**Opening Statement from Wathaurong Aboriginal Co-Operative**

**Future-proofing the right of Aboriginal Community Controlled Organisations and Health Services to regulatory frameworks and tools that are fit-for-purpose and enable self-determination**

Wathaurong Aboriginal Co-Operative are submitting our position to this Review to future-proof and protect the hard-won right to self-determination of Aboriginal communities, Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Services, including the ability to choose which regulatory framework we operate under in line with all other mainstream organisations. The *CATSI Act Review Draft Report* states that “many Indigenous communities depend on CATSI corporations to deliver essential services, including land holding, housing, health, education, employment and native title services.” Operating under the Corporations Act, WAC has a 40-year history as a corporation with high standards of corporate governance and financial management. WAC and many successful and sustainable Indigenous organisations continue to choose to register under the Corporations Act, as a fit-for-purpose and self-determining regulatory framework and regulatory tools to form and manage their community-controlled corporations.

Wendy Brabham, Wathaurong Aboriginal Co-Operative Board Member (September 2020) respectfully “*asks government to answer three key questions in relation to the CATSI Act Review:*

1. *When are we as Aboriginal and Torres Strait Islander people FREE to determine our own economic develop and operations of Aboriginal Organisations?*
2. *When are we as Aboriginal and Torres Strait Islander people seen to have the opportunity to participate in legislative development or changes as part of LAW Reform so that we are FREE?*
3. *When are we as Aboriginal and Torres Strait Islander people able to LEAD with government transformative LAW changes that embrace both Western and Aboriginal societies?”*

Table 1: Summary of WAC recommendations for the CATSI Act Review to future-proof the self-determination of ACCO/ACCHS

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| **Summary of WAC Submission Recommendations** | |
| **1. The CATSI Act Review process** | 1. ***An independent body*** to be appointed to report and make recommendations based on the submissions and consultations of this 2020 CATSI Review, thus ensuring transparency for the many Indigenous organisations and communities impacted by the legislation and associated policy implementation. |
| 2. A highly publicised and widely disseminated ***extension of the consultation process***to include all impacted organisations now and in the future, led by an independent body with transparent representation of the advantages and disadvantages of the Corporations and CATSI Acts for ACCO/ACCHS. |
| **2. Risks of the CATSI Act and associated policies to self-determination, economic development and equitable access to funding of ACCO/ACCHS** | 3. CATSI Act needs to be reviewed through the lenses of the**Closing the Gap *framework priority reforms and targets***, as well as ***State and Territory* Treaty *and Self-Determination frameworks*** using the strengths-based framing of ACCO/ACCHS |
| 4. WAC recommends that under the CATSI Act, the ***ORIC Registrar’s powers*** be equivalent to, and not extended beyond, those of ASIC as the regulatory body of the Corporations Act. |
| 5. WAC recommends the design of ***transparent accountability measures*** for regulating ORIC intervention, contracted auditors, appeals processes, deregistration by an independent body in close consultation with a diversity of ACCO/ACCHS |
| 6. Supporting ***Indigenous organisations to choose*** whether to register under the Corporations or CATSI Acts, as best serves the interest of our communities to self-determine and develop economically |
| 7. ***Equitable access to all Indigenous-specific funding*** and other opportunities while registered under the Corporations Act. |
| 8. ***The Indigeneity requirement*** of Indigenous-specific funding can be achieved by organisations registered under the ***Corporations Act via their Constitution and Advisory Committee*s.** |
| 9. All organisations whether registered under the Corporations or CATSI Act, have **the ability to issue shares and debentures** to its members and to support current and future economic development. |
| **3. Concerns the CATSI Act’s ability to place Indigenous corporations on a level playing field with organisations incorporated under the Corporation Act; and therefore, the CATSI Act’s lack of validity as a special measure of the *Racial Discrimination Act*** | 10. The ***validity of the CATSI Act as a special measure*** under the *Racial Discrimination Act* needs to be reviewed by an independent body. |
| 11. CATSI Act powers of the Registrar; and the IAS Guidelines incorporation requirement need to be ***reviewed by an independent body using the lens of the* Racial Discrimination Act*.*** |

