

November 2021

***Evaluation of the Strengthening
Organisational Governance (SOG) Policy***

Final report

National Indigenous Australians Agency



**PwC's Indigenous
Consulting**



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Terminology used in this report

Indigenous organisation: For the purpose of this Evaluation, an Indigenous organisation is defined as Aboriginal and Torres Strait Islander corporations are under Section 29.5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

Section 29.5 states, an Aboriginal and Torres Strait Islander corporation meets the Indigeneity requirement if the corporation has the following required number or percentage of its members who are Aboriginal and Torres Strait Islander persons:

- in a corporation with five or more members, at least 51% of the members are Aboriginal or Torres Strait Islander people;
- in a corporation with fewer than five members but more than one member, all members, or all but one of the members are Aboriginal or Torres Strait Islander people; and
- in a corporation with only one member, that member is an Aboriginal or Torres Strait Islander person.

Subsection 246.5(1) of the CATSI Act also states, a majority of directors of an Indigenous corporation must be Aboriginal and Torres Strait Islander persons.

In-scope organisation: For the purposes of the Evaluation, an in-scope organisation is one that has either transferred its incorporation statute to become incorporated under Commonwealth legislation as a result of the SOG Policy or has successfully sought an exemption to remain incorporated under a State or Territory regulator or is the in process of doing so.

Executive summary

1.1 About Strengthening of Governance (SOG) Policy

The SOG Policy has applied since the inception of the Indigenous Advancement Strategy (IAS) in 2014. The stated objective of the SOG Policy is to mitigate against service loss or gaps, caused by the mismanagement of public funds or by organisational failure. The Policy aims to achieve this objective by mandating incorporation requirements on IAS funded organisations receiving a high value of funding (defined as over \$500,000 (excluding GST) in IAS funding in any single financial year noting that grants for capital works projects are not counted towards the funding threshold) as follows:

- Indigenous organisations must incorporate under the CATSI Act. This requirement reflects the high level of support available to these organisations through the Office of the Registrar of Indigenous Corporations (ORIC); and
- all other organisations must incorporate under the *Corporations Act 2001* (Corporations Act).

Exemptions to the Policy are automatically applied to Indigenous organisations already incorporated under the Corporations Act and for any organisations who are required to operate under specific legislation. Exemptions can be applied for where IAS funding represents a small proportion of total revenue or where entities are required to maintain incorporation under State/Territory legislation to comply with licensing or other funding requirements.

The SOG Policy is based on the assumption that organisations that are regulated by Commonwealth legislation are better governed, resulting in the delivery of high-quality services that improve outcomes for Indigenous Australians.

1.2 Evaluation objectives, strategy and scope

The NIAA engaged PwC's Indigenous Consulting (PIC) in February 2020 to undertake an evaluation of the SOG Policy (the Evaluation).

The purpose of the Evaluation was to assess to what extent the SOG Policy is achieving its stated objective to safeguard against service delivery and/or organisational failure. Specifically:

- the extent to which incorporation under Commonwealth legislation improves organisations' capacity for service delivery and mitigates the risk of service failure;
- the appropriateness of the parameters of the SOG Policy in determining which organisations are required to comply for achieving the objectives of mitigating against service loss or gaps; and
- the appropriateness of measures to support transition for organisations that are required to change their incorporation statute under the SOG Policy.

An Evaluation Strategy (including Evaluation domains, questions, approaches, policy logic and data collection methods) drafted by the NIAA and later refined collaboratively between PIC, the Evaluation Advisory Group (EAG) and NIAA, guided the Evaluation.

The Evaluation objectives were measured by way of six evaluation questions split under three evaluation domains - appropriateness, effectiveness and efficiency (Table 1). While the Evaluation focused on the experience of in-scope organisations (those required to transition their incorporation statute, granted an exemption or currently applying for an exemption) under the SOG Policy, it also investigated the potential unintended impacts on all IAS grant recipients of the Policy.

The Evaluation covered the period since the Policy was formally introduced in July 2014 until June 2021 and seeks to identify the short to medium-term outcomes of the SOG Policy. The NIAA intends to use the Evaluation findings to inform future directions of the SOG Policy.

Table 1: Evaluation domains and questions

Evaluation domains	Evaluation questions
<p>Appropriateness The extent to which the stated needs and objectives of the SOG Policy are being achieved.</p>	<p>Q1. How appropriate is the SOG Policy in addressing its identified need?</p> <p>Q2. To what extent does the SOG Policy contribute to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations?</p> <p>Q3. To what extent is the SOG Policy culturally appropriate, sensitive and responsive for Indigenous organisations?</p>
<p>Effectiveness The extent to which the intended outcomes of the SOG Policy are being achieved as well as the positive and negative changes produced by the activity, directly or indirectly, intended or unintended.</p>	<p>Q4. To what extent is the SOG Policy being implemented as intended?</p> <p>Q5. What unintended outcomes (positive and negative) were produced?</p>
<p>Efficiency The extent to which the inputs are delivering the stated outputs of the SOG Policy.</p>	<p>Q6. To what extent is the SOG Policy cost effective?</p>

A combination of quantitative and qualitative methods were used to gather evidence to undertake this Evaluation, including:

- **desktop review / literature scan:** this included Australian National Audit Office (ANAO) reviews, Joint Committee of Public Accounts and Audit reports; policy briefings to relevant Ministers, Senate Inquiry submissions; independent analyses (Australian Human Rights Commission), and good governance literature;
- **data analysis:** NIAA administrative and monitoring data;
- **online survey:** distributed (by the Agency) to 433 IAS grantees identified as receiving \$500,000 (GST exclusive) or more of IAS funding;
- **regulator consultations:** phone interviews and or written submissions from ORIC, Australian Securities and Investments Commission (ASIC), Australian Indigenous Governance Institute (AIGI) and State or Territory regulators in New South Wales (NSW Fair Trading) and the Northern Territory (Licensing NT);
- **NIAA consultations:** video conference interviews with three NIAA staff focus groups – regional offices, program areas, and policy staff (organised by the Agency); and
- **SOG impacted organisation consultations:** video conference interviews with four IAS funded organisations nationally, two of whom have transferred incorporation to Commonwealth legislation and two that have had exemptions granted.

Limitations

While best efforts were made to solicit feedback and evidence to answer the Evaluation questions, a number of limitations exist, including:

- the nature of assessing the strengthening of organisational governance makes it challenging to attribute outcomes specifically to the SOG Policy;
- varied levels of understanding of the SOG Policy among consulted stakeholders;
- the small number of organisations that the SOG Policy has actually affected; and

- significant time has elapsed since the early activities of the SOG Policy in and prior to 2014, which limited stakeholder input and commentary.

1.3 The SOG Policy context

In 2008, the Council of Australian Governments committed to investing in the service delivery capacity of Indigenous organisations under the National Indigenous Reform Agreement (NIRA). Then in 2012, the ANAO undertook an audit on the Capacity Development for Indigenous Service Delivery assessing how a number of key federal government departments were seeking to reduce service delivery risks posed by capacity constraints in Indigenous organisations. The ANAO audit highlighted, amongst other things, a lack of an overarching strategy for implementing a capacity building approach.

In May 2013, a Joint Committee of Public Accounts and Audit review of the 2012 ANAO Capacity Development for Indigenous Service Delivery audit endorsed the ANAO's findings. The Committee described the response of Commonwealth departments to capacity development as "relatively patchy and varied in their focus". In addition, the Committee emphasised the need for a more positive risk culture within government and an increased focus on the external constraints faced by Indigenous organisations, including improving the enabling environment within which they operate.

In September 2013, responsibility for most Commonwealth Indigenous-specific policy and programs, as well as some mainstream programs that predominantly service Indigenous Australians, was transferred into the Department of the Prime Minister and Cabinet (DPM&C). At the time, the Minister of Indigenous Affairs called for "all Indigenous organisations that receive federal funding (to be) incorporated under the CATSI Act to ensure they can access the support services provided by the Registrar to improve their performance and business standards".

In mid-2014, DPM&C responded to the recommendations of the 2012 ANAO audit and the Minister's statement by developing and introducing the SOG Policy. As noted above, the SOG Policy applies to all organisations that receive funding under the IAS. When it was introduced in 2014, the IAS had the effect of consolidating the many different Indigenous policies and programs that were delivered by the Australian Government into five overarching programs with the intention of making it easier for organisations delivering local services.

1.4 In-scope organisations

Between 2014 and June 2021, 6,398 organisations have been funded through IAS grants to deliver programs and activities throughout Australia. The aggregate amount of funding during this period was approximately \$11.6 billion.

The SOG Policy, although applying to all IAS funded organisations, has only directly impacted 95 organisations since inception. This represents approximately 1.5% of all organisations to receive IAS funding since 2014, and at \$954.5 million in total IAS funding since 2014, just over 8% of all IAS funded programs and activities. Key insights into the 95 in-scope organisations, include:

- 61 have transitioned incorporation statute (39 to the CATSI Act and 22 to the Corporations Act), of which 8 initially requested an exemption that was denied;
- 18 granted an exemption to remain incorporated under State or Territory legislation;
- 2 have exemption applications that are currently under review; and
- 14 are currently required to transition but to date have not.

The 95 organisations have undertaken over 1,000 activities across the six program funding streams and as of June 2021, 79 of these organisations were receiving IAS funding to a total of \$290.72 million of committed funds. The average amount received per organisation was \$3.68 million and the median, \$2.20 million.

1.5 Good governance

Critical to understanding whether the SOG Policy is achieving its purpose and objectives is to have a baseline definition of what 'good' or 'effective and legitimate' governance is in an Australian context.

A review of literature on 'good governance' in Australia (general and Indigenous specific) identified characteristics and enablers of good governance. The Evaluation team also sought insights from IAS funded organisations, regulators and NIAA staff through consultation and survey to understand their perspectives on what amounts to good governance in practice. With this knowledge, and acknowledging that there are no clear, neat definitions, a good governance checklist was established, amalgamating intersecting elements of the literature and Evaluation stakeholder definitions (Table 2). While most of these characteristics and attributes apply to all IAS organisations, cultural legitimacy and self-determination are specific requirements for Indigenous organisations.

Table 2: Evaluation good governance checklist

Transparency - clear communication on the organisation's structure, operations and performance, both externally and internally, maintaining genuine dialogue with, and providing insight to, legitimate stakeholders.

Accountability - ensuring clarity of decision making and ensuring that the right people have the right authority, and appropriate consequences for failures to follow processes.

Integrity - developing and maintaining a culture committed to ethical behaviour and compliance.

Stability – retention of qualified and suitable Board members, CEO, and staff.

Diversity - a Board that brings together directors with a range of expertise and skills.

Cultural legitimacy - having rules, structures and processes that are informed by an understanding of members' cultural traditions; embody the values and norms that are important to the organisation and community it services; has the support of the people being governed.

Leadership – a stable CEO to oversee operations and staff, supporting long-term relationships between the organisation, local community, and other service providers.

Self-determination - Aboriginal and Torres Strait Islander people making and implementing decisions about their communities, lives and futures.

Support – the Board and management have affordable access to appropriate and relevant governance support and training.

