islander Corporations |
| Review | Review of the <i>Aboriginal Councils and Associations Act 1976</i> |
| RNTBC | registered native title body corporate |

4. Notes on clauses—overview

Schedule 1—Amendment of the Native Title Act 1993

1.1. Schedule 1 amends several provisions of the Native Title Act that deal with prescribed bodies corporate (PBCs). These are corporations established in accordance with the Native Title Act to manage native title rights and interests on behalf of common law native title holders. PBCs must be incorporated under the ACA Act (see sub-regulation 4(1) of the Native Title (Prescribed Bodies Corporate) Regulations 1999) (PBC Regulations). They will continue to be required to incorporate under the CATSI Bill.

1.2. The schedule replaces references to bodies corporate incorporated under the ACA Act with references to bodies corporate registered under the CATSI Bill (Items 1 and 5). It also corrects a technical error in the definition of registered native title body corporate (RNTBC) (Items 2, 3, 4, 6 and 7).

Schedule 2—Repeal and amendment of other Acts

1.3. Schedule 2 repeals the ACA Act and omits references in other Acts to the ACA Act and to provisions within it, substituting them with references to the CATSI Bill. References to Aboriginal Councils are omitted in entirety while references to Aboriginal corporations or associations are replaced by references to CATSI Bill corporations.

1.4. Amending other Acts is a consequential effect of the repeal of the ACA Act.

Schedule 3—Transitional provisions

1.5. The transitional provisions provide for the seamless conversion of corporations incorporated under the ACA Act to corporations registered under the CATSI Bill. The Bill will preserve the legal status, office bearers, assets and liabilities of corporations in their pre-commencement form. Transitional corporations will have up to two years to come into compliance with internal governance rules requirements and other relevant provisions of the Bill which gives a significant period of time for the holding of meetings to make necessary changes.

1.6. Applications lodged before commencement and decisions of the Registrar not yet made or communicated to the corporations will also be preserved, allowing for these applications and decisions to be recognised for the purposes of the CATSI Bill.

1.7. The provisions are designed to minimise the administrative burden on corporations to the greatest extent possible while providing certainty of operation for corporations, their members and stakeholders.

5. Notes on clauses—details

Schedule 1—Amendment of the Native Title Act 1993

Summary

1.1. Schedule 1 amends several provisions of the Native Title Act that deal with PBCs. These are corporations established in accordance with the Native Title Act to manage native title rights and interests on behalf of common law native title holders. PBCs must be incorporated under the ACA Act (see sub-regulation 4(1) of the PBC Regulations). They will continue to be required to incorporate under the CATSI Bill.

1.2. The schedule replaces references to bodies corporate incorporated under the ACA Act with references to bodies corporate registered under the CATSI Bill (Items 1 and 5). It also corrects a technical error in the definition of registered native title body corporate (RNTBC) (Items 2, 3, 4, 6 and 7).

Technical error in the definition of RNTBC

1.3. When it makes a determination that native title exists, the Federal Court must:

2. under paragraph 56(2)(b), determine a PBC to hold the native title rights and interests in trust for the common law native title holders—these PBCs are referred to as trust PBCs, or
3. under paragraph 56(2)(c), determine that the common law native title holders hold the rights and interests. Under subsection 57(2), in this case the court must also determine the PBC which, after becoming an RNTBC, performs the functions mentioned in subsection 57(3). These PBCs are commonly referred to as agent PBCs.

3.1. The Native Title Act contemplates that PBCs determined under section 56 or section 57 may need to be replaced and that regulations can be made to enable this (subsection 56(4) and section 60). One example of where a replacement PBC would be necessary is when a PBC is wound up. Subsection 56(4) of the Native Title Act also contemplates that a trust PBC may become an agent PBC (without being replaced by a new body corporate).

3.2. The CATSI Bill corrects a technical error in the definition of an RNTBC preventing a replacement PBC that is an agent PBC, or a trust PBC that becomes an agent PBC, from becoming an RNTBC. RNTBCs have important functions under the Native Title Act and PBC Regulations that PBCs do not have—for example, being a party to agreements and receiving future act notices. The Bill therefore ensures that all replacement PBCs (and trust PBCs that become agent PBCs) can become RNTBCs.

3.3. This would be achieved by replacing the reference to a PBC determined under section 57 in subparagraph 193(2)(d)(iii) with a reference to an agent PBC (Items 2, 3 and 4). Agent PBC is defined in section 253 (Item 6).

Provisions

Item 1 Paragraph 60AA(1)(a)

3.4. This item replaces the reference to a body corporate incorporated under the ACA Act in paragraph 60AA(1)(a) with a reference to a body corporate registered under the CATSI Bill.

Item 2 Subparagraph 193(2)(d)(ii)

3.5. Subparagraphs 193(2)(d)(iii) and (iv) will be repealed by Item 3. Item 4 will re-enact most of these subparagraphs as new paragraphs 193(2)(e) and (f). Item 2 amends subparagraph 193(2)(d)(ii) as a result of these amendments.

Item 3 Subparagraphs 193(2)(d)(iii) and (iv)

3.6. This repeals subparagraphs 193(2)(d)(iii) and (iv).

Item 4 At the end of subsection 193(2)

3.7. This re-enacts most of subparagraph 193(2)(d)(iii) as paragraph 193(2)(e) but changes the reference to a PBC determined under section 57 to an agent PBC (proposed subparagraph 193(2)(e)(ii)). Subparagraph 193(2)(d)(iv) would be wholly re-enacted as paragraph 193(2)(f).

Item 5 Paragraph 201B(1)(a)

3.8. This replaces the reference to a body corporate incorporated under Part IV of the ACA Act in paragraph 201B(1)(a) with a reference to a body corporate registered under the CATSI Bill.

Item 6 Section 222 (after table item dealing with affect)

3.9. This item inserts the expression ‘agent prescribed body corporate’ into the list of definitions at section 222 of the Native Title Act as a result of Item 7.

Item 7 Section 253

3.10. This inserts a definition of agent PBC in section 253—that is, an original agent PBC (proposed paragraph (a)); a trust PBC that is replaced by or becomes an agent PBC pursuant to regulations made under subsection 56(4) (proposed paragraph (b)); an agent PBC that replaces another agent PBC pursuant to regulations made under section 60 (proposed subparagraph (c)(i)); and any agent PBC that replaces that or a subsequent agent PBC pursuant to regulations made under section 60 (proposed subparagraph (c)(ii)).

Item 8 Section 253 (definition of registered native title body corporate)

3.11. This will amend the definition of RNTBC as a result of the changes made to subsection 193(2) by Item 4.

Schedule 2—Repeal and amendment of other Acts

Summary

3.12. The CATSI Bill replaces the ACA Act. Part 1 of Schedule 2 therefore repeals the ACA Act.

3.13. The repeal of the ACA Act and its replacement by the CATSI Bill results in consequential amendments of other Commonwealth Acts, which is dealt with in Part 2 of Schedule 2.

3.14. The consequential amendments occur in several common ways, identified as follows.

3.15. Where there are references to the ACA Act and its provisions in Commonwealth Acts, they are replaced with references to the CATSI Bill and its provisions.

3.16. Where there are references to incorporated Aboriginal associations and related bodies in Commonwealth Acts, they are replaced with references to corporations registered under the CATSI Bill.

3.17. Amendments to definitions are also effected as consequential amendments with a CATSI corporation replacing the body incorporated under the ACA Act.

3.18. There are also provisions relating to Aboriginal councils in Part III of the ACA Act that will be repealed and are not replaced in the CATSI Bill. References to Aboriginal councils in the *Aboriginal Land Rights (Northern Territory) Act 1976* are therefore removed.

3.19. The provisions relating to Aboriginal councils in the ACA Act are not replicated in the CATSI Bill as the creation of councils under the ACA Act has been superseded since 1976 by other means of delivering community services. Also various state and territory legislation provides for local government services, some of which include the ability to make community by-laws. As a result there are no Aboriginal councils and therefore no transitional provisions are needed.

Provisions

Part 1—Repeal

Aboriginal Councils and Associations Act 1976

Item 1 The whole of the Act

3.20. This item repeals the *Aboriginal Councils and Associations Act 1976*. The CATSI Bill will replace the ACA Act.

Part 2—Amendments

Aboriginal and Torres Strait Islander Act 2005

Item 2 Subsection 4(1) (paragraph (a) of the definition of *Aboriginal or Torres Strait Islander corporation*)

3.21. This item ensures that a CATSI corporation will be an Aboriginal or Torres Strait Islander corporation for the purposes of the Aboriginal and Torres Strait Islander Act.

Item 3 Subsection 4(1) (definition of recognised *Aboriginal or Torres Strait Islander organisation*)

3.22. This item repeals the definition. It is a technical amendment as the definition is no longer used in the Aboriginal and Torres Strait Islander Act.

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Item 4 Subsection 3(1)

3.23. This item ensures that a CATSI corporation will be an Aboriginal or Torres Strait Islander corporation for the purposes of the Aboriginal Land (Lake Condah and Framlingham Forest) Act.

Item 5 Subsection 3(1) (definition of *community council*)

3.24. This item replaces the term ‘governing committee’ with ‘directors’ in the definition as the Kirrae Whurrong Aboriginal Corporation will become a CATSI corporation and directors (rather than a governing committee) will conduct its operations.

Item 6 Subsection 3(1) (definition of *governing committee*)

3.25. This item repeals the definition of ‘governing committee’ because directors (rather than a governing committee) will conduct the operations of a CATSI corporation.

Item 7 Subsection 3(1) (definition of *Kerrup-Jmara Elders Aboriginal Corporation*)

3.26. This item repeals the definition of ‘Kerrup-Jmara Elders Aboriginal Corporation’ to ensure that the CATSI corporation of the same name is recognised for the purposes of the Aboriginal Land (Lake Condah and Framlingham Forest) Act.

Item 8 Subsection 3(1) (definition of *Kirrae Whurrong Aboriginal Corporation*)

3.27. This repeals the definition of ‘Kirrae Whurrong Aboriginal Corporation’ to ensure that the CATSI corporation of the same name is recognised for the purposes of the Aboriginal Land (Lake Condah and Framlingham Forest) Act.

Item 9 Paragraph 13(1)(b)

3.28. This item replaces the reference to an ‘Aboriginal group incorporated under the ACA Act’ with reference to an ‘Aboriginal and Torres Strait Islander corporation’.

