

21 September 2020

National Indigenous Australians Agency

By email: [CATSIActReview@niaa.gov.au](mailto:CATSIActReview@niaa.gov.au)

Dear Sir or Madam,

## CATSI Act Review – Phase 2

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback on The National Indigenous Australians Agency's (NIAA) draft report on the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) Review.

Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand (CA ANZ).

### Key Points:

- We encourage NIAA to consider, where possible, alignment with existing legislation and frameworks such as the *Corporations Act 2001* to promote consistency and remove any ambiguity when stakeholders deal with the CATSI Act.
- We support the re-naming of the special administration (SA) process and suggest any alternatives focus on the positive objective of the process, that is to return the corporation back to directors and members.
- Increasing awareness and education by providing resources and easily accessible information in areas such as Governance may encourage pro-active engagement from directors and members of CATSI corporations.

Should you have any questions about the matters discussed above or wish to discuss them further, please contact Karen McWilliams via email at [karen.mcwilliams@charteredaccountantsanz.com](mailto:karen.mcwilliams@charteredaccountantsanz.com) or phone (612) 8078 5451.

Yours sincerely

**Simon Grant FCA**  
Group Executive  
Advocacy & Professional Standing

**Karen McWilliams FCA**  
Business Reform Leader  
Advocacy & Professional Standing

# Appendix A

## Accounting standards

We agree that it is important to remove the ambiguity contained in CATSI Regulation 23 regarding compliance with accounting standards. However, in doing so, we would urge consideration of the AASB's current project that is reforming Australia's Financial Reporting Framework. This project aims to remove the use of the "reporting entity concept" and replace, where appropriate, 'special purpose' financial reports with a series of tiered reporting requirements for both for-profit and non-for-profit sectors.

We therefore recommend that NIAA consult with the AASB over the timing and specific wording of its proposed amendments to Regulation 23. This will avoid a situation where disproportionate reporting requirements are imposed on small and medium sized entities. The AASB's project has so far focused on larger for-profit and not for profit entities, introducing a second tier of general purpose reporting that replaces their special purpose reports. Corporate entities impacted by these reforms have revenue in excess of \$50million, assets of \$25million and more than 100 employees while those below can continue to produce special purpose reports. The next phase of this project, which is currently underway, is focusing on smaller not for profits and is expected to introduce a third and fourth tier in order to ensure that their reporting requirements are appropriately based on the needs of their users.

We recently published a fact sheet that discusses the current AASB financial reporting framework reform project and how it is impacting the use of special purpose reports, which NIAA may find useful [AASB reforms for 'for profit' entities introduced from June 2022 by AASB 2020-2](#). We would also be available to discuss this further and help facilitate coordination.

## Auditor provisions

The current requirements under the [Corporation Act 2001](#) (Corps Act) and [ASIC](#) would provide useful guidance to entities appointing replacement auditors where a casual vacancy has arisen. We suggest NIAA considers alignment to existing requirements and guidance that is available.

We consider the proposal under section 6.20, to align the CATSI Act with the Corporations Act regarding qualified privilege in relation to specific actions, to be reasonable.

## Special Administration – title of special administration

We support an appropriate alternative name for the SA process; however, issues may arise with any name used to outline the process. We suggest that a name change should take into account the aim of the SA process, which is to return the corporation back to directors and members. We also suggest NIAA could reach out to those directors and organisations that have been through the SA process to seek their feedback on an appropriate name change.

## Appointing special administrators – 'show cause' process

We suggest the 'show cause' process should be reviewed with an aim to be written, formatted and aligned with the special resolutions process as defined in the *Corporations Act 2001*.

## Grounds for appointment

We support the Registrar's use of modern electronic communication platforms, including ORIC's website to provide public notice when a special administrator is appointed. This method of communication would be faster and a cost effective medium of communication not only for public notice, but for the Registrar's general communication and outreach.

## Keeping contracts going during special administration

## Appendix A

As noted in the draft report, the aim of a SA is to restore the corporation to good health and return it to the control of members. We support applying a similar provision to that under the *Corporations Act 2001*, where contracts of insolvent companies could not be bought to an end just because the company went into receivership or voluntary administration, as this provision would support the objective of the SA process.

### Rebuttal presumptions of insolvency

Section 9.34 of the draft report seeks views on introducing a presumption of insolvency where a corporation has failed to keep adequate financial records. We note that in the draft report, section 9.33 proposes:

*A CATSI corporation should be presumed to insolvent where an authorized officer appointed under the ATSI Act has reported to the Registrar, or a special administrator forms the opinion, that:*

- *The corporation has failed to keep adequate written financial records (with no time period specified); or*
- *The corporation has failed to keep adequate financial records for a period of seven years.*

We suggest NIAA considers rewording section 9.33 to bring the two points in line with section 588E(4) of the Corps Act.:

- The corporation has failed to keep adequate financial records (with no time period specified);
- The corporation has failed to *retain* adequate financial records for a period of seven years

### Registrar to seek leave of the court

We support the proposal to remove the need for the Registrar to seek leave of the court to wind up the corporation.

### Voluntary deregistration

The proposal under section 9.40 appears reasonable and could also provide the opportunity for the Registrar to administratively update the current register.

We suggest that for any voluntary deregistration (sought out by either special resolution or by the Registrar) that certain grounds still need to be met (before deregistration occurs) such as ensuring the corporation is indeed dormant and that there are no outstanding creditors or legal proceedings.

### Awareness and continued education

We suggest that the areas of focus on the NIAA website could be expanded to outline governance requirements for Aboriginal and Torres Strait Islander corporations registered under the CATSI Act. The inclusion of publicly assessable resources and information may encourage directors and members of CATSI corporations to proactively strengthen current governance structures through education as well as keeping them informed of latest developments and risks that should be considered.

# Appendix B

## About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.