Although the checklist helped frame answers to individual Evaluation questions, and the macro question as to whether the SOG Policy is achieving its purpose and objectives, it was not used to assess in-scope organisations as part of the Evaluation.

1.6 Key Evaluation findings

Evaluation domains

Appropriateness – The extent to which the stated needs and objectives are being achieved.

Key Evaluation findings

Q1. How appropriate is the SOG Policy in addressing its identified need?

The SOG Policy is somewhat appropriate in addressing its identified need of mitigating the risk of service failure or mismanagement of public funds associated with the delivery of programs and services to Indigenous Australians.

The SOG Policy appears to be based on the assumption that incorporation under either the CATSI Act or the Corporations Act results in **stronger transparency and accountability**, both being characteristics identified as necessary for organisations that are well governed. Depending on the size of an organisation (in terms of revenue and assets), incorporation under the CATSI Act and the Corporations Act requires organisations to file annual, independently audited financial statements that are then published on the ORIC and ASIC websites respectively. In the case of larger organisations, annual reports detailing the activities of the organisation must also be filed. This process provides **an additional level of oversight** on the organisation's operations – potentially identifying risks that could result in organisational or service delivery failure before they occur and minimising the risk of fraud. More stringent reporting requirements can lead to boards improving their reporting processes and procedures which is proven to be effective in improving governance practices. It can also result in directors being more financially literate and aware of the risks associated with an organisation's operations, all of which contributes to stronger governance.

However, due to the funding threshold being set at \$500,000 excluding GST and the charitable nature of many IAS funded organisations, **many of the organisations required to transition from State or Territory-based legislation under the SOG Policy were already required to publish audited financial statements on an annual basis**, both with the relevant State or Territory-based regulator and the Australian Charities and Not-for-profit Commission.

For organisations that are transitioning to incorporation under the Corporations Act, the reporting requirements may actually be less unless the organisation has annual revenue in excess of \$50 million, assets worth more than \$25 million and at least 100 employees.

In relation to Indigenous organisations that are required to transition to incorporation under the CATSI Act, the **Registrar also has some additional powers to intervene** in circumstances where there is perceived to be a high risk of organisational failure. To the extent that this reduces the risk of service failure or mismanagement of public funds, this is appropriate. However, it may also be viewed as an additional layer of scrutiny that is not applied to non-Indigenous organisations.

The SOG Policy also results in Indigenous organisations that have incorporated under the CATSI Act and registered with ORIC to access the **free governance support and training provided by ORIC**, which may strengthen a number of the other 'good governance' skills and characteristics if utilised. However, some organisations have reported

Evaluation domains

Key Evaluation findings

difficulty accessing this support due to ORIC being under-resourced to respond to the level of demand.

There is at times a **disconnect** between what the SOG Policy identifies as the governance needs of IAS funded organisations (Indigenous and non- Indigenous) and what the organisations identify as indicators and characteristics of good governance. Incorporation under Commonwealth legislation may support organisations to develop some characteristics of good governance, however compliance with SOG Policy is unlikely to aid 'strengthening' all cogs in an IAS funded organisation's governance machinery.

Q2. To what extent does the SOG Policy contribute to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations?

There is little to no evidence that IAS funded organisations that have changed their incorporation status in accordance with the SOG Policy have experienced improved governance, increased organisational capacity or reduced organisational failure.

For the purpose of this Evaluation, IAS funded organisation failure rates, activity performance report submission and ratings, and risk ratings are used to measure improved governance, increased organisational capacity and reduced organisational failure. Data relating to each provides high-level insights into in-scope organisations and their performance comparatively against exempt in-scope organisations and broader IAS funded organisations.

There is no evidence to suggest a material difference in the organisational risk rating or performance of all IAS funded organisations between those incorporated under the Corporations Act and 'other organisations', being those incorporated under the CATSI Act as well as State or Territory-based legislation.

The number of in-scope organisations – only 95 out of 6,398 – and the relative size of these organisations may be a factor in this. As noted above, most of the in-scope organisations were already independently auditing and publishing their financial statements, so there is **no evident behavioural change connected with improved governance and attributable to the SOG Policy**.

As noted above, many of the organisations that transitioned under the SOG Policy were already required to publish audited annual financial statements and reports, so the change in incorporation status will have had limited impact. The **SOG Policy may have greater impact in improving performance and organisational risk if it was more targeted in its approach**. If the funding threshold of the SOG Policy was lowered in combination with an increased focus on organisations that had historically under-performed or been viewed as 'high risk', it may have wider reach and greater contribution to improved governance, increased organisational capacity and reduced organisational failure. There is a consensus across stakeholders consulted – IAS funded organisations, regulators and NIAA staff – that other relevant risk indicators need to be incorporated into the

Evaluation domains	Key Evaluation findings
	<p>SOG Policy's criteria. This could include incorporating a number of the factors currently contained in the exemptions framework.</p> <p>If the SOG Policy was more targeted, the exemption framework could be minimal or removed entirely. Further, the framework does not include an exemption for Indigenous organisations on the grounds of their ability to demonstrate strong cultural governance as defined in section 4.</p> <p>By requiring Indigenous organisations to transition to ORIC, the SOG Policy is positioning Indigenous organisations to access regulator support and guidance. This may contribute to higher levels of compliance and reporting standards and result in better governance and reduced organisational and service delivery failures over time. Although at this stage there is no quantitative evidence to support this, it is likely that for many smaller Indigenous organisations, access to the support and training provided by ORIC to organisations incorporated under the CATSI Act would be valuable. This may require further funding for ORIC.</p> <p>The SOG Policy could also embed measures to better place ORIC to support organisations through the incorporation transition stage, particularly for smaller, less sophisticated organisations. Specifically, ORIC reported it is not provided with a list of in-scope organisations that need to transition to the CATSI Act as a result of the SOG Policy. This means ORIC is not well positioned to reach out to individual organisations ahead of time to provide tailored support and additional information. Engagement with organisations is therefore reactionary as opposed to proactive.</p> <p>These findings suggest that the SOG Policy requires significant amendment to increase its contribution to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations.</p> <p>Q3. To what extent is the SOG Policy culturally appropriate, sensitive and responsive for Indigenous organisations?</p> <p>There appears to be a discrepancy between how the SOG Policy aims to support self-determination and success of Indigenous organisations and how Indigenous communities view operating as a self-determining and successful organisation.</p> <p>While the SOG Policy aims to support Indigenous organisations to improve governance through incorporation under the CATSI Act, it also removes the right for in-scope Indigenous organisations to have autonomy of choice over which legislation to incorporate under. To this end, the SOG Policy does have strengths-based intentions as it aims to support the capacity growth of Indigenous organisations. However IAS funded organisations consider that the SOG Policy affords lack of choice and autonomy which results in it being a policy that is culturally inappropriate.</p> <p>It was acknowledged among Indigenous IAS funded organisations that ORIC may be better resourced to offer governance support and training than other regulators, however autonomy of choice over which body to incorporate with was a more important priority to Indigenous organisations.</p>

Evaluation domains	Key Evaluation findings
<p>Effectiveness – The extent to which the intended outcomes are being achieved as well as the positive and negative changes produced by the activity, directly or indirectly, intended or unintended.</p>	<p>Q4. To what extent is the SOG Policy being implemented as intended?</p> <p>The broad intention of the SOG Policy is to improve organisational governance of IAS funded organisations through incorporation under Commonwealth legislations. While the SOG Policy has been implemented as intended, it has not achieved all of the desired outcomes at this time.</p> <p>The majority of in-scope organisations have transitioned to Commonwealth legislation since the SOG Policy’s inception or have sought an exemption to the Policy. This has achieved some positive results for governance practices of IAS funded organisations as ASIC and ORIC provide more stringent oversight than State or Territory regulators. According to the Australian Institute of Company Directors, more stringent reporting requirements are likely to put pressure on a Board to improve reporting processes and procedures which is proven to be effective in improving governance practices. Further, ORIC has the capacity to provide additional support to Indigenous organisations at risk of non-compliance, which most State or Territory regulators are not funded to provide.</p> <p>The SOG Policy also presents opportunities for organisations to restructure at the transition stage, including establishing leadership teams to support the transition and then retaining this team to support ongoing capacity building.</p> <p>However, there is a lack of evidence to support that transition to Commonwealth legislation has supported IAS funded organisations to improve performance ratings and lower risk status. This suggests the SOG Policy’s implementation has not achieved all desired outcomes. Further, findings also suggest that there are a range of external factors that contribute to an organisation’s governance practices that sit outside the ambit of the SOG Policy and its function as a compliance policy.</p> <p>Q5. What unintended outcomes (positive and negative) were produced?</p> <p>The SOG Policy has had few unintended outcomes, positive or negative. The main concern with the unintended outcomes of the SOG Policy are linked to the cultural appropriateness of the Policy, and its inability to provide Indigenous organisations with complete decision-making authority over governance structures.</p>
<p>Efficiency – The extent to which the inputs are delivering the stated outputs.</p>	<p>Q6. To what extent is the SOG Policy cost effective?</p> <p>Although implementing the SOG Policy has not been expensive, because the SOG Policy itself is not considered to be particularly effective the SOG Policy is not viewed as a cost-effective Policy.</p> <p>The SOG Policy currently offers a \$10,000 grant to organisations that have transitioned to cover transition costs. To date, \$500,000 has been incurred. Neither NIAA nor ORIC were able to detail other costs associated with the transition, considering working alongside the transitioning organisations to be part of their day-to-day roles.</p> <p>Costs incurred by IAS funded organisations in transitioning to Commonwealth legislation and maintaining compliance are difficult to</p>

Evaluation domains	Key Evaluation findings
	<p>quantify given the varying views of associated costs reported by IAS funded organisations. While some organisations consider transition and ongoing compliance within the scope of usual operational costs, other organisations considered the resource investment to be out of scope of usual operational costs and therefore burdensome.</p> <p>The SOG Policy does provide some rigour to accountability and reporting for IAS funded organisations, although many of these organisations are already required to regularly undertake these activities under State or Territory-based legislation.</p>

1.7 Recommendations

Based on the findings of this Evaluation, the Evaluation team has made a number of recommendations to strengthen the governance practices of IAS funded organisations through enhancing or modifying the SOG Policy and implementation to ensure that it is an appropriate, effective and efficient approach.

Recommendation 1: Consider amending the SOG Policy to take a more targeted approach, including undertaking a co-design process with IAS funded organisations

The NIAA should amend the SOG Policy to take a targeted approach to determining in-scope organisations, which moves beyond a funding threshold and considers more holistic factors, where known, such as:

- the organisation’s NIAA reporting history and its organisational risk profile (ORP) rating;
- the organisation’s governance history; and/or
- the proportion of the organisation’s total revenue that IAS funding accounts for.

To balance the targeted approach, the NIAA may consider applying a risk-based approach by reducing the funding threshold for the SOG Policy where an organisation is unable to demonstrate sound governance and financial management.

In determining more appropriate parameters, the NIAA should undertake a consultation and co-design process with a wide range of IAS funded organisations to seek their insights.

Recommendation 2: Narrow the exemption framework

On the basis that Recommendation 1 is implemented in full, it is recommended the exemption framework is narrowed to only retain the exemption for organisations that are able to identify and demonstrate that the SOG Policy unfairly imposes additional requirements on its business model.