Item 10 Subsection 13(2)

3.29. This item replaces the reference to an ‘Aboriginal group incorporated under the ACA Act’ with reference to an ‘Aboriginal and Torres Strait Islander corporation’.

Item 11 Subsection 15(5)

3.30. This item omits the reference to a ‘governing committee’ and substitutes with ‘directors of the corporation’—refer to Item 6. Also, a technical amendment changes ‘shall’ to ‘must’.

Item 12 Subsection 16(2)

3.31. This item omits the reference to a ‘governing committee’ and substitutes with ‘directors of the corporation’—refer to Item 6.

Item 13 Subsection 16(3)

3.32. This item omits the reference to a ‘governing committee’ and substitutes with ‘directors of the corporation’—refer to Item 6. Also, a technical amendment changes ‘shall’ to ‘must’.

Item 14 Paragraph 18(1)(a)

3.33. This item replaces the reference to the ACA Act with a reference to the CATSI Act.

Item 15 Subsection 18(5)

3.34. This item replaces the reference to the ACA Act with a reference to the CATSI Act.

Item 16 Section 19

3.35. This item omits the reference to an ‘Aboriginal group’ and substitutes it with reference to an ‘Aboriginal and Torres Strait Islander corporation’.

Item 17 Subparagraphs 19(b)(i) and (ii)

3.36. This item omits references to an ‘Aboriginal group’ and substitutes them with references to an ‘Aboriginal and Torres Strait Islander corporation’.

Item 18 Section 20

3.37. This item omits references to an ‘Aboriginal group’ and substitutes them with a reference to an ‘Aboriginal and Torres Strait Islander corporation’. This item also defines the transferee corporation for drafting purposes later in section 20.

Item 19 Paragraph 20(a)

3.38. This item omits references to the group, wherever occurring in the paragraph, and substitutes with ‘transferee corporation’ (which is defined earlier in the section)—refer to Item 18.

Item 20 Subparagraph 20(a)(ii)

3.39. This item omits references to the ‘governing committee of the corporation’ and substitutes them with references to the ‘directors of the corporation’ and ‘transferee corporation’—refer to Items 6, 11 & 18.

Item 21 Paragraph 20(b)

3.40. This item omits references to the group to which the land is transferred or granted and substitutes with ‘transferee corporation’.

Item 22 Paragraph 20(b)

3.41. This omits reference to the group, wherever occurring in the paragraph, and substitutes with ‘Aboriginal and Torres Strait Islander corporation’.

Item 23 Paragraph 21(1)(b)

3.42. This item replaces the reference to an Aboriginal group incorporated under the ACA Act with a reference to a CATSI corporation.

Item 24 Subsection 21(2)

3.43. This item replaces the reference to an Aboriginal group incorporated under the ACA Act with a reference to a CATSI corporation.

Item 25 Subsection 25(3)

3.44. This item replaces the reference to the ACA Act with a reference to the CATSI Act.

Item 26 Paragraph 27(1)(a)

3.45. This item replaces the reference to the ACA Act with a reference to the CATSI Act.

Item 27 Subsection 27(5)

3.46. This item replaces the reference to the ACA Act with a reference to the CATSI Act.

Item 28 Section 28

3.47. This item replaces the reference to an Aboriginal group incorporated under the ACA Act with a reference to a CATSI corporation.

Item 29 Subparagraphs 28(b)(i) and (ii)

3.48. This item omits references to an Aboriginal group and replaces it with reference to an Aboriginal and Torres Strait Islander corporation. It also substitutes CATSI Act for ACA Act.

Item 30 Section 29

3.49. This item omits references to the group, wherever occurring in the paragraph, and substitutes with the ‘transferee corporation’ (which is defined earlier in the section)—refer to Item 19.

Item 31 Paragraph 29(a)

3.50. This item omits references to the group, wherever occurring in the paragraph, and substitutes with the ‘transferee corporation’ (which is defined earlier in the section)—refer to Item 30.

Item 32 Subparagraph 29(a)(ii)

3.51. This omits references to the ‘governing committee of the corporation’ and substitutes with the ‘directors of the corporation’ and ‘transferee corporation’—refer to Items 6, 11 & 30. It also substitutes CATSI Act for ACA Act.

Item 33 Paragraph 29(b)

3.52. This omits references to group to which the land is transferred or granted and substitutes with ‘transferee corporation’.

Item 34 Paragraph 29(b)

3.53. This omits references to group, wherever occurring in the paragraph, and substitutes with reference to a CATSI corporation.

*Aboriginal Land Rights (Northern Territory) Act 1976***Item 35 Subsection 3(1)**

3.54. This inserts a definition of Aboriginal and Torres Strait Islander corporation as a corporation registered under the CATSI Act into the Aboriginal Land Rights (Northern Territory) Act.

Item 36 Subsection 3(1) (definition of *Aboriginal Council*)

3.55. This item removes the reference to Aboriginal Council and repeals the definition.

Item 37 Subsection 3(1) (definition of *Incorporated Aboriginal Association*) (first occurring)

3.56. This item repeals the definition of an Incorporated Aboriginal Association as it is superseded by the definition of a CATSI corporation in Item 35.

Item 38 Subsection 3(1) (definition of *Incorporated Aboriginal Association*) (second occurring)

3.57. This item repeals the definition—refer to Item 37.

Item 39 Subsection 7(3)

3.58. This item repeals the section and replaces it with a reference to ‘the area in which the Land Trust is to hold land’ to remove the reference to Aboriginal Council which is rendered obsolete by the repeal of the ACA Act.

Item 40 Subsection 19(2)

3.59. This item replaces the reference to ‘Aboriginal Council or Incorporated Aboriginal Association’ with a reference to ‘or an Aboriginal and Torres Strait Islander corporation’.

Item 41 Subparagraph 19(2)(a)(ii)

3.60. This item replaces the reference to ‘the Council or Association’ with a reference to ‘the corporation’.

Item 42 Paragraph 19(2)(b)

3.61. This item replaces the reference to ‘the Council or Association’ with a reference to ‘the corporation’.

Item 43 Paragraphs 21A(1)(b) and (c)

3.62. This item replaces the reference to ‘Aboriginal Council’ and ‘Incorporated Aboriginal Association’ with ‘Aboriginal and Torres Strait Islander corporation’.

Item 44 Paragraphs 25(1)(c) and (d)

3.63. This item replaces the reference to ‘Aboriginal Councils’ and ‘Incorporated Aboriginal Associations’ with ‘Aboriginal and Torres Strait Islander corporations’.

Item 45 Subsection 27(1A)

3.64. This item replaces the reference to ‘Incorporated Aboriginal Association’ with a reference to ‘Aboriginal and Torres Strait Islander corporation’.

Item 46 Subsection 28(3)

3.65. This item replaces the reference to a ‘body corporate incorporated under the *Aboriginal Councils and Associations Act 1976*’ with ‘an Aboriginal and Torres Strait Islander corporation’.

Item 47 Subsection 28A(1)

3.66. This item replaces the reference to a ‘body corporate incorporated under the *Aboriginal Councils and Associations Act 1976*’ with ‘an Aboriginal and Torres Strait Islander corporation’.

Item 48 Subsection 28A(1)

3.67. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’.

Item 49 Subsection 28A(1) (note)

3.68. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 50 Subsection 28A(2)

3.69. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’.

Item 51 Subsection 28A(4)

3.70. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 52 Subsection 28A(4) (note)

3.71. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’.

Item 53 Subsection 28A(5) (note)

3.72. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’.

Item 54 Subsection 28A(6)

3.73. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’.

Item 55 Subsection 28B(1)

3.74. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’ and also reflects this amendment in the heading.

Item 56 Subsection 28B(2)

3.75. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’.

Item 57 Subsection 28B(3)

3.76. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’. The heading is also altered to reflect the amendment.

Item 58 Subsection 28B(3) (note)

3.77. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’. The heading is also altered to reflect the amendment.

Item 59 Subsection 28B(4)

3.78. This item omits reference to the ‘body’, wherever occurring in the subsection, and substitutes with the ‘corporation’. The heading is also altered to reflect the amendment.

Item 60 Subsection 28B(4) (note)

3.79. This item omits reference to ‘body’, wherever occurring in the subsection, and substitutes with ‘the corporation’.

Item 61 Paragraph 28B(5)(a)

3.80. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 62 Subsection 28B(5) (note)

3.81. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 63 Subsection 28B(6) (note)

3.82. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 64 Subsection 28B(7)

3.83. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 65 Paragraph 28C(1)(a)

3.84. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’.

Item 66 Paragraph 28C(1)(b)

3.85. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’.

Item 67 Subsection 28C(1)

3.86. This item omits reference to ‘body’, wherever occurring in the subsection, and substitutes with ‘the corporation’.

Item 68 Subsection 28C(3)

3.87. This item omits reference to ‘body’, wherever occurring in the subsection, and substitutes with ‘the corporation’.

Item 69 Paragraph 28C(6)(a)

3.88. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 70 Paragraph 28C(6)(b)

3.89. This item omits reference to ‘body’, wherever occurring in the subsection, and substitutes with ‘the corporation’.

Item 71 Subsection 28C(7)

3.90. This item omits reference to ‘body’, wherever occurring in the subsection, and substitutes with ‘the corporation’.

Item 72 Subsection 28D(1)

3.91. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’. The heading is also altered to reflect the amendment.

Item 73 Paragraph 28E(1)(a)

3.92. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’. The heading is also altered to reflect the amendment.

Item 74 Subsection 28E(1)

3.93. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 75 Subsection 28E(2)

3.94. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’.

Item 76 Subsection 28E(2)

3.95. This item omits reference to ‘body’, wherever occurring in the subsection, and substitutes with ‘the corporation’.

Item 77 Subsection 28E(2)

3.96. This item omits reference to the ‘body’ and substitutes with the ‘corporation’.

Item 78 Section 28F

3.97. This item replaces a reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’. The heading is also altered to reflect the amendment.

Item 79 Section 28F

3.98. This item omits a reference to the ‘body’ and substitutes with the ‘corporation’.

Item 80 Subsection 35(2)

3.99. This item repeals the existing subsection and inserts a new subsection replacing references to ‘Aboriginal councils’ and ‘Incorporated Aboriginal Associations’ with a reference to ‘Aboriginal and Torres Strait Islander corporations’.

