



# **Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006**

**No. 125, 2006**

**An Act to deal with transitional and consequential matters relating to the enactment of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and to amend the *Native Title Act 1993*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to deal with transitional and consequential matters relating to the enactment of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and to amend the *Native Title Act 1993*, and for related purposes**

[Assented to 4 November 2006]

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	4 November 2006
2. Schedules 1, 2 and 3	At the same time as the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> commences.	1 July 2007

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Native Title Act 1993**

### *Native Title Act 1993*

#### **1 Paragraph 60AA(1)(a)**

Omit “incorporated under the *Aboriginal Councils and Associations Act 1976*”, substitute “registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

#### **2 Subparagraph 193(2)(d)(ii)**

Omit “concerned; and”, substitute “concerned;”.

#### **3 Subparagraphs 193(2)(d)(iii) and (iv)**

Repeal the subparagraphs.

#### **4 At the end of subsection 193(2)**

Add:

- (e) in the case of an approved determination of native title by the Federal Court, where the determination is that native title exists—the name and address of any prescribed body corporate that:
  - (i) holds the native title rights and interests concerned on trust; or
  - (ii) is an agent prescribed body corporate in relation to the native title rights and interests concerned;
- (f) in the case of an approved determination of native title by a recognised State/Territory body, where the determination is that native title exists—the name and address of any body corporate that holds the native title rights and interests concerned on trust or that is determined in relation to the native title under a provision of a law of the State or Territory concerned that corresponds to section 57.

#### **5 Paragraph 201B(1)(a)**

Omit “incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*”, substitute “registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

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

Insert:

**agent prescribed body corporate** 253

**7 Section 253**

Insert:

*agent prescribed body corporate*, in relation to native title rights and interests, means:

- (a) a prescribed body corporate that is determined under section 57 in relation to the native title; or
- (b) a prescribed body corporate that, under regulations made for the purposes of subsection 56(4), is to perform the functions referred to in subsection 57(3) in relation to the native title; or
- (c) a prescribed body corporate that replaces, under regulations made for the purposes of section 60:
  - (i) a prescribed body corporate referred to in paragraph (a) or (b); or
  - (ii) a prescribed body corporate that is an agent prescribed body corporate in relation to the native title because of an earlier application of this paragraph.

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

Repeal the definition, substitute:

*registered native title body corporate* means a prescribed body corporate whose name and address are registered on the National Native Title Register under paragraph 193(2)(e) or (f).



## **Schedule 2—Repeal and amendment of other Acts**

### **Part 1—Repeal**

#### *Aboriginal Councils and Associations Act 1976*

##### **1 The whole of the Act**

Repeal the Act.

## Part 2—Amendment of Acts

### *Aboriginal and Torres Strait Islander Act 2005*

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

Repeal the paragraph, substitute:

- (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

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

Repeal the definition.

### *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*

#### **4 Subsection 3(1)**

Insert:

*Aboriginal and Torres Strait Islander corporation* means a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

#### **5 Subsection 3(1) (definition of *Community Council*)**

Omit “governing committee”, substitute “directors”.

#### **6 Subsection 3(1) (definition of *Governing Committee*)**

Repeal the definition.

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

Repeal the definition, substitute:

*Kerrup-Jmara Elders Aboriginal Corporation* means the Aboriginal and Torres Strait Islander corporation of that name.

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

Repeal the definition, substitute:

*Kirrae Whurrong Aboriginal Corporation* means the Aboriginal and Torres Strait Islander corporation of that name.

**9 Paragraph 13(1)(b)**

Omit “Aboriginal group which is incorporated under the *Aboriginal Councils and Associations Act 1976*”, substitute “Aboriginal and Torres Strait Islander corporation”.

**10 Subsection 13(2)**

Omit “Aboriginal group”, substitute “Aboriginal and Torres Strait Islander corporation”.

**11 Subsection 15(5)**

Omit “Governing Committee shall”, substitute “directors of the Corporation must”.

**12 Subsection 16(2)**

Omit “Governing Committee”, substitute “directors of the Corporation”.

**13 Subsection 16(3)**

Omit “Governing Committee shall”, substitute “directors of the Corporation must”.

**14 Paragraph 18(1)(a)**

Omit “*Aboriginal Councils and Associations Act 1976*”, substitute “*Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

**15 Subsection 18(5)**

Omit “*Aboriginal Councils and Associations Act 1976*”, substitute “*Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

**16 Section 19**

Omit “Aboriginal group under this Act”, substitute “Aboriginal and Torres Strait Islander corporation under this Act”.

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

Repeal the subparagraphs, substitute:

- (i) to another Aboriginal and Torres Strait Islander corporation that is approved by the Minister and whose members are the descendants of the Kerrup-Jmara Clan; or
- (ii) if there is no Aboriginal and Torres Strait Islander corporation as described in subparagraph (i)—to any appropriate Aboriginal and Torres Strait Islander corporation.

**18 Section 20**

Omit “another Aboriginal group”, substitute “another Aboriginal and Torres Strait Islander corporation (the *transferee corporation*)”.

**19 Paragraph 20(a)**

Omit “the group” (wherever occurring), substitute “the transferee corporation”.

**20 Subparagraph 20(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) references to the Committee of Elders were references to such Committee of Elders as is declared by the Governor-General by Proclamation for the purposes of this section; and
- (iii) references to the directors of the Corporation were references to the directors of the transferee corporation; and

**21 Paragraph 20(b)**

Omit “the group to which the land is transferred or granted”, substitute “the transferee corporation”.

**22 Paragraph 20(b)**

Omit “or group” (wherever occurring), substitute “or Aboriginal and Torres Strait Islander corporation”.

**23 Paragraph 21(1)(b)**

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Omit “Aboriginal group which is incorporated under the *Aboriginal Councils and Associations Act 1976*”, substitute “Aboriginal and Torres Strait Islander corporation”.

**24 Subsection 21(2)**

Omit “Aboriginal group”, substitute “Aboriginal and Torres Strait Islander corporation”.

**25 Subsection 25(3)**

Omit “*Aboriginal Councils and Associations Act 1976*”, substitute “*Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

**26 Paragraph 27(1)(a)**

Omit “*Aboriginal Councils and Associations Act 1976*”, substitute “*Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

**27 Subsection 27(5)**

Omit “*Aboriginal Councils and Associations Act 1976*”, substitute “*Corporations (Aboriginal and Torres Strait Islander) Act 2006*”.

**28 Section 28**

Omit “Aboriginal group under this Act”, substitute “Aboriginal and Torres Strait Islander corporation under this Act”.

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

Repeal the subparagraphs, substitute:

- (i) to another Aboriginal and Torres Strait Islander corporation that is approved by the Minister and whose members are the descendants of the Kirrae Whurrong (Pertobe) Clan; or
- (ii) if there is no Aboriginal and Torres Strait Islander corporation as described in subparagraph (i)—to any appropriate Aboriginal and Torres Strait Islander corporation.

**30 Section 29**

Omit “another Aboriginal group”, substitute “another Aboriginal and Torres Strait Islander corporation (the *transferee corporation*)”.

**31 Paragraph 29(a)**

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Omit “the group” (wherever occurring), substitute “the transferee corporation”.

**32 Subparagraph 29(a)(ii)**

Repeal the subparagraph, substitute:

- (ii) references to the Committee of Elders were references to such Committee of Elders as is declared by the Governor-General by Proclamation for the purposes of this section; and
- (iii) references to the directors of the Corporation were references to the directors of the transferee corporation; and

**33 Paragraph 29(b)**

Omit “the group to which the land is transferred or granted”, substitute “the transferee corporation”.

**34 Paragraph 29(b)**

Omit “or group” (wherever occurring), substitute “or Aboriginal and Torres Strait Islander corporation”.

***Aboriginal Land Rights (Northern Territory) Act 1976***

**35 Subsection 3(1)**

Insert:

*Aboriginal and Torres Strait Islander corporation* means a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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

Repeal the definition.

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

Repeal the definition.

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

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Repeal the definition.

**39 Subsection 7(3)**

Repeal the subsection, substitute:

- (3) For the purposes of subsection (2), the Minister may request a nomination of a person from the Land Council for the area in which the Land Trust is to hold land.

**40 Subsection 19(2)**

Omit “, an Aboriginal Council or an Incorporated Aboriginal Association”, substitute “or an Aboriginal and Torres Strait Islander corporation”.

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

Omit “the Council or Association”, substitute “the corporation”.

**42 Paragraph 19(2)(b)**

Omit “, the Council or Association”, substitute “or the corporation”.

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

Repeal the paragraphs, substitute:

- (b) an Aboriginal and Torres Strait Islander corporation, the majority of whose members live in the qualifying area;

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

Repeal the paragraphs, substitute:

- ; and (c) Aboriginal and Torres Strait Islander corporations and any other incorporated Aboriginal groups.

**45 Subsection 27(1A)**

Omit “Incorporated Aboriginal Association that has received an amount of money from the Council under this Act, provide administrative or other assistance to the Association”, substitute “Aboriginal and Torres Strait Islander corporation that has received an amount of money from the Council under this Act, provide administrative or other assistance to the corporation”.

**46 Subsection 28(3)**

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Omit “a body corporate incorporated under the *Aboriginal Councils and Associations Act 1976*,” substitute “an Aboriginal and Torres Strait Islander corporation”.

Note: The heading to subsection 28(3) is altered by omitting “*a body corporate*” and substituting “*Aboriginal and Torres Strait Islander corporation*”.

**47 Subsection 28A(1)**

Omit “A body corporate incorporated under the *Aboriginal Councils and Associations Act 1976*,” substitute “An Aboriginal and Torres Strait Islander corporation”.

Note: The heading to section 28A is altered by omitting “**body corporate**” and substituting “**Aboriginal and Torres Strait Islander corporation**”.

**48 Subsection 28A(1)**

Omit “the body” (wherever occurring), substitute “the corporation”.

**49 Subsection 28A(1) (note)**

Omit “body”, substitute “corporation”.

**50 Subsection 28A(2)**

Omit “the body” (wherever occurring), substitute “the corporation”.

**51 Subsection 28A(4)**

Omit “body”, substitute “corporation”.

**52 Subsection 28A(4) (note)**

Omit “body”, substitute “corporation”.

**53 Subsection 28A(5) (note)**

Omit “body”, substitute “corporation”.

**54 Subsection 28A(6)**

Omit “body”, substitute “corporation”.

**55 Subsection 28B(1)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

Note: The heading to section 28B is altered by omitting “**body corporate**” and substituting “**Aboriginal and Torres Strait Islander corporation**”.

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**56 Subsection 28B(2)**

Omit “body” (wherever occurring), substitute “corporation”.

Note: The heading to subsection 28B(2) is altered by omitting “body” and substituting “corporation”.

**57 Subsection 28B(3)**

Omit “body” (wherever occurring), substitute “corporation”.

Note: The heading to subsection 28B(3) is altered by omitting “body” and substituting “corporation”.

**58 Subsection 28B(3) (note)**

Omit “body” (wherever occurring), substitute “corporation”.

**59 Subsection 28B(4)**

Omit “body” (wherever occurring), substitute “corporation”.

Note: The heading to subsection 28B(4) is altered by omitting “body” and substituting “corporation”.

**60 Subsection 28B(4) (note)**

Omit “body” (wherever occurring), substitute “corporation”.

**61 Paragraph 28B(5)(a)**

Omit “body”, substitute “corporation”.

**62 Subsection 28B(5) (note)**

Omit “body”, substitute “corporation”.

**63 Subsection 28B(6) (note)**

Omit “body”, substitute “corporation”.

**64 Subsection 28B(7)**

Omit “body”, substitute “corporation”.

**65 Paragraph 28C(1)(a)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

**66 Paragraph 28C(1)(b)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

**67 Subsection 28C(1)**

Omit “the body” (wherever occurring), substitute “the corporation”.

**68 Subsection 28C(3)**

Omit “body” (wherever occurring), substitute “corporation”.