Recommendation 3: Fund additional governance and compliance costs incurred by in-scope organisations

In addition to the \$10,000 transition funding made available to organisations who are required to transition to a Commonwealth incorporation statute, IAS funded organisations incorporated under the Corporations Act or the CATSI Act may also incur additional ongoing compliance expenses. NIAA should develop grant funding guidance to assist NIAA grants management staff to allocate sufficient IAS funding to enable IAS grant recipients to meet any additional internal and external governance and compliance costs.

Where additional IAS funding has been provided to assist with ongoing compliance costs, the NIAA performance reporting framework could be amended to require organisations to report at a high level on how grant funding has been used to maintain good governance practices.

It is noted that building the community-controlled sector is a Priority Reform under the National Agreement on Closing the Gap.

1.8 Other opportunities to strengthen governance for IAS funded organisations

Although outside the scope of the Evaluation, the Evaluation identified the following opportunities to strengthen organisational governance beyond compliance.

Further develop ORIC's governance assessment tool to better support Indigenous organisations to assess levels of good governance and areas for improvement

NIAA should work with ORIC and AIGI to develop and expand ORIC's existing 'healthy corporation checklist' into an interactive online tool. The expanded tool should go beyond its current compliance focus and enable organisations to self-assess the extent to which the organisation in its current state reflects characteristics of good governance. Through answering a series of questions pertaining to organisational governance, the tool should provide organisations with an overall governance rating and suggested areas for improvement, including resources to access.

The tool should also be used to assess an organisation's cultural governance and ask a series of questions pertaining to the organisation's number of Indigenous staff in leadership positions, the level of cultural oversight the organisation has and the extent to which the organisation has a relationship with the Indigenous community to which it provides services.

Prioritise the community-controlled organisation sector for funding

Review the Policy and grants management guidance on prioritising Indigenous organisations as the direct recipients of IAS funding. To achieve the objective of strengthening service delivery for Indigenous communities, as articulated in the SOG Policy's policy logic, Indigenous community-controlled organisations should be prioritised over other organisations for IAS grant funding. This aligns with Closing the Gap, priority reform area two which emphasises that the community-controlled sector is best placed to deliver services to Indigenous people and communities and that the Australian Government is committed to increasing the number of Indigenous specific services delivered by community-controlled organisations.¹


Increase access to Australian Government funded governance support and training for all IAS funded organisations

The Australian Government should invest in increasing access to governance training opportunities for organisations that receive IAS funding. Both Indigenous and non-Indigenous IAS funded organisations should have the opportunity to access governance training modules, workshops and information sessions at no additional cost. ORIC, as the Indigenous specific regulator and body with existing expertise in providing governance training in addition to functioning as a regulatory body could have responsibility for carrying out this function. This would require resourcing ORIC to provide increased access to training and support to IAS funded organisations incorporated under the CATSI Act, as well as to deliver training to IAS funded organisations incorporated under the Corporations Act.

The core expected outcomes of doing so are that:

- all Commonwealth incorporated organisations delivering IAS funded services access governance training and support programs;
- all CATSI Act incorporated organisations, and not just those at risk of organisational failure, easily access training and support to strengthen governance structures and processes; and

¹ Australian Government, Closing the Gap in Partnership, National Agreement on Closing the Gap – Priority Reform Two.



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- both Indigenous and non-Indigenous organisations incorporated under the Corporations Act are supported to strengthen cultural governance capabilities.

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2 *Evaluation methodology*



2.1 Evaluation context

The SOG Policy has applied since the inception of the IAS in 2014. It is included in funding agreements that the NIAA has with almost 6,400 IAS grant recipients.

The SOG Policy seeks to safeguard against service delivery and/or organisational failure by mandating Commonwealth incorporation requirements on grantees receiving a high value of funding (i.e. over \$500,000 excluding GST) in IAS funding in any single financial year. Grants for capital works projects are not counted towards the funding threshold.

The SOG Policy posits that organisations that are regulated by Commonwealth legislation (CATSI Act and Corporations Act) are typically better governed, resulting in the delivery of high-quality services that improve outcomes for Indigenous Australians.

With the SOG Policy yet to be formally evaluated, the NIAA in February 2020 engaged PIC to undertake an Evaluation of the SOG Policy. This document is the Evaluation report for the SOG Policy.

About PIC

PIC is a national Indigenous consulting business. It is the result of a unique partnership between a group of Indigenous Australians and PwC, one of the world's largest professional services firms. The unique power of PIC is the combination of Indigenous expertise and experience, with PwC's world-leading consulting capability.

PIC is majority owned, led and staffed by Indigenous Australians. PIC has a passionate belief that Indigenous people should have the opportunity to fulfil their aspirations. PIC uses its professional expertise, knowledge and understanding to assist communities, governments, and businesses achieve the outcomes they are looking for.

PIC specialises in providing advice and developing strategies to help realise the commercial and community potential of Indigenous policies, programs, projects, organisations and businesses.

2.2 Evaluation purpose

The Evaluation of the SOG Policy assessed the extent to which the SOG Policy is achieving its stated objective to safeguard against service delivery and/or organisational failure. Specifically, it aimed to assess:

- the extent to which incorporation under Commonwealth legislation improves organisations' capacity for service delivery and mitigates the risk of service failure;
- the appropriateness of the parameters of the SOG Policy in determining which organisations are required to comply for achieving the objectives of mitigating against service loss or gaps; and
- the appropriateness of measures to support transition for organisations that are required to change their incorporation statute under the SOG Policy.

The NIAA intends to use the Evaluation findings to inform future directions of the SOG Policy, including expansion to other granting agencies. It will also assist in determining whether the Indigenous grants sector is sufficiently supported to respond to the Indigenous Grants Policy, which is likely to increase demand for the services of Indigenous organisations.

2.3 Evaluation strategy

The Evaluation Strategy (including Evaluation domains, questions, approaches, policy logic and data collection methods) was initially drafted by the NIAA, later refined collaboratively between PIC and the NIAA, guided by the EAG.

The IAS Evaluation Framework (2018) has been pivotal in helping frame the Evaluation. A principles-based framework, it outlines the need for all evaluations of IAS programs and activities to test the extent that they:

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- build on strengths to make a positive contribution to the lives of current and future generations of Indigenous Australians;
- are designed and delivered in collaboration with Indigenous Australians, ensuring diverse voices are heard and respected; and
- demonstrate cultural respect towards Indigenous Australians.

These 'core values' have been embedded within the Evaluation questions and underpin the approach to the conduct of the Evaluation.

While the Evaluation focused on the experience of organisations who have been directly impacted (required to transition their incorporation statute, granted an exemption or currently applying from an exemption) under the SOG Policy, it also investigates, at a high level, the potential unintended impacts on all IAS grant recipients of the policy being applied.

The focus of this Evaluation is on identifying short to medium-term outcomes. A future evaluation may be able to consider the long-term impacts of the SOG Policy. The key Evaluation questions and sub-questions are presented under each of three evaluation domains.

The Evaluation covers the period since the policy was formally introduced into the IAS Guidelines (i.e. July 2014) to June 2021.

2.3.1 Evaluation governance

The Evaluation was guided and monitored by the EAG. The EAG members included the following representatives:

- **Chair** – Senior Adviser, Grant Design, NIAA
- **Members**
 - Adviser, Grant Design, NIAA
 - Adviser/Senior Adviser, Grants Advice, NIAA
 - Senior Adviser, Evaluation, NIAA
 - Senior Adviser, Office of the Registrar of Indigenous Corporations, ORIC
 - Adviser, Australian Indigenous Governance Institute, AIGI

Members were able to nominate alternative representatives at any time.

The EAG was designed to be an advisory group, rather than a decision-making body. Members provided verbal and written feedback on the Evaluation deliverables and were provided with project updates throughout the life of the Evaluation. The EAG had the responsibility of ensuring that the approach to the Evaluation remained appropriate, efficient and effective.


Specifically, members of the EAG collaborated to provide feedback and/or advice on:

- evaluation methods and approach; and
- evaluation deliverables: Project Plan, Ethics Application, Early Findings Presentation and Evaluation Report oversight and advice on the progress of the Evaluation.

2.3.2 Policy logic

A SOG Policy logic was instructive in scoping and developing the domains and questions of the Evaluation (Figure 1). Policy logic models are schematic representations that describe how a policy is intended to work. They are useful in helping frame monitoring and evaluation activities primarily concerned with supporting decision making around policy resources, activities, outputs, and outcomes and answering questions such as:

- Were allocated resources sufficient to implement the policy effectively?

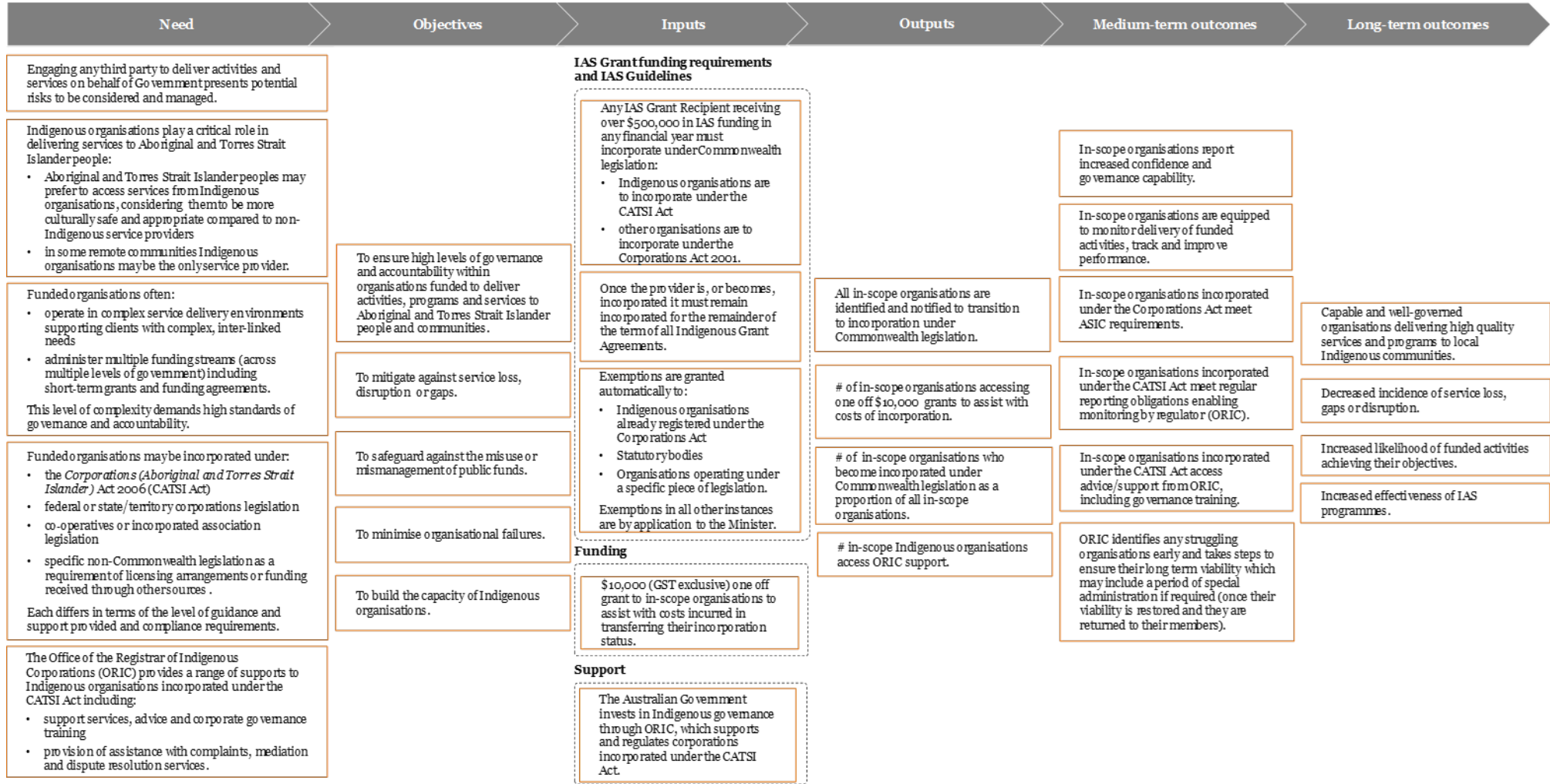


Evaluation methodology

- Were the activities conducted as intended?
- Were expected outputs achieved?
- To what extent did the policy achieve its short, medium and long-term outcomes?