**Wathaurong Aboriginal Co-Operative Submission to CATSI Act Review**

**Introduction to the Submission**

This submission details Wathaurong Aboriginal Co-Operative's (WAC) feedback on the *CATSI Act Review Draft Report* by the NIAA. WAC presents this submission from the perspective of a Victorian Aboriginal Community Controlled organisation that is currently registered under the Corporations Act and not under the CATSI Act.

WAC is an Aboriginal Community Controlled Organisation (ACCO) and Health Organisation (ACCHS) with a 40-year history of serving our urban and regional community, delivering culturally safe, responsive and meaningful services for 2500 Aboriginal people in our region. Future forecasts show that our community will grow by 36% over the next five years, and it is expected there will be a substantial growth in our annual funding requirements.

We are currently funded by the Commonwealth and Victorian Governments to provide community led, strengths-based impactful Closing the Gap services to Aboriginal families living or in transit in Wathaurong's traditional boundaries. We are the preferred culturally safe provider of Health, Mental Health, Early Childhood, Family and Community, Youth, Justice, Housing, Aged and Disability care, and cultural services; contribute to improvements in community wellbeing; and support the ability of the community to control its own affairs and achieve self-determination.

As a highly experienced corporation and a preferred, culturally safe provider for our Community, WAC’s submission to the CATSI Act Review focuses on recommendations under the three headings of

1. The CATSI Act Review process
2. The risks and ramifications of the CATSI Act and associated policies to the self-determination, economic development and equitable future funding opportunities of ACCO/ACCHS
3. Concerns the CATSI Act’s ability to place Indigenous corporations on a level playing field with organisations incorporated under the Corporation Act, and therefore the CATSI Act’s lack of validity as a special measure of the *Racial Discrimination Act*
4. **The CATSI Act Review process should be independent, transparent and future focused in its consultations with organisations that may be impacted by the CATSI Act in the future**

**Conflict of Interest:** The CATSI Act Review Steering Committee membership (*Draft Report* 1.32) of NIAA, ORIC and Commonwealth regulatory bodies presents a conflict of interest for ACCO/ACCHSs. Noting the consultation role of the Reference Group of key stakeholders to the Steering Committee, WAC feels this is an inadequate measure to counteract the conflict of interest of the Steering Committee and NIAA as the lead in this 2020 CATSI Act Review. Both the NIAA and ORIC will have legislated increased and centralised legislated powers proposed in the changes to the CATSI Act, inherently reducing the community control and self-determination of local ACCO/ACCHSs. This conflict of interest is demonstrated in the *CATSI Act Review Draft Report*, which underrepresents the disadvantages of the CATSI Act for ACCO/ACCHSs.

* **Recommendation 1:** WAC recommends an independent body to be appointed to report and make recommendations based on the submissions and consultations of this 2020 CATSI Review to ensure transparency for the many Indigenous organisations and communities impacted by the legislation and associated policy implementation.

**Inadequate timeframe for comprehensive consultation:** The proposed incorporations requirements for future NIAA funding under the *Indigenous Advancement Strategy* (IAS) *Guidelines*, makes this CATSI Act Review critically relevant to a broad range of Indigenous organisations beyond the reach of the proposed “s*takeholders include corporations registered under the CATSI Act, their members, common law holders and other interested parties.”* The ten-week timeframe of July to September 2020 for consultations and submissions on this complex issue is inadequate, particularly in the context of the increased workload and pressures of the COVID-19 pandemic on ACCO/ACCHSs.

* **Recommendation 2:** WAC recommends a highly publicised and widely disseminated extension of the consultation process to include all impacted organisations now and in the future, led by an independent body with transparent representation of the advantages and disadvantages of the Corporations and CATSI Acts for ACCO/ACCHS.