**69 Paragraph 28C(6)(a)**

Omit “body”, substitute “corporation”.

**70 Paragraph 28C(6)(b)**

Omit “body” (wherever occurring), substitute “corporation”.

**71 Subsection 28C(7)**

Omit “body” (wherever occurring), substitute “corporation”.

**72 Subsection 28D(1)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

Note: The heading to section 28D is altered by omitting “**body corporate**” and substituting “**Aboriginal and Torres Strait Islander corporation**”.

**73 Paragraph 28E(1)(a)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

Note: The heading to section 28E is altered by omitting “**body corporate**” and substituting “**Aboriginal and Torres Strait Islander corporation**”.

**74 Subsection 28E(1)**

Omit “the body”, substitute “the corporation”.

**75 Subsection 28E(2)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

**76 Subsection 28E(2)**

Omit “body” (wherever occurring), substitute “corporation”.

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**77 Subsection 28E(2)**

Omit “body’s”, substitute “corporation’s”.

**78 Section 28F**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

Note: The heading to section 28F is altered by omitting “**Body corporate**” and substituting “**Aboriginal and Torres Strait Islander corporation**”.

**79 Section 28F**

Omit “the body”, substitute “the corporation”.

**80 Subsection 35(2)**

Repeal the subsection, substitute:

- (2) Subject to this section, money paid to a Land Council under subsection 64(3) must be paid, within 6 months of its receipt by the Land Council, to any Aboriginal and Torres Strait Islander corporations whose members live in, or are the traditional Aboriginal owners of, the area affected by those mining operations, in such proportions as the Land Council determines.

**81 Subsection 35(3)**

Repeal the subsection, substitute:

- (3) Subject to this section, within 6 months after money is paid to a Land Council under an agreement made under section 42, 43, 44, 46, 48A, 48B or 48D, it must:
  - (a) be applied by the Land Council in accordance with the agreement; or
  - (b) if the agreement makes no provision in relation to the application of the money—be paid to any Aboriginal and Torres Strait Islander corporations whose members are affected by the agreement, in such proportions as the Land Council determines.

**82 Subsection 35(4B)**

Omit “Incorporated Aboriginal Association”, substitute “Aboriginal and Torres Strait Islander corporation”.

**83 Subsection 35(9)**

Omit “an Aboriginal Council, an Incorporated Aboriginal Association”, substitute “an Aboriginal and Torres Strait Islander corporation”.

**84 Subsection 35(12)**

Omit “Incorporated Aboriginal Association” (wherever occurring), substitute “Aboriginal and Torres Strait Islander corporation”.

**85 Subsection 37(6)**

Omit “a body corporate”, substitute “an Aboriginal and Torres Strait Islander corporation”.

**86 Subsection 37(6)**

Omit “the body”, substitute “the corporation”.

**87 Subsection 71(2)**

Omit “an Aboriginal Council or other”, substitute “an”.

***Age Discrimination Act 2004***

**88 Schedule 1 (table item 2)**

Repeal the item.

**89 Schedule 1 (after table item 18)**

Insert:

18A *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

***Commonwealth Authorities and Companies Act 1997***

**90 Paragraph 7(2)(b)**

Repeal the paragraph, substitute:

(b) corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

***Commonwealth Volunteers Protection Act 2003***

**91 Subsection 4(1) (paragraph (a) of the definition of  
*Commonwealth authority*)**

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Repeal the paragraph, substitute:

- (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

***Criminal Code Act 1995***

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

Repeal the subparagraph.

**93 Dictionary in the *Criminal Code* (after paragraph (a) of the definition of *Commonwealth authority*)**

Insert:

- (aa) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

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

Repeal the subparagraph, substitute:

- (i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

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

Repeal the subparagraph, substitute:

- (i) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

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

Omit “Aboriginal Corporations”, substitute “Aboriginal and Torres Strait Islander Corporations”.

***Environment Protection and Biodiversity Conservation Act 1999***

**97 Section 528 (subparagraph (i)(ii) of the definition of *Commonwealth agency*)**

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Repeal the subparagraph, substitute:

- (ii) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

### ***Income Tax Assessment Act 1936***

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

Repeal the paragraphs, substitute:

- (b) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

### ***Remuneration Tribunal Act 1973***

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

Repeal the definition, substitute:

*Aboriginal Corporation of the National Aboriginal Conference* means the corporation of that name registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

## Schedule 3—Transitional provisions

### Part 1—Preliminary

#### 1 Definitions

- (1) In this Schedule:

**ACA Registrar** means the Registrar within the meaning of the old Act.

**CATSI Registrar** means the Registrar within the meaning of the new Act.

**commencement** means the commencement of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

**maximum transitional period** for a transitional corporation has the meaning given by item 2.

**modifications** includes additions, omissions and substitutions.

**new Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and includes the regulations made under that Act.

**old Act** means the *Aboriginal Councils and Associations Act 1976* and includes the regulations made under that Act.

**this Schedule** includes the regulations made under this Schedule.

**transitional corporation** means an Aboriginal association that was incorporated under Part IV of the old Act immediately before commencement.

**transitional modifications** has the meaning given by subitem (2).

**transitional period** for a transitional corporation means the period:

- (a) beginning at commencement; and
- (b) ending at the earlier of the following times:
  - (i) the first time the CATSI Registrar registers a change to the corporation's constitution lodged with the CATSI Registrar under section 69-20 of the new Act (other than a change covered by item 80 of this Schedule);
  - (ii) the end of the maximum transitional period for the corporation.

- (2) If this Schedule provides for the **transitional modifications** to be made to a provision that applies to a transitional corporation or a corporation incorporated under Part IV of the old Act, those modifications are:

- (a) references in the provision to the corporation's directors are taken to be references to the corporation's Governing Committee; and
  - (b) references in the provision to a director of the corporation are taken to be references to a member of the corporation's Governing Committee; and
  - (c) references in the provision to the corporation's constitution are taken to be references to the corporation's Rules; and
  - (d) references in the provision to the CATSI Registrar are taken to be references to the ACA Registrar; and
  - (e) references in the provision to an officer of the corporation are taken to include references to:
    - (i) an administrator of the corporation appointed under section 71 of the old Act; and
    - (ii) a person appointed as an administrator of the corporation under Part 5.3A of the Corporations Act (as applied by section 62 of the old Act); and
  - (f) references in the provision to a failure to comply with the new Act are taken to include references to a failure to comply with the old Act; and
  - (g) references in the provision to a contravention of the new Act are taken to include references to a contravention of the old Act.
- (3) Terms that are defined for the purposes of the new Act have, when used in this Schedule, the same meaning as they have in the new Act.
- (4) Terms that are defined for the purposes of the old Act have, when used in this Schedule, the same meaning as they had in the old Act.

## **2 Maximum transitional period for transitional corporation**

- (1) Subject to subitem (2), the *maximum transitional period* for a transitional corporation is 2 years after commencement.
- (2) The CATSI Registrar may, in writing, determine a *maximum transitional period*, of between 24 and 30 months, for:
  - (a) a specified transitional corporation; or
  - (b) a specified class of transitional corporation.
- (3) The determination may be expressed to be subject to conditions.



- (4) The CATSI Registrar may, in writing, revoke, vary or suspend the determination.
- (5) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of transitional corporation must be published in the *Gazette*.
- (6) A determination under subitem (2) in relation to a specified class of transitional corporation is a legislative instrument.
- (7) A determination under subitem (2) in relation to a specified transitional corporation is not a legislative instrument.

## **Part 2—Bringing transitional corporations across to new system**

### **Division 1—Registration under the new Act**

#### **3 Registration under the new Act**

- (1) A transitional corporation is taken to be registered as an Aboriginal and Torres Strait Islander corporation under the new Act at commencement.
- (2) The CATSI Registrar must adjust the Register of Aboriginal and Torres Strait Islander Corporations accordingly.
- (3) To avoid doubt, section 32-1 of the new Act does not apply in relation to the registration that is taken to occur because of the operation of subitem (1).

#### **4 Effect of registration on the corporation's capacity etc.**

- (1) The registration that is taken to occur because of the operation of subitem 3(1) does not have the effect of creating a new legal entity. Rather, it has the effect of continuing the existence of the transitional corporation.

Note: For the legal capacity and powers of a transitional corporation, see section 96-1 of the new Act.

- (2) Subitem (1) has effect despite section 42-1 of the new Act.
- (3) The registration that is taken to occur because of the operation of subitem 3(1) also does not:
  - (a) affect the corporation's existing property, rights or obligations; or
  - (b) render defective any legal proceedings by or against the corporation.
- (4) Any legal proceedings that could have been continued or begun by or against the transitional corporation immediately before commencement may be continued or begun by or against it on and after commencement.

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

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- (1) This item applies if a person was required under subsection 50(2) of the old Act to take some action in relation to a transitional corporation and that action was outstanding immediately before commencement.
- (2) Subsection 42-30(3) of the new Act applies to the person, on and after commencement, in relation to that outstanding action. This item does not limit section 8 of the *Acts Interpretation Act 1901*.

## **6 Circumstances existing before commencement**

- (1) For the purposes of applying a provision of the new Act or this Schedule to a transitional corporation after commencement, a reference in that provision to circumstances of a particular kind in relation to the corporation includes a reference to circumstances of that kind existing before commencement.

Example 1: A person who stopped being a member of the Governing Committee of a transitional corporation before commencement will be able to inspect the corporation's books under subsection 274-15(2) of the new Act.

Example 2: Oppressive conduct before commencement can be considered under paragraph 487-5(1)(e) of the new Act for determining whether a transitional corporation should be under special administration.

Example 3: The CATSI Registrar can give a notice under subsection 439-20(1) of the new Act in relation to an irregularity in a transitional corporation's affairs before commencement, or in relation to a transitional corporation's failure to comply with a provision of the old Act or the corporation's Rules.

- (2) The provision referred to in subitem (1) applies to the transitional corporation with such modifications as are necessary, including the transitional modifications.
- (3) Nothing in this item has the effect of giving a provision of the new Act or this Schedule any effect or operation before commencement.

Example: The offence provisions of the new Act (for example, the provisions that create offences for breaches of directors' duties) will not apply in relation to conduct that was engaged in before commencement.

## **Division 2—Classification of transitional corporations**

### **7 All initially classified as medium corporations**

- (1) Despite sections 37-1 and 37-10 of the new Act, a transitional corporation is taken, on registration, to be registered as a medium corporation.

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- (2) The CATSI Registrar must adjust the Register of Aboriginal and Torres Strait Islander Corporations accordingly.

**8 Initial contact persons**

- (1) Despite section 42-10 of the new Act, the contact person of a transitional corporation on registration is taken to be the person (if any) who was, immediately before commencement, the corporation's public officer.
- (2) Sections 257-15 and 257-20, and subsection 304-5(1), of the new Act do not apply in relation to a person who is the corporation's contact person because of subitem (1).
- (3) Paragraph 257-30(a) of the new Act applies to a person who is the corporation's contact person because of subitem (1) as if the person had been appointed with his or her consent as contact person of the transitional corporation.

**9 Initial document addresses**

- (1) For the purposes of section 42-20 of the new Act, the document access address of a transitional corporation on registration is taken to be the official address, immediately before commencement, of the person who was, immediately before commencement, the corporation's public officer.
- (2) This item has effect despite section 42-20 of the new Act.

**10 CATSI Registrar may re-classify as large or small corporation**

- (1) After commencement, the CATSI Registrar may alter a transitional corporation's registration so that the corporation is registered as a large corporation if:
- (a) the CATSI Registrar is satisfied that the corporation is likely to be a large corporation in respect of its first financial year; and
  - (b) the CATSI Registrar has not already acted under this item in relation to the corporation.

Note: Subsection 37-10(3) of the new Act sets out the criteria for determining whether the corporation is a large corporation for a particular financial year.