Evaluation methodology

Figure 1: SOG Policy logic



2.3.3 Evaluation domains, questions and approaches

The Evaluation addresses the three evaluation domains of policy effectiveness, appropriateness and efficiency (Figure 2).

Figure 2: Evaluation domains

Appropriateness – The extent to which the stated needs and objectives are being achieved.
Effectiveness – The extent to which the intended outcomes are being achieved as well as the positive and negative changes produced by the policy, directly or indirectly, intended or unintended.
Efficiency – The extent to which the inputs are delivering the stated outputs.

Six evaluation questions underpin the three domains, tailored to measure whether the SOG Policy is achieving its objectives. Each Evaluation question has attached a series of sub-questions, further refining the scope of the Evaluation outcomes (Figure 3).

Figure 3: Evaluation questions (including domain and sub-questions)

Evaluation Domain	Evaluation Question #1
Appropriateness	How appropriate is the SOG Policy in addressing its identified need?

Sub-questions used to answer the Evaluation question

- A. What are the features, attributes and characteristics of organisations which display good governance (based on a brief literature scan and existing definitions used by ORIC and NIAA)?
- B. What are the characteristics of organisations funded under the IAS including, but not limited to:
 - i. Indigenous and non-Indigenous status;
 - ii. geolocation;
 - iii. incorporation statute and mechanisms (i.e. CATSI Act or Corporations Act, State or Territory legislation); and
 - iv. number of in-scope organisations for the SOG Policy (and of these the number of exempt organisations)?

Evaluation Domain	Evaluation Question #2
Appropriateness	To what extent does the SOG Policy contribute to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations?

Sub-questions used to answer the Evaluation question

- A. For each of the core organisational characteristic identified in (1B) what is the organisation failure rate (defined as organisations being subject to external administration, winding up or deregistering):
 - i. compliance with grant reporting requirements including performance against KPIs; and
 - ii. NIAA assigned organisational risk profile? What is the distribution of risk profiles amongst in-scope organisations compared to all organisations?
- B. What supports, guidance, monitoring and compliance requirements (including any specific supports for Indigenous organisations) apply under:
 - i. CATSI Act;
 - ii. Corporations Act; and

- iii. State and territory-based legislation (corporations and cooperative/incorporated association legislation)?
- C. How adequate and appropriate is:
 - i. the threshold for application of the SOG Policy (\$500,000 (GST exclusive) of IAS funding in one year)? Is this threshold an appropriate indicator of higher risk? What alternative funding thresholds exist;
 - ii. the exemption framework to ensure that well-functioning organisations are not unduly burdened; and
 - iii. the one-off \$10,000 grant to support in-scope Indigenous organisations with the costs of incorporation under the SOG Policy?

Evaluation Domain	Evaluation Question #3
Appropriateness	To what extent is the SOG Policy culturally appropriate, sensitive and responsive for Indigenous organisations?

Sub-questions used to answer the Evaluation question

- A. To what extent is the SOG Policy informed by and responsive to cultural sensitivities and the diverse needs of Indigenous organisations?
- B. What is the experience of the SOG Policy amongst in-scope Indigenous organisations compared to in-scope non-Indigenous organisations?
- C. To what extent does the SOG Policy support collaboration with Indigenous Australians, ensuring diverse voices are heard and respected?
- D. To what extent do the features, attributes and characteristics of good governance (identified in 1A) reflect Indigenous organisations’ structures, values and practices?
- E. To what extent is the SOG Policy strengths based?

Evaluation Domain	Evaluation Question #4
Effectiveness	To what extent is the SOG Policy being implemented as intended?

Sub-questions used to answer the Evaluation question

- A. What are the achievements of the SOG Policy?
- B. With reference to (2A) what evidence is there that:
 - i. organisations which have transitioned their incorporation statute under the SOG Policy have:
 - built their governance capacity. To what extent do organisations which have transitioned to be incorporated under the CATSI Act access support from ORIC? How satisfied are these organisations with the support available from ORIC;
 - improved service delivery capacity and performance (as measured by performance reporting, compliance with reporting requirements and management of funds);
 - decreased likelihood of organisation failure; and/or
 - reduced organisational risk profile assigned by the NIAA?
 - ii. compared to organisations incorporated under other mechanisms, organisations who are incorporated under Commonwealth legislation have:
 - improved service delivery capacity or performance (as measured by performance reporting, compliance with reporting requirements and management of funds); and/or
 - decreased likelihood of failure or winding up?

- C. What other factors (outside of incorporation statute) may have contributed to organisations improving their governance or service delivery?
- D. What benefits and challenges do in-scope Grant Recipients report in:
 - i. complying with the terms of the SOG Policy;
 - ii. the transition process to incorporation; and
 - iii. for Indigenous organisations incorporated under CATSI Act, accessing support services from ORIC?

Evaluation Domain	Evaluation Question #5
Effectiveness	What unintended outcomes (positive and negative) were produced?

Sub-questions used to answer the Evaluation question

- A. To what extent were unintended outcomes (positive and negative) experienced by:
 - i. IAS grant recipients who have changed their incorporation statute under the SOG Policy;
 - ii. other IAS grant recipients;
 - iii. NIAA staff; and
 - iv. ORIC?
- B. To what extent has incorporation under Commonwealth legislation enabled organisations to access other grant opportunities (outside of the IAS)?

Evaluation Domain	Evaluation Question #6
Efficiency	To what extent is the SOG Policy cost effective?

Sub-questions used to answer the Evaluation question





- A. For each of CATSI Act, Corporations Act, State or Territory-based legislation (corporations and cooperative/incorporated association legislation, what are the costs incurred through incorporation including:
 - i. one-off/setup costs; and/or
 - ii. any ongoing additional costs of maintaining incorporation statute?
- B. What costs does ORIC incur in providing support for in-scope organisations incorporated under the CATSI Act?
- C. What costs does NIAA incur in implementing the policy (including grant funding provided to organisations)?
- D. To what extent are outcomes (for example reduced organisational failure rates) achieved for the additional costs that are incurred? Describe the supports, guidance, monitoring and compliance requirements identified in (2B), any outcomes identified in (4B) and (4D) and the costs identified in (6A).

In addition to exploring these six key evaluation questions (and sub-questions), the Evaluation also assessed the policy in relation to the NIAA’s IAS values question:

“To what extent does the Strengthening Organisational Governance policy build on strengths, demonstrate cultural respect and involve collaboration in such a way as to make a positive contribution to the lives of current and future generations of Indigenous Australians?”

The IAS values question can be broken up into several components (Figure 4).

Figure 4: IAS values question components

<i>“To what extent does the Strengthening Organisational Governance policy . . .</i>		
<i>. . . build on strengths”</i>	strengths-based lens	
<i>. . . demonstrate cultural respect”</i>	cultural safety lens	
<i>. . . involve collaboration”</i>	partnership/working together lens	
<i>. . . make a positive contribution to the lives of current and future generations of Indigenous Australians?”</i>	outcome lens	

Rather than treating it as a standalone question, each component of the IAS values question has been embedded within the six Evaluation questions and underpins the approach to the conduct of the Evaluation (see Appendix A).

The Evaluation questions outlined above were developed applying two evaluation approaches – Process Evaluation and Outcome Evaluation as described in Table 3 below.

Table 3: Evaluation approaches²

Evaluation type	Focus	Evaluation goal
Process evaluation	<p>Investigates how a program or policy is delivered, including efficiency, quality and customer satisfaction. As an ongoing evaluative strategy, it can be used to continually improve policies by informing adjustments to delivery. It may:</p> <ul style="list-style-type: none"> • consider alternative delivery options; and/or • help to differentiate ineffective policies from failures of implementation. 	To generate evidence to determine whether the SOG Policy has been implemented as intended and if not, what has been changed and for what reasons.
Outcome evaluation	<p>Determines whether a program or policy caused demonstrable effects on the target outcomes. Identifies for whom, in what ways and in what circumstances the outcomes were achieved. Identifies unintended outcomes (positive and negative). Examines the ways the program contributed to the outcomes, and the influence of other factors.</p>	To generate evidence to measure the intended effects and outcomes of the SOG Policy and to assess overall effectiveness.

2.3.4 Key methods adopted

A mixed methods approach comprising a combination of qualitative and quantitative methods was utilised to gather evidence in response to the Evaluation questions. These methods were reviewed and approved by the EAG and were selected to ensure the voice of Indigenous Australians are heard and central to the Evaluation, in turn,

² Adapted from NSW Government Program Evaluation Guidelines and Evaluation Toolkit, <https://www.dpc.nsw.gov.au/tools-and-resources/evaluation-toolkit/2-develop-the-evaluation-brief/> accessed on 20 March 2020.

generating findings that are relevant and useful to NIAA, in-scope organisations, broader IAS-funded organisations and the wider Indigenous Australian community.

The extent of data collection activities has been informed by the Evaluation timeframes and budget. The agreed scope for evaluative activities - quantitative and qualitative data collection - to inform Evaluation outcomes are detailed in Table 4.

Table 4: Data collection methods

Desktop review / literature scan

- ANAO, Auditor-General Audit Report No.26, Capacity Development for Indigenous Service Delivery, Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA); Department of Education, Employment and Workplace Relations (DEEWR); Department of Health and Ageing (DoHA) (2012);
 - Joint Committee of Public Accounts and Audit, Report 437: Review of Auditor-General's Reports Nos. 2 to 10 (May 2013);
 - Department of Prime Minister & Cabinet (DPM&C), Correspondence to the Minister of Indigenous Affairs (various 2014-15);
 - Australian Human Rights Commission, The need for better engagement - Year in review (2015);
 - various Aboriginal organisations, public submissions to Senate inquiry into IAS tendering processes (2015);
 - ANAO, IAS, DPM&C, Performance Audit (2016); and
 - various literature on 'good governance' (including guidance published by: Governance Institute of Australia; ASX Corporate Governance Council; Australian Public Service Commission; Australian Institute of Company Directors; Indigenous Community Governance Project and their Indigenous Governance Toolkit; Harvard Project on American Indian Economic Development; and the Native Nations Institute at the Udall Centre of Public Policy, University of Arizona).
-

Data analysis

NIAA administrative and monitoring data (2014 – 2021).