1. **Will the proposed CATSI Act changes benefit and enhance ACCO/ACCHS capacity for self-determination and empowerment; or will the changes impinge on self-determination?**

**Self-determination is a priority in Australia’s existing obligations to the *UN Declaration on the Rights of Indigenous Peoples*, the federal 2020 *Closing the Gap* framework and the *Aboriginal Victorians Act* 2018**

Australia is a signatory to the *United Nations Declaration on the Rights of Indigenous Peoples* in which the right to self-determination is enshrined. Self-determination is the transfer of power, control, decision-making and resources from the government and non-Aboriginal service sector to Aboriginal communities and their organisations. Self-determination can be asserted in the context of natural resource development, economic development, health care, justice, education and care and protection of children.

The ACCHO/ACCHS sector is community controlled and has its origins in Indigenous peoples’ right to self-determination. As defined by the *NACCHO Constitution* (Clause 1.3), “self-determination is a process which allows the local Aboriginal or Torres Strait Islander community to be involved in its affairs in accordance with whatever procedures or protocols are determined by the community (*NACCHO Constitution*, Clause 1.3). There is evidence that the community-controlled model is both effective and efficient of delivering health services to Indigenous people in comparison to mainstream health services. As community-controlled, culturally safe service providers, ACCHO/ACCHS’ make significant contributions to ‘closing the gap’ in Indigenous health and wellbeing outcomes (AIHW Report 2020: Indigenous Health and Wellbeing). *“Aboriginal Victorians, and Indigenous people around the world, have fought for the right to self-determination including the right to make decisions on matters that affect their lives and communities.”* Any legislation or policy that steps away from self-determination is not in the best interests of Indigenous people, communities or organisations; and undermines Australia’s commitment to international, federal and state commitments to the rights of Australia’s Indigenous peoples.

**2a) The CATSI Act’s extension of powers of the Registrar directly reduces community control and self-determination of ACCO/ACCHS currently incorporated under the Corporations Act; directly contradicting to contemporary federal and State commitments**

The proposed changes to the CATSI Act legislate the Registrar with potentially discriminatory and disempowering regulatory and enforcement powers, that will diminish the community control and self-determination of our communities’ organisations. The Corporations Act in contrast supports the accommodation of local traditions and circumstances of people in governing our organisations (see 2b of this submission for further exploration).

The *CATSI Act Review Draft Report* does not outline the details of how the ORIC Registrar’s or contracted auditors’ powers and appeals processes will be transparently regulated for accountability to Indigenous communities. The provision of unprecedented powers to the ORIC Registrar in the proposed changes to the CATSI Act directly contradicts this commitment to self-determination by the Australian and Victorian Governments.

* The 2020 *Closing the Gap Framework* names Reform Priority 2 as “Growing of Aboriginal and Torres Strait Islander Community Controlled organisations,” as part of the co-designed framework focused on “moving toward a strengths-based agenda - one that partners with Indigenous people, enables more community control and embeds shared decision-making (Closing the Gap Report, 2020)”
* Likewise, this represents a backwards step for Victoria’s commitment to self-determination and empowerment as guiding principles for Aboriginal Victorians as enshrined under the *Aboriginal Victorians Act 2018* (Treaty Act) and the *Victorian Self-Determination Reform Framework*, part for the *Victorian Aboriginal Affairs Framework 2018-2023*.

The CATSI Acts legislation as a special measure with ‘unique provisions’ to impose the extensive Registrar power is founded in a deficit discourse about Indigenous people and organisations.These powers infer that Indigenous people cannot govern themselves, be fiscally responsible, and questions the capacity of Indigenous people to be community led. The ongoing paternalistic, deficit framing of our communities and organisations contributes significantly to the ongoing health and wellbeing impacts of ongoing colonisation of our nations. The potentially racially discriminatory nature of CATSI Act as a special measure is explored in Section 3a of this submission.