- (2) After commencement, the CATSI Registrar may alter a transitional corporation's registration so that the corporation is registered as a small corporation if:
- (a) the CATSI Registrar is satisfied that the corporation is likely to be a small corporation in respect of its first financial year; and
  - (b) the CATSI Registrar has not already acted under this item in relation to the corporation.

Note: Subsection 37-10(1) of the new Act sets out the criteria for determining whether the corporation is a small corporation for a particular financial year.

- (3) An alteration to a transitional corporation's registration made under subitem (1) or (2) is not a legislative instrument.
- (4) The CATSI Registrar must notify a transitional corporation in writing of an alteration made under subitem (1) or (2).
- (5) To avoid doubt, section 4 of the *Acts Interpretation Act 1901* applies in relation to this item.

## **11 First corporation secretary**

- (1) Despite section 42-10 of the new Act, if:
- (a) a transitional corporation is registered as a large corporation because of an alteration under item 10; and
  - (b) a person has not previously been appointed under this item; and
  - (c) a person:
    - (i) is a director of the transitional corporation; or
    - (ii) has consented to hold office as the corporation's corporation secretary;

the CATSI Registrar may, in writing, declare the person to be the corporation's first corporation secretary.

- (2) The person becomes the corporation's corporation secretary from:
- (a) the day specified in the declaration, being a day after the declaration is made; or
  - (b) otherwise—the day the declaration is made.
- (3) Section 257-5 of the new Act does not apply in relation to a transitional corporation if:

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- (a) the corporation is registered as a large corporation because of an alteration under item 10; and
  - (b) a person has not become the corporation's corporation secretary because of subitem (1).
- (4) Sections 257-15 and 257-20, and subsection 304-5(1), of the new Act do not apply in relation to a person who is the corporation secretary because of subitem (1).
- (5) Paragraph 257-35(a) of the new Act applies to a person who is the corporation's secretary because of subitems (1) and (2) as if the person had been appointed with his or her consent to be the secretary of the transitional corporation.
- (6) A declaration under subitem (1) is not a legislative instrument.
- (7) To avoid doubt, section 4 of the *Acts Interpretation Act 1901* applies in relation to this item.

**12 First address of registered office**

- (1) For the purposes of section 42-15 of the new Act, if:
  - (a) a transitional corporation is registered as a large corporation because of an alteration under item 10; and
  - (b) no address has previously been declared under this item; and
  - (c) the corporation has a place of business at an address in Australia;the CATSI Registrar may, in writing, declare that address to be the first address of the corporation's registered office.
- (2) The address becomes the address of the corporation's registered office from:
  - (a) the day specified in the declaration, being a day after the declaration is made; or
  - (b) otherwise—the day the declaration is made.
- (3) Division 112 of the new Act does not apply in relation to a transitional corporation if:
  - (a) the corporation is registered as a large corporation because of an alteration under item 10; and
  - (b) an address has not become the address of the corporation's registered office under subitem (1).

- (4) A declaration under subitem (1) is not a legislative instrument.
- (5) This item has effect despite section 42-15 of the new Act.
- (6) To avoid doubt, section 4 of the *Acts Interpretation Act 1901* applies in relation to this item.

### **13 Publishing declarations of first secretary and first address**

- (1) The CATSI Registrar must publish a declaration under subitem 11(1) or 12(1) on the Internet.
- (2) A single instrument can include multiple declarations under subitems 11(1) and 12(1).

## **Division 3—First constitution**

### **14 Rules registered as constitution**

- (1) A transitional corporation's Rules in force immediately before commencement, are taken to be registered, at commencement, under the new Act as the corporation's constitution.
- (2) The CATSI Registrar must adjust the Register of Aboriginal and Torres Strait Islander Corporations accordingly.

### **15 Effect of registering the Rules as constitution**

- (1) Subitem 14(1) does not have the effect of bringing the transitional corporation's constitution into existence as a contract. Rather, it has the effect of continuing the existence of the contract previously constituted by the corporation's Rules as in force immediately before commencement under subsection 47(2) of the old Act.
- (2) To avoid doubt, things done before commencement under or in relation to a provision of the transitional corporation's Rules are taken to have been done under or in relation to the corresponding provision of the corporation's constitution.

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.

### **16 Circumstances existing after commencement**

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For the purposes of applying the transitional corporation's constitution to circumstances arising on or after commencement, such modifications as are necessary are to be made to the provisions of the constitution. These modifications include the substitutions set out in the following table:

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to ...</b>	<b>substitute a reference to ...</b>
1	ACA Registrar	CATSI Registrar
2	Governing Committee	directors
3	member of the Governing Committee	director
4	public officer	(a) if the corporation is registered as a small or medium corporation— contact person; or (b) if the corporation is registered as a large corporation— corporation secretary

#### 17 Internal governance rules requirements

- (1) Subsection 66-1(3) and paragraph 66-1(5)(c) of the new Act apply in relation to a transitional corporation as if the reference in that subsection and in that paragraph to the new Act were a reference to the new Act as that Act applies in relation to the corporation.

Example: During a transitional corporation's transitional period, the corporation's constitution need not cover the matters in subsection 158-5(3) of the new Act (see item 34).

- (2) Subsection 66-1(4) and section 66-5 of the new Act do not apply in relation to a transitional corporation unless and until the corporation repeals its constitution after commencement.
- (3) Subsection 66-1(3A) of the new Act does not apply in relation to a transitional corporation during its transitional period.
- (4) During a transitional corporation's transitional period:
- (a) the corporation's constitution must provide for a procedure for the settling of disputes between the corporation and its members; and



- (b) the requirement in paragraph (a) is taken for the purposes of the new Act to be an internal governance rules requirement for the corporation.

## **18 Changing constitution during transitional period**

If a transitional corporation's constitution:

- (a) allows the corporation to change its constitution by a resolution passed at a meeting of the corporation; and
- (b) does not require the resolution to be a special resolution;

then:

- (c) the corporation may, during its transitional period, pass such a resolution to change its constitution; and
- (d) Subdivision 69-B of the new Act applies in relation to the resolution as if it were a special resolution.

## **Division 4—Other effects of registration**

### **19 Transitional corporation's name at commencement**

- (1) A transitional corporation's name, immediately before commencement, is taken to be included, at commencement, in the details of the corporation's registration under the new Act as the corporation's name.
- (2) If, at commencement, a transitional corporation has "Torres Strait Islanders Corporation" as part of its name, the corporation is taken to comply with subsection 85-1(3) of the new Act while that set of words remains as part of its name.

### **20 CATSI Registrar may change the name**

- (1) The CATSI Registrar may change a transitional corporation's name by altering the details of the corporation's registration so that the name complies with subsections 85-1(3) to (6) of the new Act.
- (2) A change of name under subitem (1) takes effect when the CATSI Registrar alters the details of the corporation's registration.
- (3) To avoid doubt, sections 88-20 and 88-25 of the new Act apply in relation to a change of name under subitem (1).

### **21 Corporation changing its name during transitional period**

If a transitional corporation's constitution:

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(a) allows the corporation to adopt a new name by a resolution passed at a meeting of the corporation; and

(b) does not require the resolution to be a special resolution;

then:

(c) the corporation may, during its transitional period, pass such a resolution to adopt a new name; and

(d) Division 88 of the new Act applies in relation to the resolution as if it were a special resolution.

**22 Transitional corporation's ICN**

The CATSI Registrar must, as soon as practicable, publish on the Internet the ICN for each transitional corporation.

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

(1) The CATSI Registrar may, in writing, determine that section 85-15 of the new Act does not apply to a specified transitional corporation, or a specified class of transitional corporation, until the end of the corporation's transitional period or the corporations' transitional periods.

(2) The determination may be expressed to be subject to conditions.

(3) The CATSI Registrar may, in writing, revoke, vary or suspend the determination.

(4) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of transitional corporation must be published in the *Gazette*.

(5) A determination under subitem (1) in relation to a specified class of transitional corporation is a legislative instrument.

(6) A determination under subitem (1) in relation to a specified transitional corporation is not a legislative instrument.

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

Section 85-15 of the new Act does not apply in relation to a transitional corporation's public documents, and negotiable instruments, signed, issued or published before commencement.

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## **25 First certificate of registration**

A transitional corporation's certificate of incorporation issued under section 45 of the old Act, and in force immediately before commencement, is taken to be the transitional corporation's certificate of registration at commencement.

## **26 CATSI Registrar may issue certificate of registration**

- (1) The CATSI Registrar may issue to the transitional corporation a new certificate of registration that states the following:
  - (a) the corporation's name and ICN;
  - (b) that the corporation is registered under the new Act;
  - (c) the date of the registration.
- (2) A certificate issued under this item is not a legislative instrument.

## **27 Common seal**

Despite subsection 42-25(1) of the new Act, a transitional corporation's common seal need not include the corporation's ICN until the corporation's name is changed for the first time after commencement.

## **Division 5—Members and observers**

### **28 Members at commencement**

- (1) A person who, immediately before commencement, was a member of a transitional corporation is taken to be, at commencement, a member of the transitional corporation for the purposes of the new Act.

Note: The person will have the same class of membership of the transitional corporation that the person had immediately before commencement (see item 14).

- (2) Subitem (1) has effect despite subsection 42-10(1), and sections 138-1 and 144-1, of the new Act.

### **29 Liability of members after commencement**

Section 147-10 of the new Act applies in relation to a transitional corporation as if the application for incorporation of the transitional corporation under Part IV of the old Act were an application for registration of the corporation under the new Act.

Note: Section 48 of the old Act continues to have effect after commencement in relation to a liability, of a member or former member, incurred before commencement (see section 8 of the *Acts Interpretation Act 1901*).

### 30 Fees for membership

Section 144-15 of the new Act does not apply in relation to a transitional corporation during its transitional period.

### 31 First register of members

- (1) Subitem (2) applies in relation to the register (the *ACA members register*), in its form immediately before commencement, kept by the public officer of a transitional corporation under section 58 of the old Act so far as it related to the members of the corporation.
- (2) The ACA members register is taken to be, at commencement, the transitional corporation's register of members for the purposes of section 180-1 of the new Act.
- (3) The transitional corporation is taken to have set up that register of members at commencement.
- (4) At commencement, the date for a member of a transitional corporation for the purposes of paragraph 180-5(1)(c) of the new Act is the date recorded under paragraph 58(1)(b) of the old Act for the member, immediately before commencement, on the ACA members register.
- (5) During a transitional corporation's transitional period, subsection 180-5(2) of the new Act does not apply in relation to entries for persons who are members of the corporation at commencement.

### 32 First register of former members

- (1) Subitem (2) applies in relation to the register (the *ACA former members register*), in its form immediately before commencement, kept by the public officer of a transitional corporation under section 58 of the old Act so far as it related to the former members of the corporation.
- (2) The ACA former members register is taken to be, at commencement, the transitional corporation's register of former members for the purposes of section 180-10 of the new Act.
- (3) The transitional corporation is taken to have set up that register of former members at commencement.

### 33 Giving CATSI Registrar a list of members

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- (1) A transitional corporation commits an offence if the corporation does not:
- (a) as soon as practicable; and
  - (b) in any case—before 31 December 2007;
- give the CATSI Registrar a list of the names and addresses of all the persons who are members of the corporation as at the date when the list is given to the CATSI Registrar.
- Penalty: \$200.
- (2) An offence against subitem (1) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) Subitem (1) does not apply if the corporation has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matters in subitem (3) (see subsection 13.3(3) of the *Criminal Code*).

### **34 Application of new Act's observer provisions**

Subsection 158-5(3) of the new Act does not apply in relation to a transitional corporation during its transitional period.

## **Division 6—Directors**

### **35 First directors—appointment**

- (1) A person who, immediately before commencement, was a member of a transitional corporation's Governing Committee is taken to be appointed, at commencement, to the position of a director of the corporation.
- (2) This item has effect despite subsection 42-10(1A) of the new Act.
- (3) Subsection 246-5(5) of the new Act does not prevent a person, who holds office under an appointment covered by subsection (1), from chairing directors' meetings of the transitional corporation.
- (4) Subsection 246-1(3), section 246-10 and subsection 304-5(1) of the new Act do not apply in relation to an appointment covered by subitem (1).