Publicly available data for ORIC and ASIC.

Online survey

Distributed to 433 IAS grantees identified as receiving \$500,000 (GST exclusive) or more of IAS funding.

Although 121 consented responses were received (a 27% response rate), only 107 responses were 'finished' and of these, only 64% responded to the majority of questions.

Of the 107 'finished' responses:

- 63.6% reported being aware of the requirements of the SOG Policy;
- 5.6% reported being involved with the design and implementation of the SOG Policy;
- 7.1% identified as in-scope organisations who transitioned incorporation status as a result of SOG;
- 44.9% identified as Indigenous organisations within the definition of the CATSI Act;*
- 32.7% are incorporated under Corporations Act, 28% incorporated under CATSI Act, 2.8% reported being incorporated under 'another' Act;*

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- 35.5% of all organisations that responded reported employing more than 20 people, with another 22.4% reported employing between 5-20 people;* and
- 15% of the organisations reported having annual revenue of greater than \$10 million and 26.1% having annual revenue of less than \$2 million.*

For each of the observations marked with ‘*’, 36.5% of survey respondents chose not to answer the question.

Regulator consultations

Video conference consultations were undertaken with AIGI, ASIC, ORIC, and the Northern Territory regulator (Licensing NT). A written submission was received in place of a video conference consultation with New South Wales regulator (NSW Fair Trading). PIC was unable to secure suitable representatives from the Western Australia and Queensland regulators to consult with.

NIAA consultations

Video conference consultations were undertaken with three NIAA Focus Groups – regional offices, program areas, and policy staff.

SOG-impacted organisation consultations

Although PIC attempted to get six SOG impacted organisations to agree to being the subject of ‘case studies’, only five agreed. Ultimately video conference interviews were undertaken with four IAS funded organisations nationally.

- Barkly Region Alcohol and Drug Abuse Advisory Group (BRADAAG), NT: Indigenous organisation incorporated under the CATSI Act;
- Nunkuwarrin Yunti of South Australia Incorporated Ltd (NY), SA: Indigenous organisation incorporated under the *Associations Incorporation Act 1985 (SA)* (Associations Incorporation Act (SA)) . Granted an exemption in 2016;
- Winnunga Nimmityjah Aboriginal Health and Community Services Ltd (Winnunga), ACT: Indigenous organisation incorporated under the Corporations Act. Granted an exemption in 2016; and
- Drug and Alcohol Services Australia Ltd (DASA), NT: Non-Indigenous organisation incorporated under the Corporations Act.

A fifth case study group withdrew from the Evaluation at late notice due to unforeseen circumstances.

A data matrix has been established (Appendix A) aligning the Evaluation questions, sub-questions and mixed methods to the policy logic, specifying the Evaluation activities and data sources utilised to answer the Evaluation questions.

2.3.5 Ethics process

This project required approval from the AIATSIS Ethics Committee prior to commencement. Following submission of an ethics application on 3 March 2020, PIC received partial ethics approval from the Committee on 22 June 2020, which granted ethical approval to undertake consultations with the following organisations:

- NIAA;
- ORIC;
- AIGI; and
- State and Territory regulators.

PIC completed consultations with the identified organisations on 1 March 2021.

In order to consult with IAS funded organisations, the project required full ethics approval. Following submission of five letters of support from IAS funded organisations on 28 April 2021, full ethics approval was granted on 8 June 2021.

PIC completed interviews with four of the five organisations that provided a letter of support by 6 August 2021 (one organisation withdrew from the Evaluation at late notice). These interviews inform the Case Study component of the Evaluation (Case studies can be read in full in Appendix B). PIC also released an online survey to 433 IAS grantees identified as receiving \$500,000 (GST exclusive) or more of IAS funding which was open for responses between 23 June 2021 and 21 July 2021 (the survey can be read in full in Appendix C).

Project delays associated with the ethics process and COVID-19

While the ethics application was submitted on 3 March 2020, the AIATSIS Ethics Committee did not provide partial approval until 22 June 2020 as Committee meetings were delayed due to the COVID-19 pandemic. The project was on substantial scale down/pause whilst awaiting an outcome of the ethics application.

Between May and November 2020, the NIAA requested that PIC pause all communication with IAS funded organisations, recognising that due to COVID-19, they were dealing with a range of pressures and challenges. During this period, PIC progressed consultations with the NIAA, identified regulators and the literature review but the project was substantially scaled down/paused while awaiting confirmation that IAS funded organisations could be contacted.

When PIC was able to contact IAS funded organisations seeking letters of support to further progress full ethics approval, PIC experienced difficulty in engaging IAS funded organisations to provide a letter of support and attempts to secure letters of support was ongoing from November 2020 to April 2021.

Due to high demand, the AIATSIS Ethics Committee experienced some delay in assessing the letters of support submitted on 28 April 2021.

2.3.6 Limitations of findings

The Evaluation had the following limitations, which should be considered in review and assessment of the Evaluation findings.

Lack of available data and evidence

The NIAA data team provided several data sets with quantitative information about IAS funded organisations, as well as data sets specific to the characteristics of IAS funded organisations in-scope of the SOG Policy. The Findings chapter of this Evaluation details the insight provided through analysis of these data sets. Notably, data sets included some gaps where information was unknown by the NIAA and therefore recorded as 'blank' or 'unknown.' Although this at times limited the extent to which the Evaluation could provide absolute accuracy it did enable a comprehensive summary of the ecosystem of IAS funded organisations. It is outside the scope of the data sets to include an overview of all aspects relevant to an organisation's governance, for example: Board composition, length of service of CEO and level of staff turnover.

As part of the consultation process, the Evaluation team engaged in case studies with four in-scope organisations. While case study organisations provided valuable insights, it is important to acknowledge that the experiences of four organisations is not a representation of the experience and viewpoint of all in-scope IAS funded organisations. Similarly, the survey was distributed to a total of 433 IAS funded organisations identified as receiving \$500,000 (GST exclusive) or more of IAS funding. Of these 433 organisations, 121 organisations responded to the survey with varying levels of completion and understanding of the SOG Policy. Survey findings are a reflection of a small portion of IAS funded organisations (1.9%) and in-scope organisations (12.8%).

Moreover, many of the stakeholders consulted as part of the Evaluation were not able to provide detailed commentary due to the time that had elapsed between the inception of the SOG Policy and the timing of the Evaluation. Some representatives from IAS funded organisations had either commenced in their roles after the policy was developed or were not able to recall specific details about how their organisation first learnt about the policy and responded to its requirements.

The Evaluation team attempted to contact representatives from a range of State or Territory regulators, however, was only able to successfully engage with two State or Territory regulators. As a result, insights related to State or Territory regulators have been largely informed by representatives from Licensing NT and Fair Training NSW.

Finally, the data available only provides a snapshot into how a particular IAS funded organisation is operating. While the outcomes of qualitative reviews of program delivery, organisational risk ratings and the timeliness of the submission of reports may be indicative of its overall governance, there are many other factors that are indicative of good and effective governance. This Evaluation has not considered, for example, board composition, stability of management teams and the financial stability of the IAS funded organisations.

Varied levels of understanding of the SOG Policy

Importantly, insights and reflections about the SOG Policy shared by representatives from IAS funded organisations, regulators and the NIAA, are based on each stakeholder's personal understanding of the policy. The level of knowledge about the SOG Policy varied greatly between stakeholders consulted. Stakeholders were provided an information sheet about the SOG Policy prior to engagement; however, it is important to acknowledge that each stakeholder has varying pre-existing knowledge of the policy and some may not have a completely accurate or fulsome understanding of each aspect of the SOG Policy, the CASTI Act and/or ORIC. Insights reported by stakeholders in the Findings chapter should be read with this in mind.

3 *About the Strengthening Organisational Governance policy*



3.1 Background

Government service delivery in Australia, both at the Commonwealth and State or Territory level, utilises third-party providers, including not-for-profit organisations, to deliver services on behalf of Commonwealth departments.

To facilitate the delivery of programs and services to Indigenous people, the Australian Government and its departments make use of a varied range of mechanisms, including National Partnership Agreements with State or Territory governments, funding agreements with local government bodies, contracts with private sector entities and agreements with other third-party organisations.

The third-party service delivery model relies heavily on Indigenous organisations to deliver programs and services to Aboriginal and Torres Strait Islander people, especially in remote communities. The funding for these services is predominantly provided through grants from the Australian Government, as well as other tiers of government.

In 2008, the Council of Australian Governments committed to investing in the service delivery capacity of Indigenous organisations under the NIRA. Included in its Service Delivery Principles for Indigenous Programs and Services was an acknowledgement that investment in the capacity of organisations, and promoting opportunities for Indigenous service delivery, is linked with the long-term sustainability of programs and services.

A 2012 audit undertaken by the ANAO on Capacity Development for Indigenous Service Delivery assessed the extent to which the FaHCSIA, DoHA and DEEWR sought to reduce service delivery risks posed by capacity constraints in Indigenous organisations. The three departments in 2010-11 were responsible for administering approximately \$3.3 billion of Indigenous program funding of which \$1.34 billion was provided to approximately 900 Indigenous organisations.

Key insights from the audit included:

- grants obtained by Indigenous organisations were generally small and relatively short. Median grant amounts and lengths were: \$55,000 and 12-months in FaHCSIA, \$151,301 and 15-months in DEEWR, and \$327,531 and 12-months in DoHA;
- the high number of short-term and small value funding agreements often made it difficult for organisations to predict future funding, which has planning and resourcing implications;
- the extent of administration that is associated with individual funding agreements—from the funding application process through to operational plans and reporting requirements—created a high administration load for some organisations, limiting the utilisation of existing capacity for the actual delivery of programs and services;
- Commonwealth departments had developed approaches to assessing risk associated with the service delivery capacity of organisations, but these approaches tended to focus on identifying and treating risks that are internal to organisations, such as financial management, governance and reporting performance;
- little consideration had been given by Commonwealth departments to assessing the risks to delivery that can originate from outside the organisations;
- the common mitigation strategies developed by Commonwealth departments were to increase the monitoring and reporting arrangements. Alone, these strategies indicated an approach focused on immediate risks, but which were unlikely to reduce risks to broader service delivery outcomes by developing organisational capacity;
- there were no clear strategies for the medium to longer-term that sought to reduce, or mitigate, risk by addressing issues that affect the service delivery capacity of organisations;
- at a whole-of-government level there was no overarching strategy for implementing a capacity development approach;

Recommendations that flowed from these insights were:

- 1 **ensure funding arrangements adequately support the achievement of desired policy outcomes** – Commonwealth departments review their current funding approaches and supporting arrangements, and where appropriate, consider other options to achieve program deliverables such as longer-term partnerships or core support;
- 2 **support service delivery arrangements and the achievement of desired policy outcomes in the longer-term** – Commonwealth departments take a more strategic approach to risk management that gives greater consideration to the broader operating environment, and balances compliance requirements with the actual level of risk and the achievement of outcomes; and
- 3 **implement the capacity development elements of NIRA - FaHCSIA**, through the Executive Coordination Forum on Indigenous Affairs, facilitate the development of a whole-of-government strategy and an implementation approach to provide a long-term, integrated and consistent approach to capacity development across Commonwealth departments.