* **Recommendation 3:** CATSI Act needs to be reviewed through the lenses of the Closing the Gap framework priority reforms and targets, as well as State and Territory Treaty and Self Determination frameworks using the strengths-based framing of ACCO/ACCHS
* **Recommendation 4:** WAC recommends that under the CATSI Act, the ORIC Registrar’s powers be equivalent to, and not extended beyond, those of ASIC as the regulatory body of the Corporations Act.
* **Recommendation 5:** WAC recommends the design of transparent accountability measures for regulating ORIC intervention, contracted auditors, appeals processes, deregistration by an independent body in close consultation with a diversity of ACCO/ACCHS.

**2b) ACCHS/ACCOs should have the choice of registering under the Corporations or CATSI Acts as they determine will best enable their community’s self-determination, economic and community development opportunities**

As outlined inthe comparison *Table 2* below, the Corporations Act that WAC is currently registered with, holds the adequate regulatory measures while supporting the self-determination and community control of our and many other successful Aboriginal community-controlled organisations. Our peak body, National Aboriginal Community Controlled Health Organisation (NACCHO) and its members are incorporated under the Corporations Act. Affiliates of NACCHO have the choice of being incorporated under the Corporations Act; the CATSI Act; State or Territory co-operatives legislation; or State or Territory incorporated associations legislation.

**Self-determined governance structure via our Constitution under the Corporations Act**

WAC and many other ACCO/ACCHS registered under the Corporations Act have established successful governance structures and organisational Constitutions that comply with regulations and provide self-determined rules. Our organisations have successful managed our exponential growth with these governance structures. Constitutional rules already support our ACCO/ACCHS in regard to decision-making and monitoring role of Boards of Management, accountability to members and community via annual reports and annual general meetings, management of membership, policies and standards for salaries set by the Primary Health Networks, Director fees and so forth.

The self-determined nature of these rules means that WAC and other ACCO/ACCHS can accommodate and self-determine local Indigenous customs, beliefs, traditions and circumstances within our corporations’ governance arrangements, as aimed for with the CATSI Act (see *CATSI Review Draft Report 2.30*). By contrast, the CATSI Act places centralised regulations around organisations’ governance structures and extensive powers with the ORIC Registrar. The requirement of an independent Director for large organisations under the CATSI Act is a prime example of the paternalistic nature of regulated governance measures of the CATSI Act, in comparison to the Corporations Act.

**Self-determined economic participation and community access to their assets**

Incorporation under the CATSI Act would undermine WAC and other ACCO/ACCHS success in supporting *Closing the Gap Target 8:* *Strong economic participation and development of Aboriginal and Torres Strait Islander people and communities.* While incorporating under the Corporations Act gives organisations the ability to manage investment schemes and financial products or services, incorporating under the CATSI Act means that cannot provide financial services or be a trade union.

Likewise, Aboriginal community-controlled organisations currently registered under the Corporations Act can issue shares and debentures to its members. Aboriginal community-controlled organisations registered incorporated under the CATSI Act are not able to own or trade shares, debentures or other securities. This is in direct contradiction to economic development goals for our communities that have been committed to by the Australian Government (*Closing the Gap*) and highlights how the CATSI Act as a special measure is not in the best interests of Indigenous people. This further entrenches systemic racism, and intergenerational poverty and disadvantage in our communities.