Item 81 Subsection 35(3)

3.100. This item repeals the existing subsection and inserts a new subsection replacing references to ‘Aboriginal councils’ and ‘Incorporated Aboriginal Associations’ with a reference to ‘Aboriginal and Torres Strait Islander corporations’.

Item 82 Subsection 35(4B)

3.101. This item replaces the reference to ‘Incorporated Aboriginal Association’ with a reference to ‘Aboriginal and Torres Strait Islander corporation’.

Item 83 Subsection 35(9)

3.102. This item replaces the reference to ‘an Aboriginal Council, an Incorporated Aboriginal Association’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’.

Item 84 Subsection 35(12)

3.103. This item replaces the references to ‘Incorporated Aboriginal Association’ (wherever occurring) with references to ‘Aboriginal and Torres Strait Islander corporation’.

Item 85 Subsection 37(6)

3.104. This item replaces the reference to ‘a body corporate’ with a reference to ‘an Aboriginal and Torres Strait Islander corporation’.

Item 86 Subsection 37(6)

3.105. This item replaces the reference to ‘the body’ with a reference to ‘the corporation’.
See also Item 85.

Item 87 Subsection 71(2)

3.106. This item removes the reference to ‘an Aboriginal Council’.

*Age Discrimination Act 2004***Item 88 Schedule 1 (table item 2)**

3.107. This item repeals table Item 2 of Schedule 1 with its reference to the ACA Act.

Item 89 Schedule 1 (after table item 18)

3.108. This item inserts new table Item 18A into Schedule 1 and a reference to the CATSI Act.

*Commonwealth Authorities and Companies Act 1997***Item 90 Paragraph 7(2)(b)**

3.109. This item repeals the existing paragraph and inserts a new paragraph replacing the reference to ‘Aboriginal associations incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*’ with a reference to ‘corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*’.

*Commonwealth Volunteers Protection Act 2003***Item 91 Subsection 4(1) (paragraph (a) of the definition of *Commonwealth authority*)**

3.110. This item repeals the existing paragraph and inserts a new paragraph replacing the reference to ‘an Aboriginal association incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*’ with a reference to ‘a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*’.

*Criminal Code Act 1995***Item 92 Dictionary in the Criminal Code (subparagraph (a)(i) of the definition of *Commonwealth authority*)**

3.111. This item repeals subparagraph (a)(i) of the definition of ‘Commonwealth authority’ as it refers to a body established by or under the ACA Act. The new definition is substituted in Item 93 below.

Item 93 Dictionary in the Criminal Code (subparagraph (a) of the definition of *Commonwealth authority*)

3.112. This item inserts a new paragraph (aa) into the definition of ‘Commonwealth authority’ referring to ‘a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*’.

Item 94 Dictionary in the Criminal Code (subparagraph (n)(i) of the definition of *Commonwealth public official*)

3.113. This item repeals the existing subparagraph (n)(i) in the definition of ‘Commonwealth public official’ and inserts a new subparagraph (n)(i) with the reference to the ACA Act substituted with a reference to the CATSI Act.

Item 95 Dictionary in the Criminal Code (subparagraph (r)(i) of the definition of *Commonwealth public official*)

3.114. This item repeals the existing subparagraph (r)(i) in the definition of ‘Commonwealth public official’ and inserts a new subparagraph (r)(i) with the reference to the ACA Act substituted with a reference to the CATSI Act.

Item 96 Dictionary in the Criminal Code (paragraph (t) of the definition of *Commonwealth public official*)

3.115. This item omits a reference to the ‘Aboriginal Corporation’ and substitutes with a reference to ‘Aboriginal and Torres Strait Islander Corporations’.

*Environment Protection and Biodiversity Conservation Act 1999***Item 97 Section 528 (subparagraph (i)(ii) of the definition of *Commonwealth agency*)**

3.116. This item repeals the existing subparagraph and inserts a new subparagraph replacing the reference to ‘an Aboriginal corporation within the meaning of the *Aboriginal Councils and Associations Act 1976*’ with a reference to ‘a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*’.

Income Tax Assessment Act 1936

Item 98 Subsection 128U(1) (paragraphs (b) and (c) of the definition of *distributing body*)

3.117. This item repeals these existing paragraphs and inserts a new paragraph (b) replacing the references to ‘an Aboriginal Council established by Part III of the ACA Act and an association, society or body incorporated under Part IV of the ACA Act’ with a reference to ‘a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*’.

Remuneration Tribunal Act 1973

Item 99 Subsection 3(1) (definition of *Aboriginal Corporation of the National Aboriginal Conference*)

3.118. This item repeals the existing definition of the ‘Aboriginal Corporation of the National Aboriginal Conference’ and inserts a new definition replacing the reference to ‘the corporation of that name being established under the ACA Act’ with a reference to ‘the corporation of that name registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*’.

Schedule 3—Transitional provisions

Summary

3.119. Transitional provisions for the Corporations (Aboriginal and Torres Strait Islander) Bill (CATSI Bill) will bring corporations registered under the ACA Act across to the new system as seamlessly as possible. On commencement all corporations incorporated under the ACA Act will become corporations under the CATSI Bill. While most provisions of the CATSI Bill will apply from commencement, some do not apply or are modified to allow a transitional period for corporations to make necessary changes for compliance with the new Act.

3.120. Under the transitional provisions any pending applications or decisions by the Registrar under the ACA Act will be preserved when the CATSI Bill commences, and will be taken to be decisions made under the new Act. These provisions will remove the burden on corporations of having to reapply under the new regime.

3.121. A transitional period of up to two years, with special provision for the Registrar to determine an extra period of six months in some circumstances, gives corporations a substantial period of time to comply with the new legislative framework.

3.122. Transitional provisions have been tailored to reduce as much of the administrative burden on corporations as possible. One possible transitional scheme could have been to require all corporations incorporated under the ACA Act to comply with the new Act on commencement. However, given the special requirements and risks of these corporations, it was necessary to give them as much lead time as possible to make the required changes to the internal governance rules that provide the framework for their operation. Consultations undertaken after the CATSI Bill was introduced in 2005 indicated that two years was an appropriate time period, providing a clear statement of when corporations must come into full compliance with the new system.

Provisions

Part 1—Preliminary

3.123. This part contains terms used in the schedule.

Item 1 Definitions

3.124. Item 1 sets out definitions used in the schedule. A key definition in the schedule is ‘transitional corporation’ which means an Aboriginal corporation that was incorporated under the ACA Act immediately before commencement of the CATSI Bill.

Item 2 Maximum transitional period for transitional corporation

3.125. Item 2 defines the transitional period that applies to a transitional corporation. This is the period when a transitional corporation should fully align its constitution with the CATSI Bill. The maximum transitional period is two years, but the period may end before that when the corporation amends its constitution.

3.126. The Registrar may provide an additional six months for a specified corporation or class of corporations to accommodate end of financial year reporting requirements.

Part 2—Bringing the transitional corporations across to new system

Division 1—Registration under the new Bill

3.127. This division sets out how an ACA Act corporation becomes registered under the CATSI Bill.

Item 3 Registration under the new Act

3.128. Item 3 automatically registers transitional corporations under the CATSI Bill and provides for the CATSI Registrar to adjust the Register of Aboriginal and Torres Strait Islander Corporations.

Item 4 Effect of registration on the corporation’s capacity etc.

3.129. Item 4 preserves the legal existence of a transitional corporation on registration under the CATSI Bill and ensures that registration does not affect a corporation’s existing property, rights or obligations or legal proceedings.

Item 5 Effect of registration on property yet to be vested in the corporation on its incorporation

3.130. Item 5 continues the legal obligation that a person holding property for the benefit of the ACA Act corporation should transfer that property to the corporation that becomes registered under the CATSI Bill. It is treated as an obligation under subsection 42-30(3) of the CATSI Bill.

Item 6 Circumstances existing before commencement

3.131. Item 6 enables the CATSI Bill to recognise circumstances of a particular kind that existed before the commencement of the Bill.

Division 2—Classification of transitional corporations

3.132. This division sets out how a transitional corporation is classified for the purposes of the CATSI Bill. Under the CATSI Bill corporations can be classified as small, medium or large for reporting purposes. This allows reporting to more appropriately reflect a corporation’s size and purpose, and avoids the one-size-fits-all approach of the ACA Act.

Item 7 All initially classified as medium corporations

3.133. Item 7 provides that all transitional corporations become medium corporations when the Bill commences, and that the Registrar must show this on the Register of Aboriginal and Torres Strait Islander Corporations.

Item 8 Initial contact persons

3.134. The CATSI Bill replaces public officers with contact persons. Item 8 ensures that the public officer of a transitional corporation becomes the contact person when the Bill commences. This item disapplies relevant provisions of the CATSI Bill that oblige the corporation to obtain the consent of a contact person and notify the Registrar of relevant details. This ensures that a corporation will not breach obligations that would otherwise apply under the CATSI Bill.

Item 9 Initial document addresses

3.135. Item 9 provides that the document access address required under section 42-20 of the CATSI Bill is taken to be the official address of the person who was the corporation's public officer immediately before commencement.

Item 10 CATSI Registrar may re classify as large or small corporation

3.136. Item 10 allows a corporation's size classification to be altered from medium to small or large if the CATSI Registrar is satisfied that a corporation is likely to be a small or large corporation rather than medium corporation for the first financial year. It also obliges the Registrar to notify a corporation of this classification change in writing.

Item 11 First corporation secretary

3.137. The CATSI Bill requires all large corporations to have a corporation secretary. When a transitional corporation is registered as a large corporation and no corporation secretary has previously been appointed, Item 11 allows a director of the corporation or a person who has given their consent to become the corporation secretary. This item disapplies relevant provisions of the CATSI Act that oblige the corporation to obtain the consent of a corporation secretary and notify the Registrar of relevant details. This ensures that a corporation will not breach obligations that would otherwise apply under the CATSI Bill.

Item 12 First address of registered office

3.138. Item 12 allows the Registrar to declare a registered office for a large transitional corporation to be its place of business. This takes the burden off the corporation to notify the Registrar of a registered address on commencement.

Item 13 Publishing declarations of first secretary and first address

3.139. Item 13 requires the Registrar to publish any declarations that he or she makes about a corporation's first secretary and first address on the Internet. This provides a timely, accessible and effective way of publishing public information.

Division 3—First constitution

3.140. This division sets out how the rules of a transitional corporation become registered as its constitution for the purposes of the CATSI Bill.