In May 2013, a Joint Committee of Public Accounts and Audit review of the 2012 ANAO Capacity Development for Indigenous Service Delivery audit endorsed the ANAO's findings. The Committee described the response of Commonwealth departments to capacity development one year from the audit as "relatively patchy and varied in their focus". In addition to supporting the audit finding, the Committee emphasised the need for:

A positive risk culture within government – the Committee, while sympathising with the difficult position of public servants in balancing the need to ensure compliance against the burdens that some compliance activities can place on service providers, encouraged the implementation of a positive risk culture. In the context of Indigenous service delivery, a positive risk culture means agencies (and indeed ministers and the Parliament) are willing to accept increased levels of risk, such as by reducing reporting requirements for Indigenous organisations, as a trade-off for greater overall outcomes.

Focus on external constraints – Commonwealth departments' activities one-year on still primarily focused on addressing internal capacity constraints within Indigenous organisations, without necessarily addressing external constraints that are within the scope of the Government to influence. These included improving the enabling environment within which Indigenous organisations operate, reforms to the governance of the programs themselves; and improved cultural awareness and increased / sustainable Indigenous representation in the Australian Public Service.

In September 2013, responsibility for most Commonwealth Indigenous-specific policy and programs, as well as some mainstream programs that predominantly service Indigenous Australians, was transferred into the DPM&C. This saw 27 programs consisting of 150 administered items, activities and sub-activities from eight separate entities moved to DPM&C.

At the same time the Registrar of ORIC met with the Minister of Indigenous Affairs to recommend that all Indigenous organisations receiving funding should be incorporated under the CATSI Act. One month later, the Minister for Indigenous Affairs stated in a 25 October 2013 press release titled 'ORIC enforces Indigenous governance', "I would like to see all Indigenous organisations that receive federal funding incorporated under the CATSI Act to ensure they can access the support services provided by the registrar to improve their performance and business standards".

In March 2014, DPM&C responded to recommendations of the 2012 ANAO Capacity Development for Indigenous Service Delivery audit, the May 2013 Joint Committee of Public Accounts and Audit review and the Minister's 25 October 2013 press release. This came in the form of developing a strategy to strengthen the governance and capability of organisations delivering Indigenous programmes and services on behalf of the Australian government. The SOG Policy was first included in the IAS guidelines released July 2014.

Figure 5: Indigenous Advancement Strategy (IAS)

In May 2014, the IAS was announced by the Australian Government as a significant reform in the administration and delivery of services and programs for Indigenous Australians. Under the IAS, the items, activities and sub-activities inherited by the DPM&C were consolidated into five broad programs under a single outcome. The Australian Government initially committed \$4.8 billion to the IAS over four years from 2014–15.

In 2019, the NIAA was established to lead and coordinate Commonwealth policy development, program design and implementation and service delivery for Aboriginal and Torres Strait Islander peoples. As a result, it took over the administration of IAS from DPM&C.

In the 2021-22 Budget, the Australian Government allocated \$5.7 billion to the IAS, over four years to 2024-25, for grant funding processes and administered procurement activities that address the objectives of the IAS.

3.2 Strengthening Organisational Governance (SOG) policy

3.2.1 Objectives

The objectives of the SOG Policy, as set out in the policy logic in Figure 1 are:

- to mitigate against service loss, disruption or gaps;
- to safeguard against the misuse or mismanagement of public funds;
- to minimise organisational failures; and
- to build the capacity of Indigenous organisations.

The SOG Policy assumes that organisations that are regulated by Commonwealth legislation are better governed than those incorporated under State or Territory legislation, resulting in the delivery of high-quality services that improve outcomes for Indigenous Australians. It is the purpose of the SOG Policy to ensure that funded organisations have high standards of governance and accountability that facilitate high quality service delivery for Indigenous Australians.

“The government has a strong interest in the security and delivery of programs it funds by requiring high standards of governance and accountability in organisations receiving that funding. Poor governance not only affects individual organisations delivering services for Indigenous Australians, it also affects the quality of services and outcomes achieved. State and Territory incorporation legislation is intended for small organisations and often does not provide the regulatory structure or resources to respond to governance issues in organisations. Commonwealth legislation, the Corporations Act 2001, and the Corporations (Aboriginal and Torres Strait Islander) Act 2006, provides best practice governance standards”.

Minister of Indigenous Affairs, Nigel Scullion, 17 March 2014

3.2.2 Requirements

The SOG Policy aims to achieve its objectives by mandating all organisations (Indigenous and non-Indigenous) receiving IAS grant funding of \$500,000 (GST exclusive) or more in any single financial year are required to:

- incorporate under Commonwealth legislation – Indigenous organisations will be required to incorporate under the CATSI Act, with other organisations incorporating under the Corporations Act; and
- maintain these arrangements while they continue to receive any level of such funding.

This requirement applies to all grant funding under agreements or variations executed on or after 1 July 2014.³ All Indigenous organisations not previously funded who receive the funding threshold must incorporate under the CATSI Act (unless already incorporated under Corporations Act).

3.2.3 Exclusions and exemptions

Exclusions

Statutory bodies, government bodies, and organisations operating under a specific piece of legislation are excluded from the requirements and do not have to apply for an exemption.

Indigenous organisations already incorporated under the Corporations Act are excluded from the requirements and do not have to change incorporation statute.⁴

Funding provided for capital works or funding as procurement is not included in the \$500,000 (GST exclusive) threshold.

The Minister may review these exclusions at any time, including considering requirements for individual organisations. In-scope organisations will be notified of any changes.

Exemptions

Exemptions are considered where an organisation can demonstrate at least one of the following:

- 1 that IAS grant funding received is a small portion of its total revenue, and as such changing incorporation statute may unfairly impose additional requirements on its operations and business model;⁵ and/or
- 2 it is required to incorporate under specific non-Commonwealth legislation as part of its licensing arrangements or funding received through other sources.

The authority to issue exemptions lies with the Minister for Indigenous Australians with advice provided by the NIAA in line with the SOG policy exemption assessment framework (Table 5). The Minister may choose to delegate this authority.

Table 5: SOG Policy exemption assessment framework

Well-governed

In accordance with the Commonwealth Grant Rules and Guidelines Governance and Accountability principle, granting activities should be underpinned by solid governance structures and clear accountability for all parties involved in grants administration.

In demonstrating that they are well governed, organisations should demonstrate that they are answerable for their plans, decisions, actions and results. This should include demonstration that the organisation has policies and procedures in place that support the grant agreement and ensure the effective and efficient governance and accountability for the grant.

Evidence should be provided to support the claims made in the application.

³ Initially the requirement applied to all organisations receiving \$500,000 or more in a single financial year from a single IAS grant. This was changed in 2015 to all organisations receiving \$5000,000 or more in a single financial year accumulatively across all IAS grants received. The initial draft policy also required all organisations to have at least two independent directors. This was removed by the Minister of Indigenous Affairs at the time.

⁴ Initially all Indigenous organisations receiving IAS grant funding of \$500,000 (GST exclusive) or more in any single financial year were required to incorporate under CATSI Act, including those already incorporated under the Corporations Act. In May 2015, the DPM&C recommended to the Minister of Indigenous Affairs that the SOG policy be amended to allow Indigenous organisations already incorporated under the Corporations Act to retain their incorporation statute. The department advised the Minister that to force Indigenous organisations already incorporated under the Corporations Act to transfer their incorporation was onerous and could be perceived as 'heavy-handed' as both the Corporations Act and CATSI Act require similar governance standards. The Minister agreed to the department's recommendation.

⁵ DPM&C initially had not formally defined what constitutes a 'small portion' of an organisation's total revenue, but advised the ANAO in September 2015 it was determined that 25 per cent, or lower, of an organisation's total would be considered a small portion of total revenue.

High-performing

This is assessed based on past performance. Information may also be provided that demonstrates current and past performance of other funding or services arrangements that the organisation is responsible for. Evidence should be provided to support the claims made in the application.

The Department will also consider current and past performance information available on the delivery of Australian Government programmes and services.

Proportionality of requirements

In accordance with the Commonwealth Grant Rules and Guidelines, consideration will be given to striking an appropriate balance between the complexity of the granting activity (including ongoing requirements for the grant recipients) and managing the risks for beneficiaries and the Commonwealth.

Organisations rated as high or extreme risk as part of the Department's grants administration processes will not be recommended for an exemption.

Small proportion of funding

If applying under this category, an organisation should demonstrate that the funding it receives from the Department's Indigenous Affairs Group is a small proportion of its overall revenue as is relevant to the organisation, and as such changing its incorporation statute may unfairly impose additional requirements on its operations and business model.

Evidence should be provided to support the claims made in the application.

Unfairly imposing additional requirements on an organisation's business model

The implementation of the SOG Policy incorporation requirements may have a different impact on individual organisations.

It is the responsibility of each organisation applying for an exemption to identify and demonstrate what these additional requirements are and how they will unfairly impose additional requirements on its specific business model. This may include detailing what impact the requirements will have, and how this impact will be above and beyond the current regulatory and grant management requirements. This will provide a base for considering the requirements, and their proportionality to risk of the beneficiaries and the Commonwealth.

Evidence should be provided to support the claims made in the application.

3.2.4 SOG implementation

The advantages of incorporation under the Corporations Act or the CATSI Act identified by DPM&C at the time in the published Frequently Asked Questions sheet included:

- the members can choose not to be liable for the debts of the organisation;
- companies and corporations can operate nationally without further registration - they are not limited to operating in the State or Territory in which they are registered;
- both Acts are modern legislation incorporating world best practice in terms of corporate governance and corporate regulation; and
- greater protections and rights for members and creditors.

About the Strengthening Organisational Governance policy

In addition to these, in administering the CATSI Act, ORIC provides:

- advice for Indigenous groups on how to become corporations;
- assistance so that Indigenous corporations can understand, create and adopt their own rule book according to their needs and values;
- support services, advice and corporate governance training;
- public information about corporations;
- assistance to corporations with complaints; and
- mediation and dispute resolution services.

Recognising that organisations may incur some additional one-off costs for independent legal advice and accountancy services to support the transfer of incorporation, the NIAA provides a one-off \$10,000 (GST exclusive) payment upon receipt of evidence that the transfer has occurred. The \$10,000 was based on an assessment of the likely costs by the Office of Deregulation.

ORIC does not charge fees for incorporation under the CATSI Act. Incorporation under the Corporations Act carries a registration fee of up to \$512.00 at the time of writing.

Non-compliance with the SOG Policy requirements constitutes a breach of the IAS funding agreement and may subject the grantee to a range of compliance actions.