**Self-determination should not be a barrier to equitable access to funding**

The NIAA’s *IAS Guidelines* requirement to incorporate under the CATSI Act, demonstrate the disadvantage and inequitable access to Indigenous-specific funding for ACCO/ACCHS who choose to register under the Corporations Act.The *CATSI Act Review Draft Report* states (2.36) that “organisations receiving grant funding of $500,000 or more in any single financial year under the administered by the NIAA are required to:

* incorporate under Commonwealth legislation—Indigenous organisations are required to incorporate under the CATSI Act and other organisations are required to incorporate under the Corporations Act;
* maintain these arrangements while they continue to receive funding

Although the IAS Guidelines requiring incorporation under CATSI, has an allowance of exemptions for organisations that are “well-governed, high performing and low risk,” this places power at the hands of the NIAA as a government body and displays a lack of trust for Indigenous-controlled organisations.

Incorporation under the CATSI Act is unnecessary to fulfill the Indigeneity requirement utilised by the NIAA to distribute Indigenous-specific program funding and can be achieved when registered under the Corporations Act via our Constitution, Advisory Committees and validated by our Indigenous National and State peak bodies. Under the CATSI Act, Indigeneity requirements are legislated by requiring a majority of Directors be Indigenous. The community rely on their organisations Constitutions, and not legislation, to understand their rights and responsibilities as members. It is unnecessary that Aboriginal community-controlled organisations registered under the Corporations Act be denied access to critical funds from the IAS This funding will be critical to ensure six national socio-economic targets in the [National Agreement on Closing the Gap](https://www.closingthegap.gov.au/node/26) can be met.

* **Recommendation 6:** WAC recommends supporting Indigenous organisations to self-determine whether to register under the Corporations or CATSI Act, as best serves the interest of our communities to self-determine and develop economically
* **Recommendation 7:** WAC recommends equitable access to all Indigenous-specific funding and other opportunities while registered under the Corporations Act.
* **Recommendation 8:** The Indigeneity requirement of Indigenous-specific funding can be achieved by organisations registered under the Corporations Act via their Constitution, Advisory Committees and Indigenous National and State Peak Bodies.
* **Recommendation 9:** WAC recommends that all organisations whether registered under the Corporations or CATSI Act, can issue shares and debentures to its members and to support current and future economic development.

1. **Do the proposed changes to the CATSI Act serve the best interests of, or racially discriminate against, Indigenous Peoples?**

**3a) The CATSI Act can be contested as a special measure of the Racial Discrimination Act, as it does not advantage Indigenous people or put CATSI incorporated organisations on an even playing field with companies incorporated under the Corporations Act**

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| The *Racial Discrimination (RD) Act* is the Australian enactment of the *International Convention on the Elimination of all forms of Racial Discrimination* (the Convention). Section 9 (1) of the *RD Act* outlaws racial discrimination, in the following terms:  *“It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."*  The human rights and the fundamental freedoms referred to above, include but are not limited to, any right of a kind referred to Article 5 of the Convention. They also include other human rights, such as those referred to in the *International Covenant on Civil and Political Right (ICCPR)* and the *UN Declaration of Human Rights* (UNDHR). |

The CATSI Act’s Article 1(4) states that it is a special measure for the purpose of the *Racial Discrimination (RD) Act 1975.* The Review of the ACA Act (2007) recommended that a new Act be established as a “*special measure to enable Indigenous people to enjoy on an equal basis with other Australians, the same legal facilities and attendant socio-economic benefits that incorporation could confer.”* The CATSI Act was enacted as this special measure, with the assertion that it provides positive discrimination, ‘affirmative action’ and is tailored to the specific needs of Indigenous people.

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| The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 1(4) of ICERD provides that special measures will be considered not to constitute racial discrimination stating that "special *measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken to have been achieved.”*  The definition of a ‘special measure’ has been tested in two significant cases as described here, first in *Gerhardy v Brown* (1985) 1159 CLR 70, 133 and more recently in *Maloney v R* (2013) 289 ALR 308. On the basis of these casesthe essential features of a special measure are:   1. *The measure rest on a finding that is reasonably open that there is a need for the protection of a racial or ethnic group or individuals in order to ensure the equal enjoyment or exercise of human rights and fundamental freedoms;* 2. *The sole purpose of the measure is to secure the adequate advancement of the relevant racial or ethnic group or individuals to ensure their equal enjoyment or exercise of human rights and fundamental freedoms; and* 3. *The measure is reasonably capable of being appropriate and adapted to that purpose, or alternatively is reasonably necessary to achieve that purpose.* |