### **36 First directors—period of appointment**

- (1) This item applies if a person is taken to be appointed as a director of a transitional corporation under subitem 35(1).

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- (2) The person's period of appointment as director under that subitem is taken to end at the time the person's term as a member of the corporation's Governing Committee would have ended if the old Act had not been repealed.
- (3) This item has effect despite subsection 246-25(2) of the new Act.

**37 Maximum number of directors**

Section 243-5 of the new Act does not apply in relation to a transitional corporation during its transitional period.

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

- (1) This item applies if, at commencement:
  - (a) one or more of a transitional corporation's directors are not individuals who are Aboriginal and Torres Strait Islander persons (the *non-Indigenous appointees*); and
  - (b) the non-Indigenous appointees are a majority of the corporation's directors.
- (2) Until the non-Indigenous appointees no longer constitute a majority of the corporation's directors:
  - (a) subsection 246-5(1) of the new Act does not apply in relation to the corporation; and
  - (b) only individuals who are Aboriginal and Torres Strait Islander persons can become directors of the corporation.
- (3) For the purposes of this item, a person ceases to be a non-Indigenous appointee if the person ceases to be a director of the transitional corporation (whether or not the person is immediately reappointed).

**39 Majority of director requirements—employees**

- (1) This item applies if, at commencement:
    - (a) one or more of a transitional corporation's directors are employees of the corporation (the *employee appointees*); and
    - (b) the employee appointees are a majority of the corporation's directors.
  - (2) Until the employee appointees no longer constitute a majority of the corporation's directors:
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- (a) subsection 246-5(4) of the new Act does not apply in relation to the corporation; and
  - (b) only persons who are not employees of the corporation can become directors of the corporation.
- (3) For the purposes of this item, a person ceases to be an employee appointee if the person:
- (a) ceases to be a director of the transitional corporation (whether or not the person is immediately reappointed); or
  - (b) ceases to be an employee of the transitional corporation.

#### **40 Remuneration**

Subsections 252-1(1) and (2) of the new Act do not apply in relation to a person's appointment as a director of a transitional corporation if:

- (a) the person's appointment is covered by subitem 35(1); and
- (b) the period of the appointment is yet to end; and
- (c) under arrangements in place immediately before commencement, the person was entitled to be paid remuneration for being a member of the corporation's Governing Committee.

#### **41 Disclosures before commencement**

- (1) A disclosure of an interest under subsection 49D(1) of the old Act to the members of a transitional corporation's Governing Committee is taken for the purposes of the new Act to be a notice of the interest given under subsection 268-1(1) of the new Act to the corporation's directors.
- (2) An approval in accordance with subsection 49D(2) of the old Act by a transitional corporation's Governing Committee is taken to be a resolution passed by the corporation's directors in accordance with subsection 268-20(4) of the new Act.
- (3) This item does not limit item 6.

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

- (1) Section 279-20 of the new Act applies as if:
  - (a) the references in paragraph (1)(b), and subsection (4), of that section to an Aboriginal and Torres Strait Islander

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corporation included references to a corporation incorporated under Part IV of the old Act; and

- (b) the reference in paragraph (2)(a) of that section to wound up under section 526-1 of that Act because the Court is satisfied that the corporation is insolvent included a reference to wound up under section 63 of the old Act because the Court is satisfied that the corporation is unable to pay its debts; and
  - (c) the reference in paragraph (2)(h) of that section to subsection 533(1) of the Corporations Act included a reference to that subsection of the Corporations Act as applied by section 67 of the old Act.
- (2) Subitem (3) applies for the purposes of the extended application of section 279-20 of the new Act because of subitem (1).
  - (3) In working out who is an *officer* of a corporation incorporated under Part IV of the old Act, apply the definition of officer in section 683-1 of the new Act as if:
    - (a) references in that definition to an Aboriginal and Torres Strait Islander corporation were references to a corporation incorporated under Part IV of the old Act; and
    - (b) the transitional modifications were made to that definition.

Note: For *transitional modifications*, see subitem 1(2).

**43 Court power to disqualify for repeated contraventions**

- (1) Section 279-25 of the new Act applies as if:
  - (a) the references in subparagraphs (1)(a)(i) and (ii) of that section to the new Act included references to the old Act; and
  - (b) the reference in paragraph (3)(a) of that section to an Aboriginal and Torres Strait Islander corporation included a reference to a corporation incorporated under Part IV of the old Act.
- (2) Subitem (3) applies for the purposes of the extended application of section 279-25 of the new Act because of subitem (1).
- (3) In working out who is an *officer* of a corporation incorporated under Part IV of the old Act, apply the definition of officer in section 683-1 of the new Act as if:



- (a) references in that definition to an Aboriginal and Torres Strait Islander corporation were references to a corporation incorporated under Part IV of the old Act; and
- (b) the transitional modifications were made to that definition.

Note: For *transitional modifications*, see subitem 1(2).

#### **44 CATSI Registrar's power to disqualify**

- (1) Section 279-30 of the new Act applies as if:
  - (a) the references in subparagraph (1)(a)(ii), and subsection (4), of that section to an Aboriginal and Torres Strait Islander corporation included a reference to a corporation incorporated under Part IV of the old Act; and
  - (b) the reference in subparagraph (1)(a)(iii) of that section to subsection 533(1) of the Corporations Act included a reference to that subsection of the Corporations Act as applied by section 67 of the old Act.
- (2) Subitem (3) applies for the purposes of the extended application of section 279-30 of the new Act because of subitem (1).
- (3) In working out who is an *officer* of a corporation incorporated under Part IV of the old Act, apply the definition of officer in section 683-1 of the new Act as if:
  - (a) references in that definition to an Aboriginal and Torres Strait Islander corporation were references to a corporation incorporated under Part IV of the old Act; and
  - (b) the transitional modifications were made to that definition.

Note: For *transitional modifications*, see subitem 1(2).

#### **45 Convictions before commencement**

- (1) If:
  - (a) a person was convicted of an offence before commencement; and
  - (b) immediately before commencement, the person was disqualified from being elected, or holding office, as a member of the Governing Committee of an Aboriginal association incorporated under Part IV of the old Act under subsection 49B(1) of the old Act in relation to the conviction;

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the person is taken to be disqualified under subsection 279-5(1) of the new Act from managing Aboriginal and Torres Strait Islander corporations because of the conviction.

Note: This subitem will not extend to a conviction to which subsection 49B(1) of the old Act did not apply because of a declaration in force under subsection 49B(3) or (5) of that Act immediately before commencement.

- (2) Despite subsection 279-5(2) of the new Act, the person's period of disqualification for the purposes of the new Act is taken to be the period:
- (a) starting at commencement; and
  - (b) ending when the person would have ceased being disqualified under subsection 49B(1) of the old Act in relation to the conviction, if the old Act had not been repealed.

## **Division 7—Meetings**

### **46 First AGM**

- (1) Chapter 5 of the new Act does not apply in relation to an AGM of a transitional corporation held before 31 December 2007.
- (2) The corporation's directors must call, and conduct, an AGM in accordance with the corporation's constitution before 31 December 2007.
- (3) However, subitems (1) and (2) have no effect in relation to the transitional corporation if:
- (a) the corporation's directors resolve; and
  - (b) the notice of the AGM states;
- that Chapter 5 of the new Act is to apply in relation to the AGM.

### **47 First general meeting**

Section 201-145 of the new Act does not apply in relation to a transitional corporation.

### **48 Provisions not applying during transitional period**

- (1) The following provisions of the new Act do not apply in relation to a transitional corporation during its transitional period:
- (a) sections 201-5, 201-10, 201-15 and 201-20;
-

- (b) subsections 201-25(1), (3) and (4);
- (c) sections 201-35, 201-40, 201-45, 201-50 and 212-20.

- (2) This item has effect subject to item 85.

## **Division 8—Related party benefits**

### **49 Related party benefits**

- (1) Part 6-6 of the new Act does not apply in relation to a transitional corporation in relation to a financial benefit if:
- (a) the corporation, or an entity that the corporation controls, is required to give a financial benefit under a contract; and
  - (b) the contract was made before commencement; and
  - (c) the provisions of the contract dealing with the requirement, or with related matters, have not been modified after commencement.
- (2) In subitem (1):  
*contract* includes deed.

## **Division 9—Record keeping**

### **50 Minutes of meetings**

- (1) Despite item 6, subsections 220-5(1) to (8) of the new Act do not apply in relation to proceedings, resolutions or declarations that happened before commencement.
- (2) Without limiting item 6, Division 220 of the new Act applies in relation to a transitional corporation as if a reference in that Division to the minute books, or minutes, of:
- (a) meetings of the corporation's members; or
  - (b) resolutions of the corporation's members passed without meetings;
- included a reference to the minute books, or minutes, of such meetings or resolutions:
- (c) kept by the corporation in accordance with its constitution or the old Act; and
  - (d) accessible by the corporation immediately before commencement.

## 51 Record keeping requirements

- (1) Despite item 6, subsection 322-10(1) does not apply to records about:
- (a) a transaction of a transitional corporation; or
  - (b) a matter relating to a transitional corporation's financial position and performance;

if the transaction or matter happened before commencement.

Note: Obligations and liabilities that arose under subsection 59(1) and paragraph 59(5)(b) of the old Act, and exemptions under section 59A of the old Act, are not affected by the repeal of that Act (see section 8 of the *Acts Interpretation Act 1901*).

- (2) Without limiting item 6, the financial records that a transitional corporation is required to keep under Division 322 of the new Act are taken to include the accounts, records and reports:
- (a) kept by the corporation in accordance with subsection 59(1) or paragraph 59(5)(b) of the old Act; and
  - (b) accessible by the corporation immediately before commencement.

## 52 Books

- (1) The application of Part 7-8 of the new Act extends to a book of a transitional corporation, to the extent that the book's content was:
- (a) kept immediately before commencement; and
  - (b) kept by the corporation in accordance with its constitution or the old Act;

as if the book was kept by the transitional corporation under a requirement of the new Act.

Note: Part 7-8 of the new Act operates only in relation to things done in relation to the document after commencement.

- (2) Subitem (1) does not limit item 6, this Division, or Part 7-8 of the new Act.

## Division 10—Reporting for financial year ending on 30 June 2007

## 53 Corporation's report

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A transitional corporation must prepare a report for the period (the *item 53 period*) corresponding to that part of the financial year ending on 30 June 2007 during which the transitional corporation was incorporated under Part IV of the old Act.

Note: A transitional corporation may be exempt from the requirements of this Division (see Division 12 of this Part).

#### **54 Content of the corporation's report**

The report must include the following matters:

- (a) a statement, in a form approved by the CATSI Registrar, whether the Governing Committee and the transitional corporation have complied with the obligations imposed by:
  - (i) the corporation's Rules; and
  - (ii) the old Act;during the item 53 period;
- (b) a balance sheet setting out the assets and liabilities of the corporation as at 30 June 2007;
- (c) an income and expenditure statement giving a true and fair view of the income and expenditure of the corporation for the item 53 period;
- (d) a copy of the last list given by the Governing Committee under subsection 58(3) or (4) of the old Act.

#### **55 When the corporation's report must be prepared**

The report must be prepared:

- (a) if the transitional corporation became incorporated under Part IV of the old Act after March 2007—as soon as practicable after 30 June 2008; or
- (b) otherwise—as soon as practicable after 30 June 2007.

Note: A paragraph (a) transitional corporation's report under this Division must be separate from its report under Division 11 of this Part.