Extended transition periods can be granted to organisations who can demonstrate that they have made reasonable attempts to but are unable to meet requirements at the time. To be eligible, the organisation needs to demonstrate that they are willing to make the changes but that they have not been able to comply.

4 *Good governance*



4.1 Defining good governance

“It is only when effective governance is in place that communities and regions will have a solid foundation for making sound decisions about their overall goals and objectives, what kind of life they want to try to build, what assets they have or require, what things they want to retain, protect or change, the kind of development they want to promote or reject, and what actions they need to take to achieve those goals”.⁶

The stated purpose of the SOG Policy is to ensure that funded organisations have high standards of governance and accountability that facilitate high quality service delivery for Indigenous Australians. High standards of governance and accountability fall under the umbrella term of ‘good governance’. Having a baseline definition of what amounts to ‘good governance’ in an Australian context is, therefore, critical to understanding whether the SOG Policy is achieving its purpose and objectives.

This section provides a summary of what is viewed as good governance in relevant Australian and international literature and identifies characteristics and enablers stated by IAS funded organisations, regulators and NIAA staff through consultation and survey. A good governance checklist is then established, being an amalgamation of the literature and Evaluation stakeholder definitions which is subsequently used in framing the Evaluation findings but not as a tool to assess the performance of the individual organisations.

4.1.1 Literature review

Governance

There is no clear, neat definition of governance or ‘good’ governance. It is place and time specific, ever evolving within its own localised context. However, while each group that comes together ultimately must find its own way of operating there are some common descriptors and principles to consider. Governance from a western corporate perspective is defined by the Governance Institute of Australia as “the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance”.⁷ Another useful corporate-specific governance definition is that of the ASX Corporate Governance Council who define governance as “the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account”.⁸ The Australian Public Service Commission (APSC) defines governance in a public service context similarly.⁹

Good governance

Good governance, the Governance Institute of Australia stipulates, is practiced when an organisation runs or is governed over and above its basic legal obligations. At a high-level it relies on four key components:

- **transparency:** being clear and unambiguous about the organisation’s structure, operations, and performance, both externally and internally, and maintaining a genuine dialogue with, and providing insight to, legitimate stakeholders;
- **accountability:** ensuring that there is clarity of decision making within the organisation, with processes in place to ensure that the right people have the right authority for the organisation to make effective and efficient decisions, with appropriate consequences for failures to follow those processes;
- **stewardship:** developing and maintaining an enterprise-wide recognition that the organisation is managed for the benefit of its shareholders or members, taking reasonable account of the interests of other legitimate stakeholders; and

⁶ Dodson and Smith, “Governance for Sustainable Development: Strategic Issues and Principles for Indigenous Australian Communities.”

⁷ Governance Institute of Australia, “What Is Governance?”

⁸ ASX Corporate Governance Council, “Principles of Good Corporate Governance and Good Practice Recommendations,” 4.

⁹ Australian Public Service Commission, “Building Better Governance.”

- **integrity:** developing and maintaining a culture committed to ethical behaviour and compliance with the law.¹⁰

The APSC's 'good' governance framework takes on the same four key components (referred to as principles in this context) with two further additions – Efficiency and Leadership. 'Good' governance is both about performance - how governance arrangements are used to contribute to overall performance and the delivery of goods, services or programs, and conformance – how governance arrangements are used to ensure requirements of the law, regulations, published standards and community expectations of probity, accountability and openness are met.

From a not-for-profit organisational perspective, the Australian Institute of Company Directors (AICD) (a national organisation committed to promoting world-leading performance of Australian boards and directors) identifies 10 Principles That Promote Good Governance. These too crosscut the corporate and public service principles outlined above, and include:

- 1 **Roles and Responsibilities:** there should be clarity regarding individual director responsibilities, organisational expectations of directors and the role of the board.
- 2 **Board Composition:** a board needs to have the right group of people, having particular regard to each individual's background, skills and experience, and how the addition of an individual builds the collective capability and effective functioning of the board.
- 3 **Purpose and Strategy:** the board plays an important role in setting the vision, purpose and strategies of the organisation, helping the organisation understand these and adapting the direction or plans as appropriate.
- 4 **Risk - Recognition and Management:** by putting in place an appropriate system of risk oversight and internal controls, a board can help increase the likelihood that its organisation will deliver on its purpose.
- 5 **Organisations Performance:** the degree to which an organisation is delivering on its purpose can be difficult to assess, but this can be aided by the board determining and assessing appropriate performance categories and indicators for the organisation.
- 6 **Board Effectiveness:** a board's effectiveness may be greatly enhanced through: careful forward planning of board-related activities; board meetings being run in an efficient manner; regular assessments of board performance; having a board succession plan; and the effective use of sub-committees, where appropriate.
- 7 **Integrity and Accountability:** it is important that a board has in place a system whereby: there is a flow of information to the board that aids decision-making; there is transparency and accountability to external stakeholders; and the integrity of financial statements and other key information is safeguarded.
- 8 **Organisation Building:** the board has a role to play in enhancing the capacity and capabilities of the organisation they serve.
- 9 **Culture and Ethics:** the board sets the tone for ethical and responsible decision-making throughout the organisation.
- 10 **Engagement:** the board helps an organisation to engage effectively with stakeholders.

More stringent reporting requirements are likely to put pressure on a Board to improve reporting processes and procedures which the AICD notes as being proven to be effective in improving governance practices.¹¹

Governance: An Indigenous Australian perspective

The Centre of Aboriginal Economic Policy Research at the Australian National University (ANU) undertook the Indigenous Community Governance Project (the ICG project) in partnership with Reconciliation Australia from 2004-2008 to identify 'best practice'. The ICG project helped inform the establishment of the widely used and

¹⁰ Governance Institute of Australia, "What Is Governance?"

¹¹ Australian Institute of Company Directors, "Good Governance Principles and Guidance for Not-for-Profit Organisations".

highly endorsed Indigenous Governance Toolkit (the Toolkit) hosted by the AIGI. Established in 2012 the AIGI was a key recommendation of the ICG project. It positions itself as:

*“a national centre of governance excellence, connecting Indigenous Australians to world class governance practice, informing effective policy, providing accessible research, disseminating stories that celebrate outstanding success and solutions, and delivering professional development opportunities to meet the self-determined governance needs of Indigenous people”.*¹²

The Toolkit is a comprehensive (yet not ‘one-size fits all’) collection of written, visual and audio resources dedicated to supporting Aboriginal and Torres Strait Islander people to determine for themselves how best to build effective and legitimate governance systems. Not only informed by findings from the ICG project it also draws on leading Indigenous-led international research out of the Harvard Project on American Indian Economic Development and the Native Nations Institute at the Udall Centre of Public Policy, University of Arizona. Further complementing the Toolkit is regularly updated inclusions of case study success stories illuminated via the Indigenous Governance Awards (established by Reconciliation Australia in 2005); and the formalised approaches to ‘best practice’ in corporate governance offered by the ORIC.

Indigenous governance

Indigenous governance in an Aboriginal and Torres Strait Islander context is about “Aboriginal and Torres Strait Islander people making and implementing decisions about their communities, lives and futures”.¹³ Indigenous Australians have always had their own governance. It is “an ancient jurisdiction made up of a system of cultural geographies (‘country’), culture-based laws, traditions, rules, values, processes and structures that has been effective for tens of thousands of years, and which nations, clans and families continue to adapt and use to collectively organise themselves to achieve the things that are important to them”.¹⁴ Processes of colonisation have and continue to disrupt, challenge and change complex and varied Indigenous Australian governance models in prioritisation of standardised western governance structures, rules and values.

Beyond legally formalised and registered organisational forms, governance is at work every day:

- in the way people own and care for their country, arrange a ceremony, manage to share their resources, and pass on their knowledge;
- in networks of extended families who have a form of internal governance;
- in the way people arrange a community football match or an art festival, informally coordinate the activities of a night patrol and develop alliances across regions; and
- in the voluntary work of Aboriginal and Torres Strait Islander men and women within their own communities, and as governing members on a multitude of informal local committees and advisory groups.¹⁵

Indigenous organisational governance

Indigenous organisational governance as defined by the Toolkit is:

*“the exercise of authority, direction and control to accomplish the functions and responsibilities of an organisation and secure its strategic objectives. The governance of an organisation rests under the direction of the group of people who are recognised and elected or selected by their nation or community as being the group of people with the right, responsibility and ability to govern on their behalf”.*¹⁶

A key distinguisher between organisational governance and Indigenous organisational governance is “the role the Aboriginal and Torres Strait Islander social and philosophical systems, cultural values, traditions, rules and beliefs

¹² Australian Indigenous Governance Institute, “About Us.”

¹³ Australian Indigenous Governance Institute, “Our People, Our Way, Stories of Indigenous Governance Success,” 5.

¹⁴ Australian Indigenous Governance Institute and Reconciliation Australia, “1.2 Indigenous Governance.”

¹⁵ Ibid.

¹⁶ Australian Indigenous Governance Institute and Reconciliation Australia, “1.3 Governance in Aboriginal and Torres Strait Islander Organisations.”

play in the governance of: processes – how things are done; structures – the ways people organise themselves and relate to each other; and institutions – the rules for how things should be done”.¹⁷ The practice of Aboriginal and Torres Strait Islander governance cannot be separated from its traditions and culture. The challenge is implementing this and remaining practically effective within a wider non-Indigenous governance environment.

The ICG project suggests that instead of talking about ‘good’ Indigenous governance, it is more useful to talk about ‘effective’ and ‘legitimate’ governance. It argues that problems too often arise when one society or cultural group impose their view of what is ‘good’ governance onto another.¹⁸ ‘Effective’ governance is defined as having rules, structures and processes that are capable of achieving an organisation’s objectives—it gets things done. To achieve this, governance must be legitimate. ‘Legitimate’ governance is defined as rules, structures and processes that are seen as credible and worthy by an organisation’s members and match their ideas about how authority should be organised and exercised—it gets things done ‘properly’.¹⁹

The Toolkit identifies ‘effective governance principles’ as defined by the United Nations Development Program as a useful starting point when new governance arrangements are being created. They are:

- **legitimacy and voice** - where all men and women have a say in decisions and about what is in the best interests of the community or group;
- **fairness** - where all men and women have the opportunity to maintain and improve their wellbeing and have their human rights protected,
- **accountability** - where decision-makers are accountable to their members, the public and stakeholders;
- **direction** - where leaders and members have a shared, long-term view of what their future society is going to be like; and
- **performance** - where the governance system delivers goods, services and outcomes that are planned for and meet the needs of the members.²⁰

Building on these, the ICG project has identified eight principles which, in combination, help to produce effective and legitimate Aboriginal and Torres Strait Islander governance. These are:

- 1 governing institutions (rules);
- 2 leadership;
- 3 genuine decision-making power;
- 4 practical capacity;
- 5 cultural legitimacy;
- 6 resources;
- 7 accountability; and
- 8 participation.²¹

Cultural legitimacy is emphasised as critical to an organisation’s overall legitimacy. It is the design, implementation and safeguarding of governance arrangements that embody and reinforce members’ preferred contemporary values and ideas about how authority should be organised, and leadership exercised.²² Explicitly, it refers to having rules, structures and processes that: are informed by an understanding of your own cultural traditions; embody the values and norms that are important to you; reflect your contemporary ideas about how

¹⁷ Australian Indigenous Governance Institute and Reconciliation Australia, “1.2 Indigenous Governance.”