The proposed extension of Registrar powers under the CASTI Act, do not advantage Indigenous people(as detailed in section 2a of this submission)**.** Identified in the *CATSI Act Review Draft Report* in the strength-based language of *“safeguards through the Registrar’s unique regulatory powers”* these unprecedented power to the Registrar (and the Minister) will restrict the freedoms, and community led decision making powers of ACCO/ACCHS. These powers are a direct contradiction to what constitutes a special measure specifically “*ensuring such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms*.As such, the CATSI Act should be reviewed to test its validity as a special measure, as it can be interpreted as racially discriminatory.”

The CATSI Act does not place CATSI corporations on an even playing field with companies incorporated under the Corporations Act. The *CATSI Act Review Draft Report* states that the “CATSI Act mirrors many requirements of the *Corporations Act 2001* (Corporations Act), while providing the flexibility and support needed to meet the unique cultural contexts of Aboriginal and Torres Strait Islander people.” In contrast, Table 2 below (based on information from ORIC’s website) outlines the reality of the significant differences between the two Acts.

If the CATSI Act has been formulated for the sole reason of redressing an identified disadvantage experienced by Indigenous Australians, it does not fulfil its purpose.

**3b) The CATSI Acts provides a vehicle for further racially discriminatory policies, such as the NIAA IAS Guidelines described in the *CATSI Act Review Draft Report***

As outlined in this submission above in section *2b) Self-determination should not be a barrier to equitable access to funding.* The incorporations requirement of the NIAA’s *IAS Guidelines* is likely to be argued as a special measure of the RD Act, as was done regarding the CATSI Act itself. NIAA’s IAS Guidelines requirement for organisations to incorporate under the CATSI Act may contravene the Racial Discrimination Act bylimiting members’

* *Right to freedom of association (right to operate freely and be protected from undue interference)*: States must allow members of associations to determine their statutes, structure and activities and make decision without State interference.
* *Right to equal protection of the law without discrimination*(protected by Article 26 of the *International Covenant on Civil and Political Rights):* This right prohibits discrimination in a field regulated and protected by public authorities and requires that government programs should not be discriminatory (an argument left open by a majority of the High Court in *Maloney v R* (2013) 289 ALR 308).

The ongoing social disadvantage of Indigenous communities is contributed to significantly by the systemic racism of legislation like the proposed CATSI Act, with the associated powers of the Registrar and which embed legislation that can be misused for backwards, paternalistic policies such as the NIAA’s *IAS Guidelines*.

In practice, while an ACCO/ACCHS choosing to register under the Corporations Act to support its self-determination and community control, it may be discriminated against and significantly disadvantaged in accessing Commonwealth funding opportunities.

* **Recommendation 10:** The validity of the CATSI Act as a special measure under the *Racial Discrimination Act* needs to be reviewed by an independent body.
* **Recommendation 11:** CATSI Act, powers of the Registrar; and the IAS Guidelines incorporation requirement need to be reviewed by an independent body using the lens of the *Racial Discrimination Act*

**Table 2: Implications of the Corporations and CATSI Act** (based on the information in the information provided in the *ORIC Factsheet: The CATSI Act and the Corporations Act – Some Differences* (Australian Government, accessed online 15/9/2020).