Item 14 Rules registered as constitution

3.141. Item 14 allows for the rules of a transitional corporation in force immediately before commencement to be recognised as the corporation's constitution under the CATSI Bill.

This alleviates the burden of transitional corporations immediately having to amend their rules and lodge them with the CATSI Registrar. The Registrar must adjust the Register of Aboriginal and Torres Strait Islander Corporations accordingly.

Item 15 Effect of registering the rules as constitution

3.142. Item 15 provides that registration of the rules of a transitional corporation as its constitution under the CATSI Bill does not bring into existence a new contract. Item 15 has the effect of continuing the existence of the contract constituted by the former rules.

3.143. Item 15 clarifies that things done before commencement under the former rules are taken to have been done under the corresponding provision of the corporation's constitution.

For example, a person who is the chair of the governing committee of a transitional corporation immediately before commencement will continue to be the chair at commencement.

Item 16 Circumstances existing after commencement

3.144. Item 16 clarifies that a corporation's constitution can be modified when necessary to take account of circumstances that arise on or after commencement. For example, the ACA Registrar is taken to be the CATSI Registrar and a governing committee member is taken to be a director.

Item 17 Internal governance rules requirements

3.145. Item 17 provides for the internal governance rules requirements in the CATSI Bill to reflect the transitional provisions and ensures transitional corporations get the benefits of the transitional arrangements provided by this Bill.

3.146. Item 17 makes necessary modifications to the internal governance rules requirements of a transitional corporation by modifying the application of section 66-1 and disapplying section 66-5 of the CATSI Bill. (Division 66 of the CATSI Bill sets out the internal governance rules requirements for an Aboriginal and Torres Strait Islander corporation.) The modifications made by Item 17 are necessary because Schedule 3 of this Act changes how the CATSI Bill applies to a transitional corporation and also because of subparagraph 60-1(2)(b)(ii) of the CATSI Bill itself.

3.147. Subitem 17(1) ensures that the requirement in subsection 66-1(3) of the CATSI Bill (that a corporation's constitution must cover the matters that the CATSI Bill requires to be covered in the constitution) and the requirement in paragraph 66-1(5)(c) of the CATSI Bill (that the internal governance rules must be consistent with the CATSI Bill) are requirements that are appropriate for a transitional corporation. In each case the reference to the CATSI Bill is a reference to the CATSI Bill as it actually applies to the transitional corporation. For example, the modifications to the CATSI Bill made by Schedule 3 of this Transitional Bill for transitional corporations would apply to the requirements.

3.148. Subitem 17(2) disapplies the internal governance rules requirement in subsection 66-1(4) of the CATSI Bill relating to replaceable rules for transitional corporations because the replaceable rules provisions in the CATSI Bill do not apply to such corporations until after the corporation has repealed its constitution after commencement. This arises from operation of subparagraph 60-1(2)(b)(ii) of the CATSI Bill. (There is a similar provision in subparagraph 135(1)(a)(ii) of the *Corporations Act 2001*.) Subitem 17(2) also disapplies section 66-5 of the CATSI Bill, which relates to coverage of replaceable rules, for transitional corporations for the same reason.

3.149. Subitems 17(3) and (4) provide that transitional corporations meet the disputes settling procedure requirement under paragraph 43(3)(c) of the ACA Act. The internal dispute resolution requirement for a corporation's constitution in subsection 66-1(3A) of the CATSI Bill will apply to transitional corporation after their transitional period.

Item 18 Changing constitution during transitional period

3.150. Item 18 allows a transitional corporation to use the process set out in its rules made and approved under the ACA Act to change its constitution while in the transitional period, and ensures that the corporation does not breach the requirements of the CATSI Bill that a change to the constitution can only be changed by special resolution.

Division 4—Other effects of registration

Item 19 Transitional corporation's name at commencement

3.151. Item 19 ensures that the name of a transitional corporation becomes the corporation's name under the CATSI Bill and is registered accordingly. This avoids the need for a transitional corporation to lodge any application to register its name.

3.152. Subitem 19(2) ensures that transitional corporations that have the words 'Torres Strait Islanders Corporation' in their name may continue to use that name and are taken to be in compliance with the changed requirement in the CATSI Bill requiring use of the singular form 'Torres Strait Islander Corporation'.

Item 20 CATSI Registrar may change the name

3.153. Item 20 allows the CATSI Registrar to make minor changes to a transitional corporation's name so that it complies with the CATSI Bill and avoids both a general meeting and lodgment of a name change application. This item also ensures that the corporation's registration details are changed to reflect the new name.

Item 21 Corporation changing its name during transitional period

3.154. Item 21 allows a transitional corporation to use the process set out in its rules made and approved under the ACA Act to change its name while in the transitional period, and ensures that the corporation does not breach the requirements of the CATSI Bill that a name can only be changed by special resolution.

Item 22 Transitional corporation’s ICN

3.155. Item 22 requires the CATSI Registrar to publish each transitional corporation’s Indigenous Corporation Number or ICN on the Internet. The ICN is a unique numeric identifier and corporations will be required to use it on all public documents and negotiable instruments.

Item 23 Power to exempt from requirement to set out ICN on documents

3.156. Item 23 provides a power for the CATSI Registrar to exempt a transitional corporation or a class of corporations from the requirement to use the ICN on documents for the transitional period. This ensures that there is some discretion to relieve a corporation from this requirement if it proves onerous or difficult to comply with.

Item 24 Exemption from requirement to set out ICN on pre-CATSI documents

3.157. Item 24 makes it clear that transitional corporations are exempt from the requirement to set out the ICN on documents when the documents were created before the commencement of the CATSI Bill. This item is intended to clarify obligations on corporations.

Item 25 First certificate of registration

3.158. Item 25 preserves the certificate of incorporation issued to a transitional corporation under the ACA Act so that it is taken to be its certificate of registration under the CATSI Bill.

Item 26 CATSI Registrar may issue certificate of registration

3.159. Item 26 gives the CATSI Registrar power to issue a new certificate of registration to a transitional corporation and clarifies that any such certificate is not a legislative instrument.

Item 27 Common seal

3.160. Item 27 relieves the obligation for a transitional corporation to set out the ICN on its corporate seal. This provision will ensure that a corporation is not in breach of this new CATSI requirement. This relief ceases when the corporation changes its name.

3.161. It should be noted that the CATSI Bill removes the need for corporations to have a common seal—however, corporations may retain the use of the seal if they choose to do so, or if it is a requirement of their constitution.

*Division 5—Members and observers***Item 28 Members at commencement**

3.162. Item 28 preserves the status of existing members and provides for them to automatically retain their membership of the corporation under the CATSI Bill.

Item 29 Liability of members after commencement

3.163. Item 29 ensures that the liability of a member of a transitional corporation to contribute towards the payment of the debts and liabilities of the corporation is unchanged under the CATSI Bill. The extent of the member’s liability is that stated in the corporation’s application for incorporation under the ACA Act.

Item 30 Fees for membership

3.164. Item 30 provides that section 144-15 of the CATSI Bill does not apply during the transitional period of a corporation. This section provides that a corporation must not impose membership or observer fees unless allowed by the corporation's constitution and the amount of any fee must be approved by a special resolution of the corporation.

Item 31 First register of members

3.165. Item 31 provides that the register of members retained by the transitional corporation before commencement is taken to be the register of members for the purpose of section 180-1 of the CATSI Bill and that the dates recorded for members under paragraph 58(1)(b) of the ACA Act are taken to be the dates recorded for the purpose of paragraph 180-5(1)(c) of the CATSI Bill.

3.166. This item also provides that subsection 180-5(2), which requires notice in the register of members who are not Aboriginal or Torres Strait Islander persons, does not apply to members on commencement. Under the ACA Act the only members who will not be Aboriginal or Torres Strait Islander persons are spouses of members.

Item 32 First register of former members

3.167. Item 32 provides that the register of members retained by the corporation before commencement, in so far as it related to former members, is taken to be the register of former members for the purpose of section 180-10 of the CATSI Bill.

Item 33 Giving CATSI Registrar a list of members

3.168. Item 33 requires transitional corporations to provide an up-to-date list of the names and addresses of members as soon as possible after commencement and before 31 December 2007. It is a strict liability offence if a corporation does not provide this information. This item is a transitional provision which preserves for these corporations the current requirements contained in subsections 58(3), (5)-(7) of the ACA Act, including the maximum penalty, a fine not exceeding \$200 and the defence of 'reasonable excuse'.

3.169. This provision replicates the ACA Act penalty of \$200 and was not converted to penalty units because the provision will apply only for at most six months.

Item 34 Application of new Act's observer provisions

3.170. During the transitional period Item 34 disapplies the requirement in section 158-5(3) of the CATSI Bill that the constitution of corporations must provide for matters relating to the application process, eligibility criteria, obligations, rights and cessation of observers.

*Division 6—Directors***Item 35 First directors—appointment**

3.171. Item 35(1) preserves the status of a member of the governing committee so that they become a director on commencement of the CATSI Bill.

3.172. Item 35(3) provides that section 246-5(5) of the CATSI Bill does not apply to persons who held office before commencement. This provision of the CATSI Bill clarifies that a person who is performing the role of chief executive officer is not prevented from being a director—however they are restricted from being the chairperson. This transitional provision has the effect of preserving the circumstances before CATSI commencement where a governing committee member who was a chief executive officer also performed the role of chairperson.

3.173. Item 35(4) also provides that section 246-10 and subsections 246-1(3) and 304-5(1) of the CATSI Bill do not apply to persons who have transitioned as directors. Section 246-10 requires a corporation to lodge the person’s written consent to be a director while subsection 246-1(3) provides that non-members and non-Indigenous persons cannot be directors unless provided for in the constitution. This subsection is disapplied so that any non-Indigenous spouses who were governing committee members under the ACA Act will not be prevented from being directors of the transitional corporation. Subsection 304-5(1) requires a corporation to lodge notice of the personal details of a director, secretary or contact person within 28 days of their appointment.

Item 36 First directors—period of appointment

3.174. Item 36 transfers the term of appointment of a director appointed under Item 35(1) as if the ACA Act had not been repealed. This means a director may serve the remainder of their existing term. Subsection 246-25(2) of the CATSI Bill also does not apply. That subsection prevents a director being appointed for more than two years.

Item 37 Maximum number of directors

3.175. Item 37 provides that section 243-5 of the CATSI Bill which restricts the number of directors to 12 does not apply to transitional corporations during the transitional period.

