



Submission – Exposure draft of CATSI Act amendment bill
Broome Regional Aboriginal Medical Service (Aboriginal Corporation) (ICN 012)
6 August 2021



Background

1. We act for Broome Regional Aboriginal Medical Service (Aboriginal Corporation) (ICN 012) (**BRAMS**), an Aboriginal community controlled health care service that delivers holistic, comprehensive, and culturally appropriate health care to the community which controls it. BRAMS is a large Aboriginal corporation with a relatively small membership base (approximately 40 members).
2. We have been instructed by BRAMS to provide formal submissions to the National Indigenous Australians Agency in respect of the amendments proposed to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**CATSI Act**) in response to the CATSI Act Review Final Report (**Exposure Draft**).
3. We set out below BRAMS' feedback in respect of various proposed amendments. For ease of reference, each submission identifies the recommendation number as set out in the CATSI Act Review Final Report and the relevant items in the Exposure Draft which seek to address the Recommendation.

Virtual general meetings

Recommendation 27, Exposure Draft items 101, 103, 104 and 105

4. BRAMS acknowledges that the proposed amendment allows members to meet more frequently and for more members to participate in meetings. However, BRAMS wishes to draw attention to some challenges associated with holding general meetings in this manner.
5. Corporations will require support and guidance from the Office of the Registrar of Indigenous Corporations (**ORIC**) as to how they can feasibly and appropriately maintain confidentiality of business discussed during a meeting, and ensure the privacy of persons who present content at a meeting. By holding a meeting without a physical location, the corporation will have no control over who is able to listen to the meeting, nor prevent attendees from recording a meeting.
6. Virtual meetings also present governance compliance challenges. For example, it is difficult to accurately prepare formal minutes of members meetings that are virtual only. It is also difficult to manage and monitor attendance, quorum and voting where multiple members are attending via one device (e.g. an elderly mother is sitting alongside her daughter who is the member "logged on" as attending, even though both are members). This can be confusing for members and the corporation staff.
7. BRAMS also has concerns as to how corporations can adequately manage members' participation and conduct during a virtual general meeting. BRAMS is conscious of its obligation to ensure that members have the opportunity to ask questions about, or



make comments on, the management of a corporation. BRAMS is wanting to ensure that this can be appropriately balanced with the need to protect members and participants from defamatory, discriminatory and derogatory language. It is quite common for a person's online conduct to fall well below a standard that would be accepted during an "in person" forum. BRAMS therefore requests that ORIC provide corporations with clear guidance on the available steps a corporation can take to manage conduct in this environment.

Inclusion of replaceable rules in rule book

Recommendation 30, Exposure Draft item 125

8. BRAMS is supportive of providing clear guidance on what rules apply to a corporation, particularly those that are subject to some, or all, of the replaceable rules.
9. However, BRAMS submits that requiring a corporation to identify which replaceable rules apply to the corporation is an unnecessary burden. Section 57-5 of the CATSI Act clearly sets out the internal governance rules that are contained in the CATSI Act and which of those are replaceable rules. As all of the replaceable rules, except to the extent modified by the rule book, apply to all corporations by virtue of section 60-1 of the CATSI Act, it seems cumbersome and unnecessary to further set out which rules apply.
10. In addition, this provision will place an additional burden on each corporation to amend its rule book to comply with this provision, not just when the Exposure Draft becomes law, but each time that a replaceable rule is added to the CATSI Act.
11. BRAMS requests that ORIC considers the manner in which this requirement is implemented and enforced, including:
 - (a) the transitional arrangements for complying with this provision (i.e. will there be a sufficient timeframe by which each corporation must comply with this provision); and
 - (b) the default position where a rule book is non-compliant, and the consequences of non-compliance (i.e. where a corporation's rule book doesn't identify the relevant replaceable rules), noting that non-compliance may arise where members fail to pass the necessary resolution (notwithstanding that the required amendment was presented to members for approval within the required timeframe).
12. BRAMS suggests that alternative mechanisms be explored to address this recommendation. For example, a corporation could be required to identify those replaceable rules that apply to the corporation at the general meeting at which the amendments are passed, and as part of the notification requirements in section 69-20 of the CATSI Act. This form may then be annexed to the rule book by a delegate of the Registrar once the amendments are approved.

**Remuneration reporting**

Recommendation 33, Exposure Draft items 148 – 158

13. BRAMS is deeply concerned with the proposal that the remuneration of key management personnel be disclosed to members and the Registrar in a manner that may result in the information being made public.
14. BRAMS appreciates that a level of transparency regarding executive remuneration may increase accountability. However, having regard to the highly sensitive nature of remuneration, there are issues in the proposed means of implementing this recommendation, which present significant challenges to corporations.
15. The Exposure Draft provides limited information in respect of what form a remuneration report may take, or the information that must be disclosed. Therefore, consideration needs to be given to the following issues:
 - (a) a corporation's obligations to its employees under employment, workplace and privacy legislative regimes, particularly in respect of the disclosure of information;
 - (b) the small size of the communities in which corporations may operate. Public disclosure of a person's remuneration (or an estimate) may create feelings of ill-will, and community/family pressures. This can be very damaging for the good functioning of a corporation, and detract from the corporation's mission; and
 - (c) the level of specificity that may be required in the disclosure. Even if the information is de-identified, or grouped together, in a smaller corporation this information can still be easily identified.
16. BRAMS is further concerned that an obligation to disclose the remuneration of key management personnel in a manner that is readily identifiable may act as a disincentive for members of the relevant community to actively seek employment with the corporation. This is highly problematic for an Aboriginal community controlled organisation (particularly in the Aboriginal health and medical sector). This could be anticipated to negatively impact on empowerment and self-determination outcomes.

Remuneration benchmarking

Recommendation 35

17. BRAMS is very supportive of this recommendation and the proposal to address it through the regulations. BRAMS submits that the regulations should require any information provided by a corporation be treated by ORIC as highly confidential, with a preference that the information be publicly presented by ORIC in a de-identified manner.
18. It is felt that this approach will provide transparency, flexibility and accountability whilst not imposing a significant compliance burden on corporations.



Appointment of independent directors

Recommendation 40, Exposure Draft items 174 – 177

19. BRAMS is concerned by the proposal to include a replaceable rule that permits a board of a corporation to appoint independent directors.
20. It is acknowledged that this rule can be varied or displaced through the rule book. However, there will likely be corporations that are unable to take this step. The proposed replaceable rule therefore presents a wide range of challenges. By way of example, this rule:
 - (a) undermines the fundamental governance principle that empowers members to appoint directors to manage the affairs of their corporation;
 - (b) reduces the members' right to appoint individuals to manage the affairs of the corporation;
 - (c) establishes a lower threshold for the appointment of independent directors than member directors (i.e. a small number of directors are able to appoint an independent director, in contrast with the number of members required to appoint a member director);
 - (d) automatically applies to corporations that have not expressly excluded the operation of all replaceable rules;
 - (e) places a burden on corporations to amend their rule book to expressly exclude the operation of the provision;
 - (f) leaves uncertainty as to whether an existing rule regarding eligibility to be appointed as a director is sufficient to displace the proposed replaceable rule (e.g. an existing rule requiring all directors to be members); and
 - (g) gives a perception that the CATSI Act undermines self determination outcomes, demonstrates a lack of confidence in the capabilities of the sector and appears to be paternalistic.
21. These are critical issues that speak to core governance principles of a corporation. Imposing such a fundamental change on corporations should be carefully considered and worked through to ensure that corporations are supported to adopt good governance models that empower and encourage corporations to pursue self determination.