



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

www.naccho.org.au

Review of the CATSI Act – Phase 2 Consultation

Submission

October 2020

About NACCHO

NACCHO is the national peak body representing 143 Aboriginal Community Controlled Health Organisations (ACCHOs) Australia wide on Aboriginal and Torres Strait Islander health and wellbeing issues. NACCHO's work is focused on liaising with governments, its membership, and other organisations on health and wellbeing policy and planning issues and advocacy relating to health service delivery, health information, research, public health, health financing and health programs. Our members provide about three million episodes of care per year for about 350,000 people across Australia, including about one million episodes of care in very remote regions.

Sector Support Organisations, also known as affiliates, are State based and represent ACCHOs offering a wide range of support services and Aboriginal and Torres Strait Islander health programs to their members including advocacy, governance and the delivery of state, territory and national primary health care policies.

ACCHOs range from large multi-functional services employing several medical practitioners and providing a wide range of services, to small services which rely on Aboriginal Health Workers/Practitioners and/or nurses to provide the bulk of primary health care services, often with a preventive, health education focus. Our 143 ACCHOs operate approximately 700 facilities, including about 450 clinics. ACCHOs and their facilities and clinics contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive holistic primary health care, and by integrating and coordinating care and services. Many provide home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support.

Collectively, we employ about 6,000 staff, 56 per cent of whom are Indigenous, making us the second largest employer of Aboriginal and Torres Strait Islander people in the country.

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Introduction

NACCHO acknowledges and appreciates the comprehensive consultation process being undertaken by the National Indigenous Australians Agency (NIAA) for the review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act). This submission is informed by valuable input provided by:

- Aboriginal Health & Medical Research Council of NSW (AH&MRC)
- Aboriginal Health Council of Western Australia (AHCWA)
- Aboriginal Health Council of South Australia (ACHSA)

The CATSI Act facilitates self-determination for Aboriginal and Torres Strait Islander corporations. It provides a vehicle to ensure corporations delivering services to Aboriginal and Torres Strait Islander people remain community-controlled. The CATSI Act is designed to reduce the inequalities faced by Aboriginal and Torres Strait Islander Australians and has an important role to play in closing the gap. Its intention aligns with the objectives of the National Agreement on Closing the Gap, launched on 30 July 2020.

Partnership, not consultation

While NACCHO appreciates the range of options NIAA has provided for consultation in reviewing the CATSI Act, we request that the process goes further, and the legislation is reviewed in partnership with relevant Aboriginal and Torres Strait Islander leadership. This is what is envisaged in the National Agreement on Closing the Gap which states that it is a “commitment from all Parties to set out a future where policy making that impacts on the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership¹.” Phase two consultation on the review has included virtual consultations, a submission process, and a survey on each chapter, all of which has been dependent on user engagement. A more effective approach to gaining feedback from Aboriginal and Torres Strait Islander corporations which use the CATSI Act would be for the Department to actively seek feedback directly from them. This will enable corporations to provide input to potential changes in the CATSI Act with a view to ensuring any changes have positive practical implications for Aboriginal and Torres Strait Islander-run corporations.

NACCHO proposes that a Joint Governance Review Group is established urgently, made up of leaders in the key community-controlled sectors that use the CATSI Act and senior public servants in NIAA which will provide a vehicle for partnership and shared decision making with respect to the CATSI Act review, including managing the community engagement process and developing options for legislative reform. We suggest relevant peak bodies would include the National Native Title Council, National Aboriginal and Torres Strait Islander Legal Services, the National Aboriginal Community Controlled Health Organisation, First Nations Media Australia, all members of the Coalition of Peaks and representatives of other Aboriginal and Torres Strait Islander organisations that are engaged with the review of the CATSI Act. Forming a Joint Governance Review Group will also enable the NIAA to provide clarity on decisions made during the review process to this point, such as how it was determined that the CATSI Act remains relevant and necessary as a special measure.

If this is not done, there is a strong risk that a second Bill will be brought into the Parliament which does not have the support of key Aboriginal and Torres Strait Islander organisations, is not

¹ *National Agreement on Closing the Gap*, July 2020, p. 2, paragraph #4.

consistent with the CATSI Act being a special measure and ultimately fails to secure cross-party support.

Revising the CATSI Act in partnership with Aboriginal and Torres Strait Islander leaders will signal the Government's commitment to embedding joint decision making as agreed to in the National Agreement on Closing the Gap. It is also an opportunity to continue to actively build the community-controlled sector, the second Priority Reform in the National Agreement, by making adjustments to the CATSI Act which improves governance, reduces unnecessary administration and streamlines compliance rules. If it is to be effective, the CATSI Act must be framed in a way that develops and strengthens structures to ensure the full involvement of Aboriginal and Torres Strait Islander people in shared decision making and embedding ownership, responsibility and expertise in the corporations which deliver services. Reforms to the CATSI Act must also address the governance and incorporation needs of Aboriginal and Torres Strait Islander people in a culturally safe and appropriate way.