Item 38 Majority of director requirements—Aboriginal and Torres Strait Islander persons

3.176. Item 38 enables directors of a transitional corporation who are not Aboriginal or Torres Strait Islander persons (non-Indigenous appointees) and who are a majority of the directors to continue as directors during the transitional period without the corporation breaching subsection 246-5(1) of the CATSI Bill until non-Indigenous appointees are no longer a majority. This subsection would otherwise require a majority of directors to be Aboriginal and Torres Strait Islander persons.

3.177. The item also provides that until non-Indigenous appointees are no longer a majority, only Aboriginal and Torres Strait Islander persons can become directors. Subitem 38(3) deals with when a person ceases to be a non-Indigenous appointee for the purposes of this item.

Item 39 Majority of director requirements—employees

3.178. Item 39 enables directors who are employees of the corporation and constitute a majority of the directors (employee appointees) to continue as directors during the transitional period without the corporation breaching subsection 246-5(4) of the CATSI Bill until they no longer constitute a majority. This subsection would otherwise prevent such persons who are employees of the corporation from being directors. Subitem 39(3) deals with when a person ceases to be an employee appointee for the purposes of this item.

Item 40 Remuneration

3.179. Item 40 enables a director, as per Item 35, who was paid remuneration as a governing committee member, to continue to be paid under pre-commencement arrangements until the end of their appointment without the corporation breaching subsections 252(1) and (2) of the CATSI Bill. These subsections would otherwise prevent remuneration unless the constitution permits it and the remuneration had been determined by a general resolution.

Item 41 Disclosures before commencement

3.180. Item 41 preserves disclosure of interests made by governing committee members under the ACA Act and applies the disclosure to directors of transitional corporations as if the disclosure had been given under subsection 268-1(1) of the CATSI Bill. Approvals of disclosures by governing committee members are also preserved as if the approvals had been resolutions passed by the directors under subsection 268-20(4) of the CATSI Bill.

Item 42 Court power to disqualify for insolvency and non-payment of debts

3.181. Item 42 applies the provisions of section 279-20 of the CATSI Bill which enables the court to disqualify a person from managing Aboriginal and Torres Strait Islander corporations as if the references in these provisions regarding failed corporations, insolvency and winding-up were also to an ACA Act corporation, an insolvent ACA Act corporation and a winding-up under the ACA Act. This means that these matters under the ACA Act regime may be relevant in a court determining whether to disqualify a person from managing a CATSI corporation for insolvency and non-payment of debts.

3.182. This item also applies the definition of officer in the CATSI Bill to a corporation that was incorporated under the ACA Act.

Item 43 Court power to disqualify for repeated contraventions

3.183. Item 43 applies the provisions of section 279-25 of the CATSI Bill which enables the court to disqualify a person from managing Aboriginal and Torres Strait Islander corporations as if the references in these provisions to the CATSI Bill and CATSI corporations included references to the ACA Act and to corporations incorporated under the ACA Act. This means that contraventions under the ACA Act regime may be relevant in a court determining whether to disqualify a person from managing a CATSI corporation under this section.

3.184. The item also applies the definition of officer in the CATSI Bill to a corporation that was incorporated under the ACA Act.

Item 44 CATSI Registrar's power to disqualify

3.185. Item 44 applies the provisions of section 279-30 of the CATSI Bill which enables the Registrar to disqualify a person from managing corporations as if the references in these provisions to the CATSI Bill and the provisions of the Corporations Act applied by the CATSI Bill included references to the ACA Act and provisions of the Corporation Act as applied by the ACA Act. This allows acts undertaken during the operation of the ACA Act to be recognised for the purposes of this section.

3.186. The item also applies the definition of officer in the CATSI Bill to a corporation that was incorporated under the ACA Act.

Item 45 Convictions before commencement

3.187. Item 45 provides that a person who is convicted of an offence before the commencement of the CATSI Bill and who is disqualified from being a governing committee member for that offence under subsection 49B(1) of the ACA Act is taken to be disqualified under subsection 279-5(1) of the CATSI Bill from managing CATSI corporations because of that conviction.

3.188. The item does not extend to a conviction which the ACA Act did not apply because of a declaration in force under subsection 49B(3) or (5) of the ACA Act immediately before the commencement of the CATSI Bill.

3.189. The disqualification is taken to end when the person would have ceased being disqualified under the ACA Act. The item therefore does not apply subsection 279-5(2) of the CATSI Bill for the period of disqualification in these cases.

Division 7—Meetings

3.190. This division sets out the requirements that apply to transitional corporations in relation to meetings.

Item 46 First AGM

3.191. Item 46 gives corporations the choice to call and hold their first annual general meeting after the commencement of the CATSI Bill in accordance with their constitution or the requirements of the CATSI Bill. A corporation can elect to do this by a resolution of the directors and setting this resolution out in the notice of the AGM.

Item 47 First general meeting

3.192. Item 47 clarifies that section 201-145, which imposes an obligation on a corporation to hold its first AGM within three months of registration, does not apply to a transitional corporation.

Item 48 Provisions not applying during transitional period

3.193. Item 48 disapplies sections of the CATSI Bill that set out how members can ask directors to call a general meeting, the process by which meetings must be called, the notice that must be given, the process governing members' resolutions, their notice and circulation, and quorum of directors' meetings. As all pre-existing constitutions of corporations incorporated under the ACA Act contain clauses covering these matters, these provisions are disapplied to ensure that corporations are not put in a position where their constitutions conflict with the Bill.

Division 8—Related party benefits

3.194. This division clarifies the extent to which related party provisions of the CATSI Bill apply to transitional corporations.

Item 49 Related party benefits

3.195. Item 49 makes it clear that the related party provisions of the CATSI Bill do not apply to a transaction undertaken by a transitional corporation when the conditions set out in this item are met. Therefore where a contract was made before the CATSI Bill commenced and the transaction within that contract would otherwise fall within the related party benefit requirements under the CATSI Bill, member approval is not required even though a financial benefit to a related party may occur.

Division 9—Record keeping

3.196. This division sets out the record keeping requirements that apply to transitional corporations.

Item 50 Minutes of meetings

3.197. Item 50 provides that transitional corporations do not have to comply with certain provisions of the CATSI Bill related to minute keeping and the form they must be kept in if these minutes cover proceedings, resolutions or declarations made before the CATSI Bill commences.

3.198. Subitem 50(2) clarifies that division 220 of the CATSI Bill applies as if references to minute books or minutes of meetings or resolutions were kept in accordance with a transitional corporation's constitution or the ACA Act, or if they were accessible by the corporation before commencement. This enables minutes and records made and kept before commencement to be recognised under the CATSI Bill.

Item 51 Record keeping requirements

3.199. Item 51 disapplies subsection 322-10(1) of the CATSI Bill, which requires corporations to keep records that correctly explain their transactions and which present a true and fair view of their financial position, for transactions or matters that occur before the CATSI Bill commences. Disapplication of this provision protects corporations from non-compliance with the CATSI Bill in relation to records made before commencement.

Item 52 Books

3.200. Item 52 clarifies that the provisions on books in Part 7-8 of the CATSI Bill apply to transitional corporations as if the books were kept immediately before the CATSI Bill commenced, or if these books were required to be kept under the ACA Act or in accordance with its constitution.

Division 10—Reporting for financial year ending 30 June 2007

3.201. This division sets out the reporting requirements for the 2006–07 financial year and clarifies reporting obligations that apply once the CATSI Bill commences in respect of the 2006–07 financial year.

Item 53 Corporation's report

3.202. Item 53 provides that a transitional corporation must prepare a report for the part of the 2006–07 financial year that the corporation was incorporated under the ACA Act.

Item 54 Content of the corporation's report

3.203. Item 54 clarifies that the requirements of the ACA Act for annual reporting apply to a transitional corporation. This item allows a corporation to report under the ACA Act for the financial year ending 30 June 2007 and removes the possibility that corporations would be required to comply with a new set of reporting obligations as soon as the CATSI Bill commences.

Item 55 When the corporation's report must be prepared

3.204. Item 55 relieves corporations incorporated under the ACA Act after March 2007 from having to report until as soon as possible after 30 June 2008. This alleviates the burden of having to prepare reports for a relatively short period of time and allows a corporation's reports for the 2006–07 and 2007–08 financial years to be prepared at the same time.

3.205. Transitional corporations that have been incorporated under the ACA Act before March 2007 will otherwise have to report as soon as possible after 30 June 2007.

Item 56 Examiner's report

3.206. Item 56 requires a transitional corporation to have a report prepared under Item 53 examined by a person authorised by the CATSI Registrar. The purpose of the examination is to confirm that the corporation and its management have complied with the obligations of the ACA Act and accurately recorded the financial position of the corporation and to report to the corporation on the results. This provision aligns with the requirements of the ACA Act and provides some relief from immediate compliance with changed requirements of the CATSI Bill.

Item 57 Lodging the reports and making them available

3.207. Item 57 provides that a transitional corporation must lodge the report prepared under Item 53 and the examiners report under Item 56 with the CATSI Registrar before the end of the calendar year in which the reports were prepared. The corporation must also make these reports available to the members at the AGM and for inspection. This is consistent with requirements of the ACA Act.

Item 58 Offence—transitional corporations

3.208. Item 58 makes non-compliance with Division 10 by a transitional corporation a strict liability offence. The higher penalties in the offence provisions of Part 7-3 of the CATSI Bill therefore do not apply to these financial reports as they are for years before the commencement of the CATSI Bill. This provision replicates the ACA Act penalty of \$200 and was not converted to penalty units because the provision will only apply for the accounting period at the end of 2006–07.

Item 59 Offence—directors

3.209. Item 59 provides that if a director of a transitional corporation does not take steps to comply with Division 10 it is a contravention of the Bill. This provision replicates the ACA Act penalty of \$200, which is lower than the corresponding CATSI Bill provision, and was not converted to penalty units because the provision will only apply for the accounting period at the end of 2006–07.

Division 11—Reporting for financial year ending on 30 June 2008

3.210. This division sets out the reporting requirements for the 2007–08 financial year for transitional corporations. It assists transitional corporations in moving from financial reporting requirements under the ACA Act to those under the CATSI Bill.

Item 60 Election to adopt old Act reporting

3.211. Item 60 enables a transitional corporation to elect in writing to report under this division for the financial year ending 30 June 2008. If a corporation elects to report under Division 11 then the election cannot be revoked. The election means that the reporting requirements in Divisions 327, 330, 342 and 345 of Part 7-3 the CATSI Bill do not apply and that the reporting is similar to that undertaken in Division 10.