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|  | **Corporations Act** | **CATSI Act** | **Implications of the differences between the Corporations and CATSI Act for WAC ad other ACCO/ACCHS** |
| **Special measure** | Governs operations of companies | Special measure “for the benefit of Aboriginal and Torres Strait Islander people” | The CATSI Act is not of benefit to our community and arguably does not constitute a ‘special measure’ under the *RD Act due* to the negative impact on the self-determination and economic development opportunities for our organisations, communities and people. The requirements to incorporate under this Act to receive IAS funding demonstrates how the CATSI Act can be used to impinge on Aboriginal peoples and organisations’ rights to freedom of association, and to equal protection of the law without discrimination. |
| **Who is the regulator?** | ASIC Government body | ORIC independent body | ORIC’s Registrar is an independent statutory office holder appointed by the Minister for Indigenous Affairs under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The Registrar and Government are not therefore truly independent. |
| **Regulatory assistance** | Limited | Extensive: including appointing an examiner, appointing an administrator, change rule book, call meetings, and act for members | The proposed extension of Registrar powers contradicts the principles of self-determination committed to by the Australian and Victorian Governments; showcasing how the *CATSI Act* is not in the best interests of Indigenous people. The ongoing paternalistic, deficit framing of our communities contributes significantly to the ongoing health and wellbeing impacts of ongoing colonisation of our nations. These powers are potentially racially discriminatory and founded in a deficit discourse about the capacity of Indigenous people and organisations unfounded in the reality of the success of ACCO/ACCHS. |
| **Merits review** | No internal review required by ASIC prior to Administrative Appeals Tribunal | ORIC internal review required before access to Administrative Appeals Tribunal | The additional power of the Registrar further detracts from the power of ACCO/ACCHSs in relationship with ORIC |
| **Registration requirements** | Any group or organisation satisfying basic requirements | Registrar must be satisfied of ‘unique standards’ including requirements for members and directors; and ‘certain rules in its rule book.’ Largely voluntary but required for certain organisations (e.g. native title bodies) |
| **Shares and debentures** | Can issue shares and debentures to its members | Cannot own or trade shares, debentures or other securities; members can have rules for how profits are shared. | In direct contradiction to the *Closing the Gap* economic development targets that have been committed to by the Australian Government, this difference showcases how the CATSI Act is not in the best interests of Indigenous people. Such measures further entrench systemic racism, intergenerational poverty and disadvantage in our communities. |
| **Types of corporations** | Public or propriety companies | Small, medium or large |
| **Financial services** | Extensive provisions dealing with managed investment schemes and financial products or services | Cannot provide financial services or be a trade union |
| **Members and Directors** | Members: own the company. One minimum member, no age or race restrictions. May have to contribute to costs of winding up.  Directors: Any person can be a director. Public: Must have three directors and 1 secretary, living in Australia. | Members: own the corporation. Generally, 5x members minimum over 15 years, must be Aboriginal and Torres Strait Islander, not liable for debt. Corporation may have rules regarding membership.  Directors: Rule book describes that people who are not members may be Directors. Majority must be Aboriginal or Torres Strait Islander; be members of the corporation; not be employees of the corporation. Maximum of 12 (exemptions available). Secretary/contact person depending on size. | While it is stated that the corporation is owned by members under both Acts, the powers of the Registrar under the CATSI Act significantly reduces the members control over the organisation.  Centralised regulation and definitions of the CATSI Act are counter to the principle of self-determination.  The self-determined Constitution under the Corporations Act supports ACCO/ACCHS to accommodation traditional beliefs, customs and circumstances into their governance structure and rules. |
| **Internal governance rules** | Company can follow replaceable rules from Act or adopt their own Constitution | Must have a rule book with minimum requirements including dispute resolution process. May adopt, adapt or replace those in Act |
| **Reporting** | Report to ASIC according to public or private company status | Report to Registrar according to size and income | The financial categories in the proposed *CATSI Act Review Draft Report* do not reflect the diversity of ACCO/ACCHS organisations’ sizes. |
| **Native title** | N/A | | |
| **Fees** | Charge fees for lodging documentation | No fee charged | This advantage of no fees is not significant enough to justify the significant disadvantages described above between incorporating under the CATSI and Corporations Acts. |