#### **56 Examiner's report**

As soon as practicable after the transitional corporation has prepared its report under item 53, the corporation must cause a person authorised by the CATSI Registrar for the purposes of this item:

- (a) to examine whether, during the item 53 period:
  - (i) the corporation's Governing Committee; and
  - (ii) the corporation;

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complied with the obligations imposed by the old Act and the corporation's Rules; and

- (b) to examine whether the balance sheet, and income and expenditure statement, for the item 53 period are:
  - (i) based on proper accounts and records; and
  - (ii) are in agreement with those accounts and records; and
- (c) to give the corporation a report of the results of those examinations, drawing attention to any irregularity that it has disclosed.

**57 Lodging the reports and making them available**

- (1) The transitional corporation must lodge:
  - (a) its report prepared under item 53; and
  - (b) the examiner's report given under paragraph (c) of item 56;with the CATSI Registrar as soon as practicable and before the end of the calendar year in which they were prepared.
- (2) The transitional corporation must make a copy of the reports mentioned in subitem (1):
  - (a) available at the next AGM after they have been prepared; and
  - (b) available for inspection at all reasonable times by its members.

**58 Offence—transitional corporations**

- (1) A transitional corporation commits an offence if it fails to comply with this Division.

Penalty: \$200.

- (2) An offence against subitem (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subitem (1) does not apply if the transitional corporation has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in subitem (3) (see subsection 13.3(3) of the *Criminal Code*).

**59 Offence—directors**

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- (1) A director of a transitional corporation contravenes this subitem if the director fails to take all reasonable steps to comply with, or to secure compliance with, this Division.
- (2) A person commits an offence if the person contravenes subitem (1) and the contravention is dishonest.

Penalty: \$200.

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

### **60 Election to adopt old Act reporting**

- (1) A transitional corporation may elect to report under items 61 to 66 for the financial year ending on 30 June 2008.

Note: A transitional corporation may be exempt from the requirements of this Division (see Division 12 of this Part).

- (2) The election must be made in writing and given to the CATSI Registrar before 30 June 2008.
- (3) The election is irrevocable.
- (4) If a transitional corporation makes an election under subitem (1):
  - (a) Divisions 327, 330, 342 and 345 of the new Act do not apply in relation to the corporation for the financial year; and
  - (b) items 61 to 66 apply in relation to the transitional corporation for the financial year.

Note: If a transitional corporation is not exempt and does not make an election, it will need to report under Part 7-3 of the new Act for the financial year.

- (5) Items 61 to 66 apply to a transitional corporation only if it makes an election under this item.

### **61 Corporation's report**

A transitional corporation must prepare a report for the financial year.

### **62 Content of the corporation's report**

The report must include the following matters:

- (a) a statement, in a form approved by the CATSI Registrar, whether the directors and the transitional corporation have

complied with the obligations imposed by its constitution, the new Act and this Schedule during the financial year;

- (b) a balance sheet setting out the assets and liabilities of the corporation as at the end of the financial year;
- (c) an income and expenditure statement giving a true and fair view of the income and expenditure of the corporation for the financial year;
- (d) a copy of the corporation's register of members as at the end of the financial year.

### **63 When the corporation's report must be prepared**

The report must be prepared as soon as practicable after 30 June 2008.

### **64 Examiner's report**

As soon as practicable after the report has been prepared, the transitional corporation must cause a person authorised by the CATSI Registrar for the purposes of this item:

- (a) to examine whether, during the financial year:
  - (i) the directors; and
  - (ii) the corporation;complied with the corporation's constitution, the new Act and this Schedule; and
- (b) to examine whether the balance sheet, and income and expenditure statement, for the financial year are:
  - (i) based on proper accounts and records; and
  - (ii) are in agreement with those accounts and records; and
- (c) to give the transitional corporation a report of the results of those examinations, drawing attention to any irregularity that it has disclosed.

### **65 Lodging the reports and making them available**

- (1) The transitional corporation must lodge:
    - (a) its report prepared under item 61; and
    - (b) the examiner's report given under paragraph (c) of item 64;with the CATSI Registrar as soon as practicable and before the end of 2008.
  - (2) The transitional corporation must make a copy of the reports mentioned in subitem (1):
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- (a) available at the next AGM after they have been prepared; and
- (b) available for inspection at all reasonable times by its members.

## **66 Offence**

- (1) A transitional corporation commits an offence if it fails to comply with a provision of this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Note: The directors may also be liable for the corporation's failure to comply (see subitem (3)).

- (2) An offence against subitem (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) For the purposes of Part 7-6 of the new Act, a reference to Parts 7-2 and 7-3 of the new Act is taken to include a reference to this Division.

## **Division 12—Reporting exemptions**

### **67 CATSI Registrar may exempt from reporting**

For the purposes of Parts 7-4 and 7-5 of the new Act:

- (a) a reference to provisions of Part 7-2 or 7-3 of the new Act is taken to include a reference to Division 10 or Division 11 of this Part; and
- (b) a reference to the requirements of, or obligations under, Part 7-2 or 7-3 of the new Act is taken to include a reference to the requirements of, or obligations under, Division 10 or Division 11 of this Part.

### **68 Preserving old Act exemptions for Division 10**

- (1) An instrument:
  - (a) that was in force under subsection 59A(1) of the old Act immediately before commencement; and
  - (b) that wholly or partly exempted a transitional corporation from the reporting requirements of section 59 of the old Act for the period that is the item 53 period applicable to the corporation;

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is taken to exempt the transitional corporation from the requirements of Division 10 of this Part in a corresponding way to the way it exempted the corporation from the requirements of section 59 of the old Act for the item 53 period.

- (2) Despite the repeal of the old Act, subsections 59A(2) and (3) of the old Act continue to apply in relation to the requirements (if any) imposed on a transitional corporation in an instrument covered by subitem (1), as if that repeal had not happened.

**Division 13—Enforcement**

**69 Enforcement under Part 10-3 of the new Act**

- (1) Section 450-1 of the new Act applies in relation to a transitional corporation as if:
- (a) the reference in paragraph (a) of that section to the new Act included a reference to this Schedule; and
  - (b) the reference in paragraph (b) of that section to the new Act included a reference to the old Act, the corporation's Rules and this Schedule; and
  - (c) the reference in subparagraph (c)(i) of that section to the new Act included a reference to this Schedule.

Note 1: This subitem will not extend to an obligation under the old Act that is covered by an exemption under that Act.

Note 2: The operation of section 450-1 of the new Act is also extended by item 6. That item, for example, treats the reference in subparagraph 450-1(c)(i) of the new Act to a contravention of the new Act as including a reference to a contravention of the old Act (see item 6 and paragraph (2)(g) of item 1).

- (2) Section 453-1 of the new Act applies in relation to a transitional corporation as if the reference in paragraph (1)(a) of that section to the new Act included a reference to this Schedule.

Note 1: This subitem will not extend to an obligation under the old Act that is covered by an exemption under that Act.

Note 2: The operation of section 453-1 of the new Act is also extended by item 6. That item, treats the reference in paragraph 453-1(1)(a) of the new Act to a failure to comply with a provision of the new Act as including a reference to a failure to comply with a provision of the old Act (see paragraph (3)(g) of item 6). It also treats the reference in that paragraph to a failure to comply with a provision of the corporation's constitution as including a failure to comply with a provision of the corporation's Rules (see item 6 and paragraph (2)(f) of item 1).

- (3) Without limiting item 4 or 6:
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- (a) section 453-1 of the new Act extends to a transitional corporation's books created before commencement; and
- (b) section 453-5 of the new Act extends to a transitional corporation's examinable affairs existing before commencement.

(4) Subitems (1) and (2) do not limit item 6.

## **70 Compliance with this Schedule**

Section 439-20 of the new Act applies in relation to a transitional corporation as if references in that section to the new Act included references to this Schedule.

## **Division 14—Special administration**

### **71 Grounds for special administration**

Section 487-5 of the new Act applies in relation to a transitional corporation as if:

- (a) the reference in subparagraph (1)(b)(i) of that section to the new Act included a reference to this Schedule; and
- (b) the reference in subparagraph (1)(b)(ii) of that section to an internal governance rule of the corporation included a reference to the corporation's Rules; and
- (c) the reference in subparagraph (1)(b)(iii) of that section to section 439-20 of the new Act included a reference to section 60A of the old Act; and
- (d) the reference in paragraph (1)(c) of that section to Part 7-3 of the new Act included a reference to:
  - (i) subsections 59(2) to (9) of the old Act; and
  - (ii) Division 10 or 11 of this Part.

Note: The operation of section 487-5 of the new Act is also extended by item 6. That item, for example, treats the reference in paragraph 487-5(1)(b) of the new Act to a failure to comply with a provision of the new Act as including a reference to a failure to comply with a provision of old Act (see item 6 and paragraph (2)(f) of item 1).

## **Division 15—Winding up**

### **72 Grounds for Court ordered winding up**

Section 526-5 of the new Act applies in relation to a transitional corporation as if:

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- (a) the reference in paragraph (b) of that section to the corporation's registration were a reference to its incorporation under Part IV of the old Act; and
- (b) the reference in paragraph (j) of that section to section 439-20 of the new Act included a reference to section 60A of the old Act; and
- (c) the reference in paragraph (k) of that section to Part 7-3 of the new Act included a reference to:
  - (i) subsections 59(2) to (9) of the old Act; and
  - (ii) Division 10 or 11 of this Part.

Note: The operation of section 526-5 of the new Act is also extended by item 6 so that the grounds in that section extend to circumstances existing before commencement.

## **Part 3—Matters pending under old Act immediately before commencement**

### **Division 1—Applications for incorporation**

#### **73 Division applies to pending applications for incorporation under old Act**

- (1) This Division applies to an application made under section 43 of the old Act by the committee of an Aboriginal association for incorporation of the association under the old Act if the application had been made, but was still pending, before commencement.
- (2) For the purposes of this item, the application is taken to be *still pending* before commencement if, before commencement:
  - (a) the ACA Registrar had neither issued, nor refused to issue, a certificate of incorporation to the association under section 45 of the old Act; or
  - (b) the ACA Registrar:
    - (i) had refused, under section 45 of the old Act, to issue a certificate of incorporation to the association; and
    - (ii) had given the committee of the association an invitation under paragraph 45(4)(c) of the old Act; and the period for responding to the invitation had not ended; or
  - (c) the ACA Registrar:
    - (i) had refused, under section 45 of the old Act, to issue a certificate of incorporation to the association; and
    - (ii) had been given a notification under subsection 45(4) of the old Act; and
    - (iii) had not reconsidered the application under subsection 45(1) of the old Act.

#### **74 Pending application treated as application under new Act**

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*Application treated as application under section 21-1 of new Act*

- (1) On commencement, the application is taken to be an application under section 21-1 of the new Act for the registration of an Aboriginal and Torres Strait Islander corporation.

Note: The application will only be granted if the requirements of the new Act are met.

*Applicant in relation to application under section 21-1 of the new Act*

- (2) The CATSI Registrar must request the committee of the association, in writing, to advise the Registrar, within 28 days of the request, of the name and address of the person who is to be the applicant in relation to the application under section 21-1 of the new Act.
- (3) If the committee of the association advises the CATSI Registrar of the name and address of the person in accordance with the request under subitem (2), that person is taken to be the applicant for the application under section 21-1 of the new Act.
- (4) If the committee of the association does not comply with the request under subitem (2), the CATSI Registrar may treat the application under section 21-1 of the new Act as having been withdrawn and notify the committee in writing accordingly.
- (5) The CATSI Registrar may also treat the application under section 21-1 of the new Act as having been withdrawn if:
- (a) the committee of the association advises the Registrar of the name and address of the person in accordance with the request under subitem (2); and
  - (b) the person has not consented to being the applicant for the application under section 21-1 of the new Act.

*Registrar's power to seek further information*

- (6) Without limiting section 21-10 of the new Act, the CATSI Registrar may, under that section, request the applicant to provide further information for the purposes of determining the application.

Note: The application under section 43 of the old Act may well not have included all the information that is required by sections 21-1 and 21-5 of the new Act.