3.212. If a transitional corporation has been exempted under Division 12 and does not elect to report under this division then it must report under Part 7-3 of the CATSI Bill.

Item 61 Corporation’s report

3.213. Item 61 makes it clear that a transitional corporation must prepare a report for the financial year.

Item 62 Content of the corporation’s report

3.214. Item 62 clarifies that the report of a transitional corporation is the same as the annual reporting requirements of the ACA Act. This item allows a corporation to report in a manner similar to Items 53 and 54 for the 2006–07 financial year but in a way slightly modified to fit with the CATSI Bill.

Item 63 When the corporation’s report must be prepared

3.215. Item 63 clarifies that the report under Item 62 must be prepared as soon as possible after the end of the 2007–08 financial year.

Item 64 Examiner’s report

3.216. Item 64 requires a transitional corporation to have a report prepared under Item 61 examined by a person authorised by the CATSI Registrar. This requirement is aligned with the requirements of the ACA Act.

Item 65 Lodging the reports and making them available

3.217. Item 65 provides that a transitional corporation must lodge the report prepared under Item 61 and the examiner's report under Item 64 with the CATSI Registrar before the end of 2008. The corporation must also make these reports available to the members at the AGM and for inspection.

Item 66 Offence

3.218. Item 66 makes non-compliance by a transitional corporation with this division a strict liability offence. The higher penalties in the offence provisions of the CATSI Bill therefore do apply to these financial reports. Part 7-6 is therefore read as if this division is included along with the references to Part 7-2 and 7-3 for penalties.

*Division 12—Reporting exemptions***Item 67 CATSI Registrar may exempt from reporting**

3.219. Item 67 enables the CATSI Registrar to also exempt transitional corporations from Division 10 or Division 11 of the transitional provisions as if the divisions are referred to in Part 7-2 or 7-3 of the CATSI Bill. This has the effect of providing for the Registrar to consider exemptions from the CATSI Bill record keeping and reporting requirements in relation to transitional corporations.

Item 68 Preserving old Act exemptions for Division 10

3.220. Item 68 clarifies that exemptions from reporting made under the ACA Act that are in force before commencement are taken to be exemptions that apply to the transitional corporation from the requirements of Division 10 for the financial year ending 30 June 2007 (requirements as per Item 53).

3.221. This item confirms that subsections 59A(2) and (3) of the ACA Act continue to apply as if the repeal had not happened. Therefore the corporation may have some reporting requirements as set out in the exemption and it is subject to the strict liability offence as set out in the ACA Act if it does not comply.

*Division 13—Enforcement***Item 69 Enforcement under Part 10 3 of the new Act**

3.222. Item 69 applies section 450-1 of the CATSI Bill (Purposes for which Powers may be exercised under Part 10-3 Enforcement) to transitional corporations as if this schedule was referred to in that Bill. Therefore the section also operates as if the reference to the CATSI Bill includes a reference to the ACA Act, the corporation's rules and the schedule. However, this item does not cover obligations under the ACA Act that are covered by exemptions that transfer over to the CATSI Bill.

3.223. This item also applies section 453-1 of the CATSI Bill (Examination of books and persons in Part 10-3 Enforcement) to transitional corporations as if this schedule was referred to in that Bill. This item does not cover obligations covered by exemptions under the ACA Act.

Item 70 Compliance with this schedule

3.224. Item 70 applies section 439-20 of the CATSI Bill (Registrar may require compliance with Act) to transitional corporations as if this schedule was referred to in that Bill.

*Division 14—Special administration***Item 71 Grounds for special administration**

3.225. Item 71 provides that grounds for special administration under the CATSI Bill can take account of circumstances that existed under the ACA Act. This has the effect of providing the CATSI Registrar with the power to consider matters that occurred or circumstances that arose before commencement.

*Division 15—Winding-up***Item 72 Grounds for Court ordered winding up**

3.226. Item 72 ensures that in deciding to wind up a corporation, a Court can consider circumstances that arose under the ACA Act and provides that relevant references in the CATSI Bill are taken to include references to the ACA Act for the purposes of considering whether the grounds for winding-up have been met.

Part 3—Matters pending under ACA Act immediately before commencement

3.227. This part sets out how matters pending under the ACA Act are treated for the purposes of the CATSI Bill. The provisions have been drafted to preserve pending applications as far as possible to remove the administrative burden on corporations from having to re-apply under the CATSI Bill.

Division 1—Applications for incorporation

3.228. Division 1 preserves any applications for incorporation of an Aboriginal association under the ACA Act that were pending at the commencement of the CATSI Bill by treating them as applications made under the CATSI Bill for registration. These pending applications must meet the requirements of the CATSI Bill.

Item 73 Division applies to pending applications for incorporation under ACA Act

3.229. Item 73 applies Division 1 to any pending ACA Act applications for incorporation and, for the purpose of Division 1, identifies in subitem 73(2) the particular stages that a pending application could have reached under the ACA Act.

Item 74 Pending application treated as application under new Act

3.230. Item 74 provides that pending ACA Act applications for incorporation are treated as applications for registration under section 21-1 of the CATSI Bill.

3.231. Subitems 74(2)-(3) provide for the committee of the association to advise the Registrar of an applicant for the pending application. (Under section 21-1 of the CATSI Bill applications for registration under the CATSI Bill must state the name and details of the applicant.)

3.232. Subitems 74(4)-(5) handle situations where the committee of the association fails within 21 days to notify the Registrar of an applicant or the person advised does not consent to be the applicant. Like subsection 21-10(3) of the CATSI Bill, the Registrar may treat the application as withdrawn.

3.233. Item 74(6) confirms that the CATSI Registrar may request the applicant to provide further information to determine the pending application. (Section 21-10 of the CATSI Act provides the Registrar with power to seek further information for applications for registration.)

Item 75 Pending invitations to change application

3.234. Item 75 preserves invitations from the ACA Registrar under section 45(4)(c) of the ACA Act to the committee of the association to change its application for incorporation to remove the grounds for initial refusal of the application. Subitem 75(2) treats the ACA Registrar's initial refusal of the application as a decision taken by the CATSI Registrar under section 26-1 of the CATSI Bill, and subitem 75(3) treats the invitation as an invitation to make changes removing the grounds for refusal under paragraph 32-5(1)(d) of the CATSI Bill.

Item 76 Pending notifications under subsection 45(4) of the old Act

3.235. Item 76 preserves, under section 45(5) of the ACA Act, any pending reconsiderations by the ACA Registrar of the application for incorporation where the committee of the association has notified changes in its application. Subitem 76(4) treats the notification by the committee as advice under subsection 32-5(1)(d) of the CATSI Bill, and the CATSI Registrar must reconsider the application. The note under subitem 76(4) clarifies that the CATSI Registrar may need to ask for additional information to ensure that the application meets the requirements of the CATSI Bill in sections 21-1 and 21-5.

Item 77 No AAT review of decisions made before commencement

3.236. Item 77 confirms that there is no Administrative Appeals Tribunal merits review available under section 617-1 of the CATSI Bill of decisions made by the ACA Registrar before the CATSI Bill commences. No AAT review was available for such decisions under the ACA Act.

Division 2—Application for name change

3.237. Division 2 handles any pending ACA Act applications for name change and any new name approvals made by the ACA Registrar for which a new certificate of incorporation was not issued before commencement of the CATSI Bill. The name change procedures under the ACA Act and the CATSI Bill are very different and preserving these matters requires detailed application provisions in subitems 78(1) and 79(1).

Item 78 Application made under section 53 of old Act but not decided

3.238. To preserve an ACA Act application for a name change, paragraph 78(1)(b) of this schedule requires the corporation to lodge with the CATSI Registrar within 28 days after commencement a directors' statement and corporation documentation to the effect that the proposed new name has been adopted by the corporation in accordance with its constitution.

3.239. Subitem 78(2) treats any pending applications for a proposed new name as an application under subsection 88-1(1) of the CATSI Bill, provided the documentation required by paragraph 78(1)(b) of this schedule has been lodged.

3.240. Subitem 78(3) provides that the requirement in subsection 88-1(2), to lodge the resolution and minutes relating to adoption of the new name by the corporation within 28 days, and the related offence provisions in subsections 88-1(2) and (3) of the CATSI Bill do not apply to these preserved name change applications.

Item 79 Application made under section 53 of old Act and approval given

3.241. To preserve any new name approved by the ACA Registrar for which a new certificate of incorporation was not issued before commencement, paragraph 79(1)(c) of this schedule requires the corporation to lodge a directors' statement and corporation documentation with the CATSI Registrar within 28 days after commencement. The statement and documentation confirm that the corporation has adopted the proposed new name in accordance with its constitution.

3.242. Subitem 79(2) preserves a new name approved by the ACA Registrar by requiring the CATSI Registrar to change the corporation's name by altering its registration details, provided the corporation has lodged the documentation required by paragraph 79(1)(c) of this schedule.

3.243. Subitem 79(3) provides that the change of name takes effect when the CATSI Registrar alters the details of the corporation's registration.

Division 3—Changes to constitution

3.244. Division 3 preserves pending alterations to the rules and to the objects of an ACA Act corporation filed with the Registrar but which the Registrar, before commencement of the CATSI Bill, had not approved.

Item 80 Changes to constitution made but not approved before commencement

3.245. Subitems 80(1) and (2) apply Division 3 to these pending alterations.

3.246. Subitem 80(3) preserves any alterations filed with the ACA Registrar by treating them as changes to the corporation's constitution under subsection 69-5(1) of the CATSI Bill.

3.247. Subitem 80(4) provides that the corporation is taken to have passed a special resolution effecting the change to the constitution. (Paragraph 69-5(1)(a) of the CATSI Bill requires a corporation to pass a special resolution to change its constitution.)

3.248. Subitem 80(5) modifies the operation of subsection 69-20(1) of the CATSI Bill in relation to pending ACA Act alterations. Paragraphs 80(5)(b) and (d) provide that the documentation and directors' statement to be lodged with the CATSI Registrar under subsection 69-20(1) need only show that the corporation made the change in accordance with its constitution and its internal governance rules. Special resolutions may not be required.

3.249. Paragraphs (a) and (c) of subitem 80(5) operate to take commencement of the CATSI Bill and any other constitutional requirement into account and extend the period for lodgment of the required documentation and directors' statement.