Strengthening the CATSI Act

The practical implications of the CATSI Act are varied across corporations, and the review of the CATSI Act would be strengthened by direct conversations with leaders of Aboriginal and Torres Strait Islander corporations in urban, remote and regional settings. This should be able to be organised even if the COVID-19 restrictions prevent face to face meetings.

Corporations in remote and very remote areas account for 40% of all CATSI corporations². In remote Australia, Indigenous languages remain strong as does traditional law and custom. It is essential that traditional law and custom provisions be upheld in the review process and acknowledged in the revised CATSI Act. Direct consultation and decisions made in partnership with Aboriginal and Torres Strait Islander corporations – especially those in remote areas – will enable the Act to be adjusted to better pursue economic and community development opportunities.

The powers and functions of the Registrar should be altered to allow for targeted, minimalist interventions to address concerns before serious problems emerge. Such powers would be exercised only in circumstances where either the Board or Membership has made a request, or where the Office of the Registrar of Indigenous Corporations holds a reasonable belief that doing so is in the best interest of the Membership. This creates an opportunity to make adjustments and improvements to corporations as they are established and grow. Including a capacity building component in the functions of the Registrar will make it more likely that Aboriginal and Torres Strait Islander corporations achieve success.

NACCHO supports regular legislative review in accordance with other special measures but encourages an emphasis on carrying out reviews in partnership with relevant Aboriginal and Torres Strait Islander representative leadership. Appropriate governance is important to establish policies to guide the successful operation of Aboriginal and Torres Strait Islander corporations, including financial management, control and reporting. However, consideration of cultural, geographic, social and economic situations must inform how governance is carried out. For example, a remote corporation may have a highly transient membership base making contact difficult without recourse to posting notices on noticeboards in health services or outback stores. It is important that

² NIAA, *Objects of the CATSI Act fact sheet*, p. 3,
<https://www.niaa.gov.au/sites/default/files/publications/objects-of-catsi-act-factsheet.pdf>

governance structures in the CATSI Act are flexible enough to accommodate such situations without an unnecessary compliance burdens.

Improved Governance

NACCHO also supports improved accountability of corporations to members, and increased consideration of member needs and requirements in supporting the corporation. As we have conveyed in prior submissions³ we do not support small corporations being able to avoid holding Annual General Meetings (AGMs). Transparency and accountability to members is very important and we encourage any revisions to be targeted towards greater transparency around operations, remuneration and membership. Further, AGMs serve as a touch point for the communities the corporations serve and provide the best way for members to ask questions about their management and results.

We also support the notion that organisations should be able to determine the nature of the contact with their Members that is acceptable – in consultation with their Members. For example, this determination should be made at a general meeting by way of resolution and revised annually to ensure Members remain satisfied with the method and frequency of contact. NACCHO strongly supports the recommendation that personal information of members should be able to be redacted if requested. This provides a safety net for members who may be experiencing domestic violence or other exceptional circumstances.

NACCHO proposes the following suggestions also be considered regarding management of Membership:

- Reducing the time frame for cancelling memberships on the basis that members are non-contactable from two years to 12 months to facilitate up to date membership lists.
- Corporations must attempt to contact Members at least 4 times over the 12 month period with all attempts being 3 months apart, using a minimum of two contact methods to ensure all efforts are made with “uncontactable” Members before membership is cancelled.

Impact of COVID-19 on the CATSI Act

The COVID-19 pandemic and its response has posed significant challenges for Aboriginal and Torres Strait Islander corporations, making it difficult to hold face to face Annual General Meetings, and impacting governance and operations. The Registrar’s acknowledgement of this, and creation of a set of special rules to manage the impacts, has been appreciated⁴. We suggest that the innovative practices introduced by these special rules could be continued in the future to permanently improve governance of Aboriginal and Torres Strait Islander corporations. NACCHO supports the continuance of rules which will allow a corporation to postpone or cancel a meeting after its been called, more easily pass resolutions without meeting, meet virtually⁵, and allow for virtual participation in physical meetings.

³ January 2019 NACCHO Submission to the Inquiry by Senate Finance and Public Administration Legislation Committee into the Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018

⁴ Office of the Registrar of Indigenous Corporations, *Special rules for during the pandemic*, <https://www.oric.gov.au/covid-19/special-rules-during-pandemic>

⁵ Office of the Registrar of Indigenous Corporations, *Special rules for during the pandemic*, <https://www.oric.gov.au/covid-19/special-rules-during-pandemic>

Conclusion

NACCHO supports the NIAA's initiative in aiming to bring the CATSI Act in line with other Commonwealth legislation with regular reviews and improved governance. However, we would also like to see a reduction in the administrative and compliance burden for corporations and an increased consideration of cultural traditions and safety in the operations of the CATSI Act.

With the signing of the National Agreement on Closing the Gap on 30 July 2020, NACCHO strongly considers that the CATSI Act review is a good opportunity for the Australian Government to begin signalling its commitment to practical implementation of the Agreement. We suggest NIAA take this into consideration as they progress through the CATSI Act review. This will need to include consideration of how the Office of the Registrar of Indigenous Corporations can align with the four Priority Reforms in the National Agreement.