**75 Pending invitations to change application**

- (1) This item applies if, before commencement:
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- (a) the ACA Registrar:
    - (i) had refused, under section 45 of the old Act, to issue a certificate of incorporation to the association; and
    - (ii) had given the committee of the association an invitation under paragraph 45(4)(c) of the old Act; and
  - (b) the period for responding to the invitation had not ended.
- (2) The ACA Registrar's refusal to issue a certificate of incorporation to the association is taken to be a decision by the CATSI Registrar under section 26-1 of the new Act not to grant the application.
  - (3) The invitation to the committee of the association is taken to be an invitation given to the applicant under paragraph 32-5(1)(d) of the new Act.

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

- (1) This item applies if, before commencement, the ACA Registrar:
  - (a) had refused, under section 45 of the old Act, to issue a certificate of incorporation to the association; and
  - (b) had been given a notification under subsection 45(4) of the old Act; and
  - (c) had not reconsidered the application under subsection 45(1) of the old Act.
- (2) The ACA Registrar's refusal to issue a certificate of incorporation to the association is taken to be a decision by the CATSI Registrar under section 26-1 of the new Act not to grant the application.
- (3) The invitation to the committee of the association is taken to be an invitation given to the applicant under paragraph 32-5(1)(d) of the new Act.
- (4) The notification under subsection 45(4) of the old Act is taken to be advice given to the CATSI Registrar under paragraph 32-5(1)(d) of the new Act.

Note: This means that the CATSI Registrar will need to reconsider the application under subsection 32-5(2) of the new Act and may need to ask the applicant for additional information because of the requirements of sections 21-1 and 21-5 of the new Act.

## **77 No AAT review of decisions made before commencement**

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A decision made in relation to the application before commencement is not a reviewable decision for the purposes of section 617-1 of the new Act.

## **Division 2—Application for name change**

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

- (1) This item applies if:
  - (a) before commencement:
    - (i) a transitional corporation had applied to the ACA Registrar under subsection 53(1) of the old Act for approval of a proposed new name for the transitional corporation; and
    - (ii) the ACA Registrar neither approved, nor refused to approve, the proposed new name under subsection 53(2) of the old Act; and
  - (b) within 28 days after commencement, the transitional corporation lodges with the CATSI Registrar:
    - (i) a statement signed by 2 directors of the corporation or, if there is only 1 director, that director to the effect that the proposed new name has been adopted by the transitional corporation in accordance with its constitution; and
    - (ii) a copy of the document, or documents, that show that the proposed new name had been adopted by the transitional corporation in accordance with its constitution.
- (2) The application is taken to be an application lodged with the CATSI Registrar under subsection 88-1(1) of the new Act.
- (3) Paragraph 88-1(1)(a) and subsections 88-1(2) and (3) of the new Act do not apply in relation to the application.

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

- (1) This item applies if:
    - (a) before commencement:
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- (i) a transitional corporation had applied to the ACA Registrar under subsection 53(1) of the old Act for approval of a proposed new name for the transitional corporation; and
  - (ii) the ACA Registrar had approved the proposed new name under subsection 53(2) of the old Act; and
  - (iii) the ACA Registrar had not issued to the transitional corporation a certificate of incorporation in the new name of the corporation; and
- (b) the transitional corporation (whether before or after commencement) adopts the new name in accordance with its constitution; and
- (c) within 28 days after commencement, the transitional corporation lodges with the CATSI Registrar:
- (i) a statement signed by 2 directors of the corporation or, if there is only 1 director, that director to the effect that the proposed new name had been adopted by the transitional corporation in accordance with its constitution; and
  - (ii) a copy of the document, or documents, that show that the proposed new name had been adopted by the transitional corporation in accordance with its constitution.
- (2) The CATSI Registrar must change the corporation's name by altering the details of the corporation's registration to reflect the change.
- Note: The CATSI Registrar will give the corporation a new certificate of registration under section 88-20 of the new Act.
- (3) For the purposes of the new Act, the change of name takes effect when the CATSI Registrar alters the details of the corporation's registration.

### **Division 3—Changes to constitution**

#### **80 Changes to constitution made but not approved before commencement**

- (1) This item applies if, before commencement:
- (a) a transitional corporation had, in accordance with the its Rules, altered its Rules (whether or not notice of the

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- alteration was filed with the ACA Registrar under subsection 54(1) of the old Act); and
- (b) the ACA Registrar neither approved the alteration, nor refused to approve the alteration, under subsection 54(2) of the old Act.
- (2) This item also applies if, before commencement:
- (a) a transitional corporation had, in accordance with its Rules, altered its objects (whether or not a copy of the alteration was filed with the ACA Registrar under subsection 52(1) of the old Act); and
- (b) the ACA Registrar neither approved the alteration, nor refused to approve the alteration, under subsection 52(2) of the old Act.
- (3) The alteration is taken, for the purposes of subsection 69-5(1) of the new Act, to be a change to the transitional corporation's constitution.
- (4) The transitional corporation is taken, for the purposes of the new Act, to have passed a special resolution effecting the change to the constitution.
- (5) Subsection 69-20(1) of the new Act applies to the change to the constitution as if:
- (a) the period within which the materials referred to in that subsection must be lodged with the CATSI Registrar were the period of 28 days after commencement; and
- (b) the materials that must be lodged with the CATSI Registrar under that subsection did not include the materials referred to in paragraphs 69-20(1)(a) and (b) of the new Act but included instead a copy of any document or documents showing that the constitutional change was effected in accordance with the transitional corporation's constitution; and
- (c) the period within which the materials referred to in subsection 69-20(2) of the new Act must be lodged with the CATSI Registrar were the period of 28 days after the later of:
- (i) the requirement referred to in that subsection has been met; or
- (ii) commencement; and
- (d) the statement required by subsection 69-20(5) of the new Act were a statement to the effect that the constitutional change
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was effected in accordance with the transitional corporation's constitution.

Note: The materials required by paragraph (b) may be, for example, a copy of a resolution put to a meeting and the notice and minutes of that meeting.

## **Division 4—Meetings called before commencement**

### **81 Meeting called by Governing Committee**

- (1) This item applies if, before commencement:
  - (a) a meeting of a transitional corporation had been called by the Governing Committee of a transitional corporation; and
  - (b) the meeting had not been held.
- (2) To avoid doubt, the meeting may be held despite the repeal of subsections 58B(1) and (2) of the old Act.

Note 1: The meeting will have been called under the Rules of the transitional corporation and item 14 of this Schedule continues those in effect after commencement as the constitution of the transitional corporation.

Note 2: Item 85 deals with the situation in which, before commencement, a request has been made to the Governing Committee under subsection 58B(2) of the old Act but a meeting has not been called in response to that request.

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

- (1) This item applies if:
  - (a) before commencement, the Governing Committee of a transitional corporation had advertised a special general meeting for a particular day (the *advertised day*); and
  - (b) the meeting is not held within 14 days after the advertised day; and
  - (c) the ACA Registrar had, before commencement, not called a special general meeting of the transitional corporation under subsection 58B(3) of the old Act in relation to the advertisement.
- (2) For the purposes of paragraph 439-10(1)(a) of the new Act:
  - (a) the transitional corporation is taken to have called a meeting for the advertised day; and
  - (b) the meeting is taken not to have been held for 14 days after the advertised day.

- (3) This item does not limit item 6.

### **83 Meeting called by ACA Registrar**

- (1) If, before commencement:
- (a) the ACA Registrar had called a special general meeting under subsection 58B(3) of the old Act; and
  - (b) the meeting had not been held;
- the CATSI Registrar is taken to have called the meeting under paragraph 439-10(1)(a) of the new Act.
- (2) If, before commencement:
- (a) the ACA Registrar had called a special general meeting under subsection 58B(4) of the old Act; and
  - (b) the meeting had not been held;
- the CATSI Registrar is taken to have called the meeting under paragraph 439-10(1)(d) of the new Act.
- (3) If, before commencement:
- (a) the ACA Registrar had called a special general meeting under subsection 58B(5) of the old Act; and
  - (b) the meeting had not been held;
- the CATSI Registrar is taken to have called the meeting under paragraph 439-10(1)(b) of the new Act.

### **84 Request to ACA Registrar to call meeting**

- (1) This item applies if, before commencement:
- (a) members of a transitional corporation had requested the ACA Registrar under subsection 58B(5) of the old Act to call a special general meeting of the transitional corporation; and
  - (b) the ACA Registrar had not called the special general meeting.
- (2) The request has effect as if the request:
- (a) had been made under paragraph 439-10(1)(b) of the new Act; and
  - (b) had been made by at least the required number of members of the corporation under subsection 439-10(9) of the new Act.

### **85 Request to Governing Committee to call meeting**

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- (1) If, before commencement:
- (a) a request had been made under subsection 58B(2) of the old Act for the calling of a special general meeting of a transitional corporation; and
  - (b) either:
    - (i) the Governing Committee of the transitional corporation had not applied to the ACA Registrar under subsection 58B(2) of the old Act in relation to the request; or
    - (ii) the Governing Committee of the transitional corporation had applied to the ACA Registrar under subsection 58B(2) of the old Act in relation to the request and the ACA Registrar had decided that the request was not frivolous, unreasonable or contrary to the interests of the members of the transitional corporation; and
  - (c) the meeting had not been called;
- the request is taken to be a request under section 201-5 of the new Act by at least the number of members required under subsection 201-5(4) of the new Act.
- (2) If, before commencement:
- (a) the Governing Committee of a transitional corporation had applied to the ACA Registrar under subsection 58B(2) of the old Act in relation to a request under that subsection for the calling of a special general meeting of the transitional corporation; and
  - (b) the ACA Registrar had not considered the application;
- the application is taken to be an application to the CATSI Registrar under subsection 201-10(1) of the new Act.
- (3) If, before commencement:
- (a) a request had been made under subsection 58B(2) of the old Act for the calling of a special general meeting of a transitional corporation; and
  - (b) the ACA Registrar had decided that the request was not frivolous, not unreasonable and not contrary to the interests of the members of the transitional corporation concerned and had notified the Governing Committee of the decision; and
  - (c) the meeting had not been called;

the directors of the transitional corporation must call a general meeting of the transitional corporation within 21 days of being notified of the ACA Registrar's decision.

## **Division 5—Compliance and enforcement steps**

### **86 Notice by ACA Registrar under subsection 68(2) of the old Act**

- (1) This item applies if, before commencement:
  - (a) the ACA Registrar had given a person a notice under subsection 68(2) of the old Act in relation to a transitional corporation; and
  - (b) the time specified in the notice had not arrived.
- (2) The notice has effect as if it had been given by the CATSI Registrar under subsection 453-5(1) of the new Act and had complied with subsections 453-5(2) and (3) of the new Act.

### **87 Request by ACA Registrar for membership list**

- (1) If, before commencement:
    - (a) the ACA Registrar had, under subsection 58(4) of the old Act, requested the Governing Committee of a transitional corporation to give him or her a list of the names and addresses of all the persons who were members of the transitional corporation; and
    - (b) the Governing Committee had not given the ACA Registrar the list; and
    - (c) the compliance period had not ended;the transitional corporation must, before the end of the compliance period, give the CATSI Registrar the list requested.
  - (2) The transitional corporation commits an offence if it contravenes subitem (1).

Penalty: \$200.
  - (3) An offence against subitem (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
  - (4) In this item:
-

*compliance period* for a request under subsection 58(4) of the old Act means:

- (a) the period of 14 days after the request; or
- (b) if the ACA Registrar specified another period under that subsection of the old Act—the period specified by the ACA Registrar.