Division 4—Meetings called before commencement

3.250. Division 4 preserves the calls for a meeting by the governing committee or the ACA Registrar, and the requests by members of the corporation for a meeting, before commencement when that meeting has not been held.

Item 81 Meeting called by Governing Committee

3.251. Item 81 clarifies that, despite the repeal of the ACA Act, a meeting may go ahead after commencement of the CATSI Bill when the governing committee had already called the meeting but it had not taken place. (Note 2 refers the reader to Item 85 which deals with the special case where an aggrieved member requested a meeting before commencement.)

Item 82 Meeting date advertised by Governing Committee but meeting not held within 14 days after advertised date

3.252. Item 82 allows the CATSI Registrar to call a general meeting under paragraph 439-10(1)(a) of the CATSI Bill when, before commencement, a special general meeting was advertised by the governing committee but not held within 14 days. (The ACA Registrar had a similar power under subsection 58B(3) of the ACA Act.)

Item 83 Meeting called by ACA Registrar

3.253. Item 83 treats certain special general meetings called by the ACA Registrar before commencement (under subsections 58B(3), (4) and (5)) as general meetings called by the CATSI Registrar (under paragraph 439-10(1)(a), (d) and (b) of the CATSI Bill). The ACA Registrar could call a special general meeting if an advertised special general meeting was not held within 14 days (subsection 58B(3), ACA Act); the ACA Registrar believed that a special general meeting was needed (subsection 58B(4), ACA Act); or if required by a certain number of members of the corporation, being not fewer than 10 per cent of members or 5 members (subsection 58B(5), ACA Act).

Item 84 Request to ACA Registrar to call meeting

3.254. Item 84 preserves requests by members of the corporation to the ACA Registrar, before commencement, under section 58B(5) of the ACA Act for a special general meeting if the Registrar has not called that meeting. Item 84 treats such requests as being made under paragraph 439-10(1)(b) of the CATSI Bill and treats the required number of members requesting the meeting, under the CATSI Bill, as having been met.

Item 85 Request to Governing Committee to call meeting

3.255. Item 85 preserves pending requests made to the governing committee, under subsection 58B(2) of the ACA Act, by an aggrieved member for a special general meeting. There is no equivalent provision in the CATSI Bill. Such pending requests are handled using sections 205-5, 205-10 and 205-15 of the CATSI Bill with any necessary modifications provided by Item 85.

3.256. Subitem 85(1) provides that such a pending request by an aggrieved member is taken to be a request under section 205-5 of the CATSI Bill by at least the number of members required under that section. Subitem 85(2) provides that, if the ACA Registrar has not considered the application, the CATSI Registrar may determine the application under section 205-10 of the CATSI Bill. If the ACA Registrar decided that the special general meeting should be held but the meeting has not been held, subitem 85(3) provides for it to be held 21 days after the ACA Registrar's decision.

*Division 5—Compliance and enforcement steps***Item 86 Notice by ACA Registrar under subsection 68(2) of the old Act**

3.257. Item 86 preserves a pending notice given by the ACA Registrar under subsection 68(2) of the ACA Act, by treating it as being given by the CATSI Registrar under subsection 453-5(1) of the CATSI Bill, and by treating the requirements about service and notice in subsections 453-5(2) and (3) of the CATSI Bill as being complied with. (Under subsection 68(2) of the ACA Act the Registrar may require a person to attend at a specified time and place and answer questions.)

Item 87 Request by ACA Registrar for membership list

3.258. Subitem 87(1) preserves any pending request for a membership list made by the ACA Registrar to the governing committee of a transitional corporation before commencement. Subitems 87(2) and (3) preserve the same offence provision, which now applies to the corporation rather than each member of the governing committee, and the same \$200 penalty, that was in the ACA Act. The penalty was not converted to penalty units because the provisions only apply for the transitional period.

Division 6—Administrations

3.259. Division 6 preserves existing administrations of transitional corporations under the ACA Act and treats them as special administrations under the CATSI Bill. Division 6 also preserves ACA Act show cause notices, administrators' remuneration and statutory indemnities and elections conducted by the ACA Registrar.

Item 88 Show cause notice given under subsection 71(1) of the old Act

3.260. Item 88 preserves a notice, served under subsection 71(1) of the ACA Act by the ACA Registrar on a transitional corporation, to show cause why an administrator should not be appointed, and treats it as a notice given under subsection 487-10(1) of the CATSI Bill by the CATSI Registrar.

3.261. Subitem 88(1) applies the provisions in Item 88 to each of the identified stages of the ACA Act show cause process. Subitem 88(2) preserves the show cause notice. Subitem 88(3) provides that, before determining that a transitional corporation is under special administration, the CATSI Registrar must consider any representations that the corporation made to the ACA Registrar or the CATSI Registrar, within the show cause period. Subitem 88(4) confirms that the CATSI Registrar may make the determination without the minister's consent. Subitem 88(5) provides that, if the ACA Registrar had decided to appoint an administrator before commencement, the CATSI Registrar is not required to make a fresh assessment of the grounds and may make a determination without being satisfied of at least one of the grounds in the CATSI Bill.

Item 89 Appointment of Administrator

3.262. Item 89 preserves existing administrations of transitional corporations under section 71(2) of the ACA Act and treats them as special administrations under subsection 487-1(1) of the CATSI Bill starting on commencement and ending on 30 June 2008. (A determination under subsection 487-1(1) of the CATSI Bill must specify a period for the special administration.)

3.263. Subitem 89(1) applies the provisions in Item 89 to ACA Act administrations current on commencement. Subitem 89(2) treats an ACA Act administration as a special administration under the CATSI Bill. Subitem 89(3) treats the ACA Act administrator as a special administrator under subsection 490-1(1) of the CATSI Bill starting on commencement and ending on 30 June 2008. It also confirms that the period of this appointment may be extended under subsection 490-5(2) of the CATSI Bill. Subitem 89(4) provides for continuation of legal proceedings involving the ACA Act administrator in their new capacity as a special administrator. Subitem 89(5) disapplies section 493-1 and subsection 496-15(3) of the CATSI Bill where the appointment of the ACA Act administrator was published in accordance with section 72 of the ACA Act. (Section 493-1 of the CATSI Bill provides for the appointment of a special administrator to be published in the *Gazette* and in certain newspapers. Subsection 496-15(3) of the CATSI Bill protects certain payments made in good faith by an Australian Authorised Deposit-taking Institution (ADI) out of a corporation account before publishing the special administrator's appointment.)

3.264. Subitem 89(6) confirms that the CATSI Registrar may not use the power in section 496-5 of the CATSI Bill to determine corporation offices were not vacated on the appointment of the special administrator. Subitem 89(7) confirms that Administrative Appeals Tribunal merits review is not available when a current ACA Act administration is taken under subitem 89(2) to be a special administration.

Item 90 Effect of appointment on receivers and administrators

3.265. Item 90 disapplies subsections 496-10(7) and 496-15(7) of the CATSI Bill when the ACA Registrar published a notice of the appointment of an ACA Act administrator under section 72 of the ACA Act. (Subsections 496-10(7) and 496-15(7) of the CATSI Bill protect the validity of anything done by a receiver or Corporations Act administrator before the CATSI Registrar has given notice of the appointment of a special administrator under the CATSI Bill.)

Item 91 Cancellation or variation of employment contracts

3.266. Item 91 confirms that the repeal of the ACA Act does not affect the cancellation or variation of a contract of employment, before commencement, by an ACA Act administrator under section 76 of the ACA Act. Item 91 also confirms that the repeal of the ACA Act does not affect the right a person had accrued under section 77 to apply to the Administrative Appeals Tribunal for review of the decision made by the administrator under section 76 of the ACA Act.

Item 92 Administrator’s remuneration

3.267. Item 92 preserves the remuneration of an administrator appointed under the ACA Act taken, on commencement, by Item 89(3) to become a special administrator under the CATSI Bill. Item 92 also preserves a direction by the ACA Registrar in relation to an administrator’s remuneration, charges or expenses in force under subsection 74(2) of the ACA Act, and treats it as a direction by the CATSI Registrar in relation to the special administrator’s remuneration, charges or expenses under subsection 511-1(4) of the CATSI Bill.

Item 93 Elections conducted by Registrar

3.268. Item 93 provides that the CATSI Registrar may complete an election begun under section 77D of the ACA Act by the ACA Registrar, before the commencement of the CATSI Bill, to fill the offices of the governing committee members of a transitional corporation. Item 93 also provides that the persons elected become directors of the transitional corporation.

Item 94 Indemnity for administrator

3.269. Item 94 confirms that, despite the repeal of section 77B of the ACA Act, the administrator’s protection from legal action provided by section 77B continues in relation to things done, or not done, by an administrator before commencement.

*Division 7—Corporations Act administrations***Item 95 Appointment of administrator under Part 5.3A of the Corporations Act**

3.270. Subitems 95(1) and (2) preserve and continue any ongoing administration of a transitional corporation under Part 5.3A of the Corporations Act and treat the administrator as being appointed under Part 5.3A of the Corporations Act (as applied by section 521-1 of the CATSI Bill).

3.271. Subitem 95(3) confirms that regulations can be made under paragraph 521-1(2)(b) of the CATSI Bill which may modify how the Corporations Act administration provisions operate in relation to a transitional corporation.

*Division 8—Windings-up***Item 96 Court winding up commenced under old Act**

3.272. Subitems 96(1) and (2) preserve and continue any ongoing winding-up of a transitional corporation begun under section 63 of the ACA Act, and treat it as if the court had made an order under section 526-1 of the CATSI Bill.

3.273. Subitem 96(3) treats, on commencement, a liquidator appointed to carry out a winding-up under the ACA Act as a liquidator appointed under the CATSI Bill.

3.274. Subitem 96(4) confirms that regulations can be made under paragraph 526-35(2)(b) of the CATSI Bill which may modify how the Corporations Act winding-up provisions operate in relation to a transitional corporation.

Item 97 Voluntary winding up commenced under old Act

3.275. Subitems 97 (1) and (2) preserve and continue any ongoing voluntary winding-up of a transitional corporation and treat it as if it were a voluntary winding up under the CATSI Bill.

3.276. Subitem 97(3) treats, on commencement, a liquidator appointed to carry out a voluntary winding-up as a liquidator appointed under the CATSI Bill.