## **Division 6—Administrations**

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

- (1) This item applies if, before commencement:
  - (a) the ACA Registrar had served a notice on the public officer of a transitional corporation under subsection 71(1) of the old Act; and
  - (b) one of the following is satisfied:
    - (i) the period specified in the notice as the period within which the corporation is to show cause why an Administrator should not be appointed (the *show cause period*) had not ended;
    - (ii) the show cause period had ended but the ACA Registrar had not decided whether to appoint an Administrator;
    - (iii) the ACA Registrar had decided to appoint an Administrator but the Minister had not approved the appointment of the Administrator;
    - (iv) the Minister had approved the appointment of an Administrator but the ACA Registrar had not appointed the Administrator.
- (2) The notice is taken to have:
  - (a) been given by the CATSI Registrar to the transitional corporation under subsection 487-10(1) of the new Act; and
  - (b) invited the corporation to show cause, within the show cause period, why the CATSI Registrar should not determine that the corporation is to be under special administration.
- (3) If the ACA Registrar had not, before commencement, decided to appoint an Administrator, the CATSI Registrar must, before deciding whether to make a determination under subsection 487-1(1) of the new

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Act that the transitional corporation is to be under special administration, consider:

- (a) any representations that the transitional corporation made to the ACA Registrar, within the show cause period and before commencement, in response to the notice; and
- (b) any representations the transitional corporation makes to the CATSI Registrar, within the show cause period and after commencement, in response to the notice.

Note: The grounds to be applied in determining whether to appoint a special administrator will be the grounds specified in the new Act.

- (4) The CATSI Registrar may determine, under subsection 487-1(1) of the new Act, that the transitional corporation is to be under special administration without the Minister's approval.
- (5) If the ACA Registrar had, before commencement, decided to appoint an Administrator, the CATSI Registrar may determine, under subsection 487-1(1) of the new Act, that the transitional corporation is to be under special administration without having to be satisfied that at least one of the grounds set out in subsection 487-5(1) of the new Act is satisfied.

Note 1: To have decided to appoint an Administrator under the old Act, the ACA Registrar must have been satisfied that at least one of the grounds set out in subsection 71(2) of the old Act had been established.

Note 2: Without subitem (5), subsection 487-1(4) of the new Act would require the CATSI Registrar to make a fresh assessment of the grounds set out in section 487-5 of that Act before proceeding to make the determination under subsection 487-1(1) of that Act.

## **89 Appointment of Administrator**

- (1) This item applies if, before commencement:
  - (a) the ACA Registrar had appointed a person as an Administrator for a transitional corporation under subsection 71(2) of the old Act; and
  - (b) that appointment had not ended.
- (2) The CATSI Registrar is taken to have determined under subsection 487-1(1) of the new Act that the transitional corporation is to be under special administration for the period that:
  - (a) starts on commencement; and
  - (b) ends on 30 June 2008.



- (3) The CATSI Registrar is taken to have appointed the person under subsection 490-1(1) of the new Act as a special administrator for the transitional corporation for the period that:
- (a) starts on commencement; and
  - (b) ends on 30 June 2008.

This item has effect despite the period specified in the appointment. The CATSI Registrar may extend the appointment under subsection 490-5(2) of the new Act.

- (4) Without limiting subitems (2) and (3), any proceedings that had been commenced before commencement and to which the person was a party immediately before commencement in his or her capacity as an Administrator appointed for the transitional corporation under the old Act may be continued after commencement as if the person were a party to those proceedings in his or her capacity as a special administrator appointed for the transitional corporation under the new Act.
- (5) If notice of the appointment of the Administrator and the period of the appointment had been published under section 72 of the old Act before commencement:
- (a) section 493-1 of the new Act does not apply in relation to the following:
    - (i) the determination that the CATSI Registrar is taken to have made under subitem (2);
    - (ii) the appointment that the CATSI Registrar is taken to have made under subitem (3); and
  - (b) subsection 496-15(3) of the new Act does not apply in relation to the special administration of the transitional corporation.
- (6) To avoid doubt, section 496-5 of the new Act does not apply in relation to the determination that the CATSI Registrar is taken to have made under subitem (2).

Note: Under section 73 of the old Act, all the offices of the members of the Governing Committee of the transitional corporation will have become vacant when the Administrator was appointed under section 71 of that Act.

- (7) Item 38 of the table in section 617-1 of the new Act does not apply to the determination that the CATSI Registrar is taken to have made under subitem (2).

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Note: This means that AAT review is not available in relation to this determination. Under the old Act, the original appointment of the Administrator under that Act was not subject to AAT review.

**90 Effect of appointment on receivers and administrators**

- (1) This item applies if:
  - (a) a transitional corporation is taken, under subitem 89(2), to be under special administration because the ACA Registrar had, before commencement, appointed a person as an Administrator for the transitional corporation under subsection 71(2) of the old Act; and
  - (b) the ACA Registrar had, before commencement, published notice of the appointment and the period of the appointment under section 72 of the old Act.
- (2) Subsections 496-10(7) and 496-15(7) of the new Act do not apply in relation to the special administration of the transitional corporation.

**91 Cancellation or variation of employment contracts**

- (1) This item applies if, before commencement, an Administrator for a transitional corporation had cancelled or varied a contract or agreement under section 76 of the old Act.
- (2) To avoid doubt:
  - (a) the repeal of section 76 of the old Act does not affect the cancellation or variation; and
  - (b) the repeal of section 77 of the old Act does not affect the right a person had accrued under that section to apply to the Administrative Appeals Tribunal for review of the decision made by the Administrator under section 76 of the old Act.

**92 Administrator's remuneration**

- (1) This item applies if a person is taken, under subitem 89(3), to have been appointed as a special administrator for a transitional corporation.
  - (2) If, immediately before commencement, a determination by the ACA Registrar of the person's remuneration as Administrator was in force under subsection 74(1) of the old Act, the determination continues in force after commencement as if it were a determination by the CATSI Registrar of the person's remuneration as special administrator for the transitional corporation under subsection 511-1(1) of the new Act.
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- (3) If, immediately before commencement, a direction by the ACA Registrar in relation to the person's remuneration, charges or expenses was in force under subsection 74(2) of the old Act, the direction continues in force after commencement as if it were a direction by the CATSI Registrar in relation to the person's remuneration, charges or expenses as a special administrator for the transitional corporation under subsection 511-1(4) of the new Act.
- (4) Subitem (3) has effect only to the extent to which the direction provides for the person's remuneration, charges or expenses to be borne by, or charged on the property of, the transitional corporation or a related body corporate.

### **93 Elections conducted by Registrar**

- (1) This item applies if, before commencement:
  - (a) the ACA Registrar had commenced to conduct an election under section 77D of the old Act to fill the offices of the members of the Governing Committee of a transitional corporation; and
  - (b) the conduct of the election had not been completed.
- (2) The CATSI Registrar may complete the conduct of the election.
- (3) The election is taken, for the purposes of the new Act, to be an election conducted to fill the offices of the directors of the transitional corporation.

### **94 Indemnity for Administrator**

Despite the repeal of section 77B of the old Act, that section continues to apply to anything done, or omitted to be done, by an Administrator before commencement.

## **Division 7—Corporations Act administrations**

### **95 Appointment of administrator under Part 5.3A of the Corporations Act**

- (1) This item applies if, before commencement:
  - (a) an administrator of a transitional corporation had been appointed under Part 5.3A of the Corporations Act (as applied by section 62 of the old Act); and

- (b) the administration had not been completed.
- (2) The administration may be continued and completed as if the administrator had been appointed under Part 5.3A of the Corporations Act (as applied by section 521-1 of the new Act).
- (3) Without limiting paragraph 521-1(2)(b) of the new Act, regulations made under the new Act for the purposes of that paragraph may modify the operation of the Corporations Act administration provisions in relation to a transitional corporation to which this item applies.

## **Division 8—Windings up**

### **96 Court winding up commenced under old Act**

- (1) This item applies if, before commencement:
  - (a) the Court had ordered under section 63 of the old Act that a transitional corporation be wound up; and
  - (b) the winding up had not been completed.
- (2) The winding up may be continued and completed under the new Act as if the Court had made an order under section 526-1 of the new Act that the transitional corporation be wound up.
- (3) Without limiting subitem (2), a liquidator appointed before commencement to carry out the winding up of the transitional corporation is taken, after commencement, to have been appointed to carry out the winding up of the transitional corporation under the new Act.
- (4) Without limiting paragraph 526-35(2)(b) of the new Act, regulations made under the new Act for the purposes of that paragraph may modify the operation of the Corporations Act winding up provisions in relation to a transitional corporation to which this item applies.

### **97 Voluntary winding up commenced under old Act**

- (1) This item applies if, before commencement:
    - (a) a transitional corporation had resolved by special resolution that the transitional corporation be wound up voluntarily; and
    - (b) the winding up of the transitional corporation had commenced but had not been completed.
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- (2) The winding up may be continued and completed under the new Act as if it were a voluntary winding up under the new Act.
- (3) Without limiting subitem (2), a liquidator appointed before commencement to carry out the winding up of the transitional corporation is taken, after commencement, to have been appointed to carry out the winding up of the transitional corporation under the new Act.
- (4) Without limiting paragraph 526-35(2)(b) of the new Act, regulations made under the new Act for the purposes of that paragraph may modify the operation of the Corporations Act winding up provisions in relation to a transitional corporation to which this item applies.

## **98 Petition to Court**

- (1) This item applies if, before commencement:
  - (a) a person (the *petitioner*) had made a petition to the Court under subsection 63(1) of the old Act for an order that a transitional corporation be wound up; and
  - (b) the petition had not been withdrawn; and
  - (c) the Court had not decided whether to make an order that the transitional corporation be wound up; and
  - (d) the petition satisfied subsections 63(2), (3), (4) and (6) of the old Act.
- (2) For the purposes of the new Act:
  - (a) the petition is taken to be an application made to the Court under subsection 526-15(1) of the new Act; and
  - (b) the grounds set out in the petition are taken to be the grounds set out in the application referred to in paragraph (a); and
  - (c) if the petitioner was the ACA Registrar—the application referred to in paragraph (a) is taken to have been made by the CATSI Registrar; and
  - (d) if the petitioner was a person in his or her capacity as an Administrator appointed for the transitional corporation under section 71 of the old Act—the application referred to in paragraph (a) is taken to have been made by the person in his or her capacity as a special administrator appointed for the transitional corporation under section 490-1 of the new Act; and

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- (e) subsections 526-15(2), (3), (4) and (6) of the new Act do not apply in relation to the application referred to in paragraph (a); and
- (f) any proceedings before the Court in relation to the petition that had taken place under the old Act before commencement are taken to have been proceedings under the new Act before the Court in relation to the application referred to in paragraph (a); and
- (g) the person who is taken to have made the application referred to in paragraph (a) may apply to the Court to amend the application to include additional grounds referred to in section 526-5 of the new Act and the Court may make a direction amending the application to include those grounds.

Note: In applying paragraph (g), any references in section 526-5 of the new Act to officers of the transitional corporation will pick up, for example, references to members of the Governing Committee of the transitional corporation in relation to circumstances existing before commencement (see item 6 and paragraph (2)(a) of item 1).

- (3) Paragraph (2)(g) does not limit the Court's powers to give a direction in relation to the proceedings on the application.

**99 Special resolution to wind up transitional corporation**

- (1) This item applies if, before commencement:
  - (a) a transitional corporation had resolved by special resolution that the transitional corporation be wound up voluntarily; and
  - (b) the winding up of the transitional corporation had not commenced.

- (2) For the purposes of section 526-20 of the new Act, the members of the transitional corporation in general meeting are taken to have resolved by special resolution that the transitional corporation be wound up voluntarily.

- (3) Subsection 526-20(5) of the new Act does not apply to the resolution.

Note: Subsections 526-20(2) to (4) of the new Act cannot apply to the resolution because the transitional corporation could not have been under special administration before commencement and the CATSI Registrar could not have given the transitional corporation a notice under subsection 487-10(1) of the new Act before commencement.

- (4) If the public officer of the transitional corporation had, before commencement, lodged with the ACA Registrar a notice under subsection 64(2) of the old Act on a particular day, the transitional

corporation is taken, for the purposes of subsection 526-20(8) of the new Act, to have lodged the notice under subsection 526-20(6) of the new Act with the CATSI Registrar on that day.

- (5) If the ACA Registrar had, before commencement, published in the *Gazette*, on a particular day, a notice of the passing of the resolution to which the notice relates under subsection 64(3) of the old Act, the CATSI Registrar is taken to have published in the *Gazette*, on that day, a notice of the passing of the resolution to which the notice relates under subsection 526-20(8) of the new Act.

### **100 Resolution about distribution of surplus assets in winding up**

- (1) This item applies if, before commencement:
- (a) a transitional corporation had been wound up under the old Act; and
  - (b) on the winding up, there remained surplus assets; and
  - (c) a resolution relating to the distribution of the surplus assets of the transitional corporation had been passed by at least two-thirds of the members of the transitional corporation; and
  - (d) some or all of the surplus assets had not been distributed in accordance with the resolution.
- (2) For the purposes of sections 526-25 and 526-30 of the new Act, the resolution has effect as if it had been passed by a special resolution of the transitional corporation.

## **Division 9—Deregistration and reinstatement**

### **101 Deregistration process commenced under old Act**

- (1) This item applies if, before commencement:
- (a) a process to strike a transitional corporation's name off the Register of Incorporated Aboriginal Associations, and dissolve the transitional corporation, had commenced under the regulations made under paragraph 82(b) of the old Act; and
  - (b) the process had not been completed.
- (2) The process may be continued and completed under those regulations as if:

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- (a) the old Act had not been repealed; and
- (b) references in those regulations to an Aboriginal association incorporated under Part IV of the old Act were references to a transitional corporation; and
- (c) references in those regulations to the ACA Registrar were references to the CATSI Registrar; and
- (d) references in those regulations to striking the name of an Aboriginal association incorporated under Part IV of the old Act off the Register of Incorporated Aboriginal Associations, or to the dissolution of an Aboriginal association incorporated under Part IV of the old Act, were references to the deregistration of a transitional corporation under the provisions of the new Act; and
- (e) references in those regulations to the official address of the public officer of an Aboriginal association incorporated under Part IV of the old Act were references to the registered office, or the document access address, of a transitional corporation; and
- (f) references in those regulations to the members of the Governing Committee of an Aboriginal association incorporated under Part IV of the old Act included references to the directors of a transitional corporation; and
- (g) references in those regulations to the Minister administering the old Act were references to the Minister administering the new Act.

**102 Reinstatement process commenced under old Act**

- (1) This item applies if, before commencement:
    - (a) a process to restore the name of an Aboriginal association incorporated under Part IV of the old Act to the Register of Incorporated Aboriginal Associations had commenced under the regulations made under paragraph 82(b) of the old Act; and
    - (b) the process had not been completed.
  - (2) The process may be continued and completed under those regulations as if:
    - (a) the old Act had not been repealed; and
    - (b) references in those regulations to the ACA Registrar were references to the CATSI Registrar; and
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- (c) references in those regulations to the restoration of the name of an Aboriginal association incorporated under Part IV of the old Act to the Register of Incorporated Aboriginal Associations were references to registering the association as an Aboriginal and Torres Strait Islander corporation under the new Act; and
- (d) references in those regulations to the Minister administering the old Act were references to the Minister administering the new Act.

## **Part 4—Administrative matters, compliance and enforcement**

### **Division 1—Compliance and enforcement**

#### **103 Use of information etc. obtained under the old Act**

Any information, documents or records made or obtained by the ACA Registrar under or for the purposes of the old Act may be used by the CATSI Registrar for the purposes of the new Act and this Schedule.

#### **104 Fees that became payable before commencement but were not paid**

If, before commencement:

- (a) a fee became payable under the old Act; and
- (b) the fee was not paid;

the CATSI Registrar may, on behalf of the Commonwealth, waive the whole or a part of the fee.

#### **105 Fees paid in advance before commencement**

(1) If:

- (a) under the old Act, fees were payable in relation to matters of a particular kind; and
- (b) a person paid a fee, before commencement, in relation to a matter of that kind; and
- (c) the matter in relation to which the fee was paid did not arise before commencement; and
- (d) the matter (or a corresponding matter) arises after commencement;

the fee is taken, despite the repeal of the old Act, to become payable when the matter referred to in paragraph (d) arises.

Note: For example, a person applying for incorporation of an Aboriginal association under the old Act may have paid a fee before commencement in relation to the prospective issue of a certificate of incorporation if the application were successful. If the application is dealt with under the new Act and an Aboriginal and Torres Strait Islander corporation is registered as a result of the application, the fee becomes payable in relation to the registration (see subitem (2)).

- (2) For the purpose of this item, the matter of the registration of an Aboriginal and Torres Strait Islander corporation under the new Act is taken to correspond to the matter of the issue of a certificate of incorporation to an Aboriginal association under the old Act.

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

- (1) This item applies if, before commencement:
- (a) the name of an Aboriginal association incorporated under Part IV of the old Act had been struck off the Register of Incorporated Aboriginal Associations, and the Association had been dissolved, under regulations made under paragraph 82(b) of the old Act; and
  - (b) no process to restore the Association's name to the Register had commenced.
- (2) Section 546-40 of the new Act applies to the Association as if:
- (a) references in that section to reinstating the registration were references to registering under the new Act; and
  - (b) references in that section to an Aboriginal and Torres Strait Islander corporation were references to the Association; and
  - (c) references in that section to deregistration were references to the striking of the Association's name off the Register of Incorporated Aboriginal Associations.
- (3) Subitems (4) and (5) apply if the Association is registered under section 546-40 of the new Act (as applied by subitem (2)) as an Aboriginal and Torres Strait Islander corporation.
- (4) Paragraph 546-40(5)(b) of the new Act does not apply in relation to the Association's registration.
- (5) A person who was a member of the Association's Governing Committee immediately before the Association's name was struck off the Register of Incorporated Aboriginal Associations becomes a director of the corporation from the time of the corporation's registration under the new Act.

**107 Extensions of time**

- (1) This item applies if, before commencement:
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- (a) the Minister or the ACA Registrar had, under section 79 of the old Act, extended the time for the performance of an act or the doing of a thing; and
  - (b) the time, as extended, had not ended.
- (2) The extension of the time for performing that act, or doing that thing, continues to have effect after commencement despite the repeal of section 79 of the old Act.

**108 Registrar's power to exempt**

- (1) On an application made in accordance with subitem (2) in relation to a transitional corporation, the CATSI Registrar may make a determination in writing exempting any of the following from a provision of the new Act, or of this Schedule, specified in the Registrar's determination:
  - (a) the transitional corporation itself;
  - (b) the directors of the transitional corporation.

Note: For the criteria for making determinations under this item, see item 111.

- (2) The application must:
  - (a) specify the provisions in relation to which the exemption is being sought; and
  - (b) be authorised by a resolution of the directors; and
  - (c) be in writing and signed by a director; and
  - (d) be lodged with the CATSI Registrar.
- (3) The determination may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (4) The CATSI Registrar may, in writing, revoke, vary or suspend the determination.
- (5) The CATSI Registrar must give the applicant written notice within 28 days of the making, revocation, variation or suspension of the determination.
- (6) A determination under subitem (1), or a revocation, variation or suspension under subitem (4), is not a legislative instrument.

### **109 Registrar may make determination even if application is incomplete**

Despite subitem 108(2), the CATSI Registrar may make a determination even if the application does not specify the provisions in relation to which the exemption is being sought.

### **110 Registrar's power to make determinations**

- (1) The CATSI Registrar may determine in writing that:
- (a) a specified transitional corporation or a specified class of transitional corporations; and
  - (b) the directors of a specified transitional corporation or of a specified class of transitional corporations (as the case may be);

are exempted from a provision of the new Act, or of this Schedule, specified in the Registrar's determination.

Note: For the criteria for making determinations under this item, see item 111.

- (2) The determination may:
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The CATSI Registrar may, in writing, revoke, vary or suspend the determination.
- (4) Notice of the making, revocation, variation or suspension of a determination in relation to a specified class of transitional corporations, or the directors of a specified class of transitional corporations, must be published in the *Gazette*.
- (5) A determination under subitem (1) in relation to:
- (a) a specified class of transitional corporations; or
  - (b) the directors of a specified class of transitional corporations;
- is a legislative instrument.
- (6) A determination under subitem (1) in relation to:
- (a) a specified transitional corporation; or
  - (b) the directors of a specified transitional corporation;
- is not a legislative instrument.

### **111 Criteria for determinations**

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- (1) In making a determination under item 108 or 110, the CATSI Registrar must be satisfied that the requirements of the relevant provision would:
- (a) be inappropriate in the circumstances; or
  - (b) impose unreasonable burdens.

*Unreasonable burden*

- (2) In deciding for the purposes of subitem (1) if the relevant provision imposes an unreasonable burden on the transitional corporation or corporations, the Registrar is to have regard to:
- (a) the expected costs of complying with the obligations; and
  - (b) the expected benefits of having the corporation or corporations comply with the obligations; and
  - (c) any practical difficulties that the corporation or corporations face in complying effectively with the obligations; and
  - (d) any other matters that the Registrar considers relevant.

## **Division 2—The Registrar**

### **112 Appointment of Registrar**

- (1) The person who, immediately before commencement held office as the ACA Registrar is taken, at commencement, to have been appointed as the CATSI Registrar under subsection 653-1(2) of the new Act.
- (2) The period for which the person is taken to have been appointed as CATSI Registrar under subitem (1):
- (a) starts at commencement; and
  - (b) ends at the end of the period specified in the person's instrument of appointment as the ACA Registrar.

### **113 References to ACA Registrar in documents**

- (1) This item applies to an instrument if it:
- (a) was in force immediately before commencement; and
  - (b) is an instrument covered by one or more of the following subparagraphs:
    - (i) an instrument that was made by the ACA Registrar;
    - (ii) an instrument to which the ACA Registrar was a party;
    - (iii) an instrument that was given to, or in favour of, the ACA Registrar;
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- (iv) an instrument under which any right or liability accrues or may accrue to the ACA Registrar;
  - (v) any other instrument in which a reference is made to the ACA Registrar.
- (2) An instrument to which this item applies continues to have effect from commencement as if a reference in the instrument to the ACA Registrar were a reference to the CATSI Registrar.
  - (3) The Minister may, by writing, determine that subitem (2) does not apply in relation to a specified reference. A determination under this subitem has effect accordingly.
  - (4) The regulations may provide that an instrument containing a reference specified in a determination under subitem (3) has effect from the commencement time as if the reference were a reference to a specified person or body other than the CATSI Registrar.
  - (5) A determination under subitem (3) is not a legislative instrument.
  - (6) For the purposes of this item, an *instrument*:
    - (a) includes, but is not limited to, a regulation, declaration, determination, direction, licence, application or standard; but
    - (b) does not include an Act.

#### **114 Substitution of CATSI Registrar as a party to pending proceedings**

If any proceedings to which the ACA Registrar was a party were pending in any court or tribunal immediately before commencement, the CATSI Registrar is substituted for the ACA Registrar, from commencement, as a party to the proceedings.

### **Division 3—Other administrative matters**

#### **115 Compensation for acquisition of property**

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of

competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this item:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## **116 Regulations**

(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Schedule to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

(2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- (a) the amendments or repeals made by this Act; or
- (b) the enactment of this Act or the new Act; or
- (c) the application of provisions of this Schedule or of the new Act (including modifying the application of those provisions) to transitional corporations; or
- (d) the application of other laws of the Commonwealth (including modifying the application of those laws) to transitional corporations.

(3) Regulations made for the purposes of paragraph (2)(c) or (d) must not:

- (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
- (b) widen, or have the effect of widening, the scope of any offence.



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*[Minister's second reading speech made in—  
House of Representatives on 14 September 2006  
Senate on 16 October 2006]*

(136/06)