3.277. Subitem 97(4) confirms that regulations can be made under paragraph 526-35(2)(b) of the CATSI Bill which may modify how the Corporations Act winding-up provisions operate in relation to a transitional corporation.

Item 98 Petition to Court

3.278. Subitem 98(1) and paragraph 98(2)(a) preserve a petition to a court for a winding-up order for a transitional corporation and treat the petition as an application made to the court under subsection 526-15(1) of the CATSI Bill.

3.279. Paragraph 98(2)(b) preserves the grounds of the petition—see also paragraph 98(2)(g). Paragraph 98(2)(c) facilitates the smooth running of court proceedings by treating a petition by the ACA Registrar as having been made by the CATSI Registrar. Similarly, paragraph 98(2)(d) facilitates the smooth running of court proceedings by treating a petition by an ACA Act administrator as having been made by that person in his or her capacity as a special administrator under the CATSI Bill. Paragraph 98(2)(e) disapplies subsections 526-15(2), (3), (4) and (6) of the CATSI Bill to these petitions. Paragraph 98(2)(f) provides that the proceedings before commencement are taken to have been proceedings under the CATSI Bill. To avoid fresh proceedings being commenced to include new grounds available under the CATSI Bill, paragraph 98(2)(g) allows a petitioner to apply to the court to amend the petition to include additional grounds referred to in section 526-5 of the CATSI Bill. It also allows the court to make a direction amending the application to include those grounds.

3.280. Subitem 98(3) confirms that paragraph 98(2)(g) does not limit the court's powers to give a direction in relation to the proceedings.

Item 99 Special resolution to wind up transitional corporation

3.281. Subitems 99(1) and (2) preserve the effect of a special resolution to wind up a transitional corporation made before commencement. For the purposes of section 526-20 of the CATSI Bill, it is treated as if the members of the transitional corporation in general meeting resolved by special resolution that the corporation be wound up voluntarily.

3.282. Subitem 99(3) provides that subsection 526-20(5) of the CATSI Bill does not apply to the resolution.

3.283. Subitem 99(4) preserves the notice lodged under section 64(2) of the ACA Act with the ACA Registrar by the public officer. The notice is taken to have been lodged under subsection 526-20(6) with the CATSI Registrar for the purposes of subsection 526-20(8) of the CATSI Bill.

3.284. Subitem 99(5) preserves a notice of the passing of the resolution published under subsection 64(3) of the ACA Act by the ACA Registrar. The CATSI Registrar is taken to have published the notice under subsection 526-20(8) of the CATSI Bill.

Item 100 Resolution about distribution of surplus assets in winding up

3.285. Item 100 preserves a resolution relating to the distribution of the surplus assets of the transitional corporation that at least two thirds of the members of the transitional corporation have passed. For the purposes of sections 526-25 and 526-30 of the CATSI Bill, it treats the resolution as if it had been passed by a special resolution of the corporation. (The CATSI Bill would otherwise require a special resolution for which at least 75 per cent of members entitled to vote must do so.)

Division 9—Deregistration and reinstatement

Item 101 Deregistration process commenced under old Act

3.286. Subitems 101(1) and (2) preserve a process to strike a transitional corporation's name off the Register of Incorporated Aboriginal Associations, and dissolve the corporation. It allows the process to be completed under the regulations made under paragraph 82(b) of the ACA Act.

3.287. Paragraph 101(2)(c) allows the CATSI Registrar to complete the process. Paragraph 101(2)(d) provides that striking off and dissolution are taken to be deregistration of the corporation under the CATSI Bill.

Item 102 Reinstatement process commenced under old Act

3.288. Subitems 102(1) and (2) preserve a process to restore the name of an ACA Act Aboriginal association to the Register of Incorporated Aboriginal Associations. It allows the process to be completed under the regulations made under paragraph 82 of the ACA Act.

3.289. Paragraph 102(2)(b) allows the CATSI Registrar to complete the process. Paragraph 101(2)(c) provides that restoration of the name of the corporation is taken to be registration of the corporation under the CATSI Bill.

Part 4—Administrative matters, compliance and enforcement

Division 1—Compliance and enforcement

3.290. This division deals with reinstatement of corporations struck off under the ACA Act, fees that became payable in anticipation of something occurring under the ACA Act, extensions of time provided under the ACA Act and the CATSI Registrar's power to exempt transitional corporations from provisions of the CATSI Bill or this schedule.

Item 103 Use of information etc. obtained under the old Act

3.291. Item 103 clarifies that information, documents and records made or obtained by the ACA Registrar can be used by the CATSI Registrar for the purposes of the CATSI Bill of this schedule. This allows for records and information made or obtained before commencement to be used under the new legislative framework and provides continuity between the two legislative regimes.

Item 104 Fees that became payable before commencement but were not paid

3.292. Item 104 provides that fees that became payable but were not paid before commencement of the CATSI Bill may be waived.

Item 105 Fees paid in advance before commencement

3.293. Item 105 provides that if a fee was paid before commencement in anticipation of a matter that occurred after commencement, then the fee is taken to be payable then. This item deals with circumstances such as a corporation providing payment for the issue of a certificate of incorporation that does not get issued under the ACA Act but instead gets issued with a certificate of registration after the CATSI Bill commences. In these circumstances, the fee will become payable when the certificate of registration under the CATSI Bill is issued.

Item 106 Reinstatement of Aboriginal associations incorporated under Part IV of the old Act that were struck off before commencement

3.294. Item 106 provides a process for corporations that were struck off the Register under the ACA Act to be reinstated in accordance with the CATSI Bill.

Item 107 Extensions of time

3.295. Item 107 clarifies that an extension of time given to a corporation or individual under the ACA Act that has not ended before the CATSI Bill commences is taken to continue under the CATSI Bill.

Item 108 Registrar's power to exempt

3.296. Items 108-111 provide for exemption provisions for transitional corporations. They are based on similar exemptions in the CATSI Bill. They permit the Registrar, either on his or her initiative or on application, to exempt a transitional corporation and its directors, or a class of transitional corporations and its directors, from the CATSI Bill or Schedule 3. The CATSI Bill already allows the Registrar to exempt a CATSI corporation and its directors, or a class of corporations and its directors, from several provisions dealing with their internal governance (for example, the provisions of Chapter 5 that regulate meetings). These provisions give the Registrar the flexibility to exempt a transitional corporation if it could cause an excessive administrative burden on corporations. They also allow the Registrar to take into account the diversity and special circumstances of a transitional corporation or class of corporations.

Item 108 Registrar’s power to exempt

3.297. Item 108 provides that a transitional corporation can apply for exemption from the requirements of the CATSI Bill or Schedule 3. This gives the Registrar the flexibility to exempt a transitional corporation or its directors if it would cause an administrative burden on corporations. It also takes into account the diversity and special circumstances of a transitional corporation or class of corporations.

Item 109 Registrar may make determination even if application is incomplete

3.298. Item 109 provides that the Registrar can issue a determination in writing even if the application seeking the exemption does not specify the provisions for which it is sought. It is designed to reduce the administrative burden on corporations if they have made a minor error or omission in their application.

Item 110 Registrar’s power to make determinations

3.299. Item 110 gives the Registrar the power to issue determinations for an individual corporation or class of corporations. This allows the Registrar to give exemptions based on the circumstances of particular classes of transitional corporations.

Item 111 Criteria for determinations

3.300. Item 111 sets out the criteria that the CATSI Registrar must apply when deciding about an exemption application and supports reducing the procedural requirements imposed on transitional corporations when appropriate, a key aim of this schedule and the CATSI Bill.

*Division 2—The Registrar***Item 112 Appointment of Registrar**

3.301. Subitem 112(1) provides for the ACA Registrar to be appointed as the CATSI Registrar when the CATSI Bill commences. Subitem 112(2) provides for that person’s appointment under subitem 112(1) to end when specified in the person’s instrument of appointment as ACA Registrar.

Item 113 References to ACA Registrar in documents

3.302. Item 113 sets out a common approach in Commonwealth legislation to handling references to repealed offices or bodies in a document.

3.303. Subitem 113(1) provides for the application of Item 113. It applies to any instrument in force before commencement which the ACA Registrar made, was a party to, was given or in favour of the ACA Registrar, or under which any right or liability accrues or may accrue to the ACA Registrar or which refers to the ACA Registrar.

3.304. Subitem 113(2) provides that an instrument to which Item 113 applies continues to apply from commencement as if a reference to the ACA Registrar were a reference to the CATSI Registrar.

3.305. Subitem 113(3) provides that the minister may, by writing, determine that subitem 113(2) does not apply to a specified reference. A determination under subitem 113(3) has effect accordingly.

3.306. Subitem 113(4) provides that regulations may provide that an instrument containing a reference specified in a determination under subitem 113(3) applies from the commencement as if it were a reference to a specified person or body other than the CATSI Registrar.

3.307. Subitem 113(5) provides that a determination by the minister under subitem 113(3) is not a legislative instrument. In most cases a determination by the minister under Item 113(3) would not be legislative within the meaning of section 5 of the *Legislative Instruments Act 2003*. If any determination of this kind is arguably legislative within the meaning of that section (for example, because it changes such a reference in a legislative instrument), the determination has been declared not to be legislative as it is transitional and will only be required for a limited period of time.

Item 114 Substitution of CATSI Registrar as a party to pending proceedings

3.308. Item 114 is intended to facilitate the smooth running of court and tribunal proceedings by substituting the CATSI Registrar as the appropriate party in any proceedings pending at commencement in which the ACA Registrar was a party.

Division 3—Other administrative matters

Item 115 Compensation for acquisition of property

3.309. Item 115 sets out the standard Constitutional compensation provision for acquiring property from a person otherwise than on just terms. A person will be entitled to reasonable compensation if the operation of this schedule would result in the acquisition of property from a person otherwise than on just terms.

Item 116 Regulations

3.310. Subitem 116(1) is a standard regulation-making provision. The Governor-General may make regulations about matters that Schedule 3 requires or permits or which are necessary or convenient to be prescribed to give effect to the provisions of Schedule 3.

3.311. Subitem 116(2) provides for regulations to be made prescribing matters of a transitional nature. These regulations of a transitional nature may relate to the amendments or repeals made by this Bill, the enactment of this Bill or the CATSI Bill, the application of this schedule or of the CATSI Bill or the application of other laws of the Commonwealth to transitional corporations.

3.312. Subitem 116(3) provides that any regulations made under this Act must not increase the maximum penalty for any offence or widen the scope of any offence.