¹⁸ Australian Indigenous Governance Institute and Reconciliation Australia, “1.1 The Important Parts of Governance.”

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Australian Indigenous Governance Institute and Reconciliation Australia, “Glossary.”

power and authority should be shared and put into practice; and are generated through your people's own efforts, and therefore have the support of the people being governed.²³

Having effective and legitimate governance benefits families, communities and nations. It is a powerful predictor of success in economic and community development and in maximising self-determination for Aboriginal and Torres Strait Islander peoples. To be effective and legitimate, governance solutions need to be tailored to suit the local environment.

Case study: The Indigenous Governance Awards

The Indigenous Governance Awards share and promote success from Aboriginal and Torres Strait Islander communities and organisations around Australia.

Reconciliation Australia and the BHP Foundation have partnered to deliver the Indigenous Governance Awards since their inception in 2005. In 2018 the AIGI joined as co-host.

The Indigenous Governance Awards define good governance as the melding of “traditional governance and responsibilities based on culture and kinship, with the requirements of mainstream organisations, including financial and legal accountabilities”.²⁴ It acknowledges there are multiple ways of ‘doing’ Indigenous governance from an Aboriginal and Torres Strait Islander perspective, yet the common thread is “that culture must be at the core”.²⁵ Across its award categories, judges look for the demonstration of:

- innovation;
- effectiveness;
- self-determination and leadership;
- cultural relevance and legitimacy; and
- future planning, sustainability and resilience.²⁶

4.1.2 Evaluation stakeholder definitions of good governance

Summarised below are the characteristics and enablers of good governance identified by IAS funded organisations, regulators and NIAA staff through consultation and survey. Icons are used to delineate who supported each (● IAS funded organisations | ● Regulators and NIAA staff).

Characteristics

Diverse Board of Directors ●●

A Board that brings together directors with a range of expertise and skills. For Indigenous organisations, this means directors with both technical expertise in areas such as law and finance, as well as cultural expertise, including cultural authority and connection to the community the organisation services. Regulators highlighted the importance of directors having a clear understanding and awareness of conduct obligations and behaviours.

Stable CEO ●

A stable CEO is an indicator of good governance, helping ensure clear and consistent policy direction, and supporting long-term relationships between the organisation, local community, and other service providers.

²³ Ibid.

²⁴ Reconciliation Australia, BHP Foundation, and Australian Indigenous Governance Institute, “Indigenous Governance Awards 2018,” 3.

²⁵ Reconciliation Australia, BHP Foundation, and Australian Indigenous Governance Institute, 4.

²⁶ Australian Indigenous Governance Institute, “Our People, Our Way, Stories of Indigenous Governance Success,” 5.

Good governance

Experienced management and operations team ●

A management team with the required skills, knowledge, experience and understanding of the local service environment. Examples of a management team with the right type of skills and experience will include but not be limited to: financial management capabilities, ability to set a strong policy direction, and the knowledge of how to implement robust reporting processes and procedures.

Understanding of the local service environment and strong community connections ●

Directors and CEOs need to have knowledge of, and connections to, the wider local service environment. They need to have strong and long-standing relationships with the Indigenous community in which the organisation is located. Respect and trust of the community is non-negotiable.

Strong reporting processes and procedures are in place ●●

Strong reporting processes and procedures help ensure accountability and compliance with requirements imposed by funding bodies and accreditation bodies.

Ability to effectively manage significant funds and multiple grants over a long period of time ●●

Demonstrated ability to produce accurate financial reports including both a special purpose report and a general-purpose report.

Low-risk ratings ●●

Consistent low risk ratings from funding body assessments.

Transparency in decision making ●

Transparency in decision making should, where possible, extend beyond the Board and be afforded to all members of an organisation. ORIC shared that in its experience, more disputes and complaints arise where organisations are not internally sharing information and decisions which impact service delivery staff.

Enablers

Access to governance support and training ●●

Training opportunities, including online modules, in-person workshops and networking events that are tailored to each organisation's specific characteristics. For example, Indigenous organisations stated that they need to access culturally safe and relevant good governance training in order to practice good governance. This is in recognition that Indigenous organisations operate in two worlds - Indigenous organisations must manage traditional Indigenous lore, customs and traditions with the expectations of western compliance laws and regulators. Training to support organisations to create a governance model that translates the legal requirements of the western world in a way that enables respect for cultural governance is therefore necessary to support Indigenous organisations to have good governance.

Ability to employ and retain qualified and suitable staff ●

An organisation retains qualified and suitable staff at all levels across multiple years. This includes long-term CEO retention to ensure clear and consistent policy direction, and support long-term relationships between the organisation, local Indigenous communities and other service providers.

Inclusion of Indigenous governance models / structures ●●

Characteristics of good governance differ between Indigenous and non-Indigenous organisations. Indigenous governance structures do not neatly fit into a western legislative structure; legislation need to be flexible and supportive of this. Cultural integrity and legitimacy are critical. Indigenous governance is fluid and place specific. It requires ongoing conversations, negotiations and relationships between organisations, Traditional Owners,

Good governance

Elders, and broader community. It is self-determining, culturally safe, and prioritises cultural knowledge, ways of doing, standards, and structures.

4.1.3 Good governance checklist


This good governance checklist is an amalgamation of the literature and Evaluation stakeholder definitions. It helps frame answers to individual Evaluation questions, and the macro question as to whether SOG is achieving its purpose and objectives. Indigenous specific factors are tagged with the icon .

Table 6: Evaluation good governance checklist


Transparency - clear communication on the organisation's structure, operations and performance, both externally and internally, maintaining genuine dialogue with, and providing insight to, legitimate stakeholders.

Accountability - ensuring clarity of decision making. Ensuring that the right people have the right authority, and appropriate consequences for failures to follow processes.

Integrity - developing and maintaining a culture committed to ethical behaviour and compliance.

Stability - retention of qualified and suitable Board members, CEO, and staff.

Diversity - a Board that brings together directors with a range of expertise and skills.

Cultural legitimacy  - having rules, structures and processes that are informed by an understanding of members cultural traditions; embody the values and norms that are important to the organisation and community it services; has the support of the people being governed.

Leadership - a stable CEO to oversee operations and staff, supporting long-term relationships between the organisation, local community, and other service providers.

Self-determination  - Aboriginal and Torres Strait Islander people making and implementing decisions about their communities, lives and futures.

Support - the ability to access appropriate, relevant and affordable governance support and training.

5 *Evaluation question findings*

5.1 Appropriateness

Evaluation Domain	Evaluation Question #1
Appropriateness	How appropriate is the SOG Policy in addressing its identified need?

Sub-questions used to answer the Evaluation question

- A. What are the features, attributes and characteristics of organisations which display good governance (based on a brief literature scan and existing definitions used by ORIC and NIAA)?
- B. What are the characteristics of organisations funded under the IAS including, but not limited to:
 - i. Indigenous and non-Indigenous status;
 - ii. location;
 - iii. incorporation statute and mechanisms (i.e. CATSI Act or Corporations Act, State or Territory legislation); and/or
 - iv. number of in-scope organisations for the SOG Policy (and of these the number of exempt organisations)?

Identified need of the SOG Policy

Section 3 provides a detailed explanation of the SOG Policy, including why it was introduced and its intent. In summary, the SOG Policy seeks to mitigate against service loss or gaps caused by the mismanagement of public funds or by organisational failure through mandating that organisations that receive more than \$500,000 (GST exclusive) of IAS funding in any financial year (excluding for capital works projects) be incorporated under Commonwealth legislation.

The SOG Policy is based on the assumption that organisations regulated by Commonwealth legislation are better governed and that, in transitioning from non-Commonwealth to Commonwealth incorporation legislation the governance of organisations will be strengthened.

The identified need that the SOG Policy is responding to is, therefore, two-fold:

- to ensure that all organisations who receive above the threshold amount are incorporated under Commonwealth legislation unless they are exempt from the SOG Policy, and
- to build the capacity of organisations (specifically in relation to their governance) that were not previously incorporated under Commonwealth legislation.

Ultimately both of these things are designed to ensure that the programs and services funded under the IAS are delivered for the benefit of Indigenous Australians.

Identifying organisations that display good governance

Section 4 explores the features, attributes and characteristics of organisations which display good governance, as identified in leading literature and through consultations undertaken as part of the Evaluation. What constitutes good governance is contextual and differs between organisations, jurisdictions and cultures.

The 'good governance' checklist developed as part of this Evaluation draws on together the common themes and points to nine key characteristics or attributes of organisations that contribute to an organisation being well, or effectively, governed in the context of providing services to Indigenous Australians.

Transparency - clear communication on the organisation's structure, operations and performance, both externally and internally, maintaining genuine dialogue with, and providing insight to, legitimate stakeholders.

Accountability - ensuring clarity of decision making. Ensuring that the right people have the right authority, and appropriate consequences for failures to follow processes.

Integrity - developing and maintaining a culture committed to ethical behaviour and compliance.

Stability – retention of qualified and suitable Board members, CEO, and staff.

Diversity - a Board that brings together directors with a range of expertise and skills.

Cultural legitimacy ☉ - having rules, structures and processes that are informed by an understanding of members cultural traditions; embody the values and norms that are important to the organisation and community it services; has the support of the people being governed.

Leadership – a stable CEO to oversee operations and staff, supporting long-term relationships between the organisation, local community, and other service providers.

Self-determination ☉ - Aboriginal and Torres Strait Islander people making and implementing decisions about their communities, lives and futures.

Support – the ability to access appropriate, relevant and affordable governance support and training.

Reporting obligations under Corporations Act and CATSI Act

Incorporation under the Corporations Act or the CATSI Act supports greater transparency and accountability within some organisations, depending on their size and previous incorporation statute. As shown in Table 7 below, the various annual reporting requirements – particularly in relation to audited financial reports – differ depending on incorporation statute. Each year, under the Corporations Act and CATSI Act all organisations are required to lodge an annual statement that confirms the organisation’s details (such as registered office and place of business and officeholders’ details).²⁷ In the case of the CATSI Act, this information is more detailed and includes a number of employees and basic financial details.

Under the CATSI Act, all organisations with a consolidated gross annual revenue of \$100,000 or more also need to file audited financial reports. Under the Corporations Act the threshold is much higher, and the requirement to lodge audited financial reports only applies for organisations with an annual revenue of \$50 million or more, assets of \$25 million or more and at least 100 employees. Audited financial reports are an important tool as they can validate the accuracy of accounting information provided by an organisation. They are also helpful to identify errors in accounting information that could, if undetected, lead to organisations making bad ‘business decisions’, and can also educate the organisation (both management and the board) on the importance of accounting information.

The requirement for lodging annual audited financial reports varies across the non-Commonwealth incorporation statutes depending on the size or annual income of the organisation, and whether the organisation has charitable status. However, any organisation that is registered under State or Territory based incorporated associations legislation and receives IAS grant funding of \$500,000 (exclusive of GST) or more in any financial year would be required to file audited financial reports. Similarly, most of the Aboriginal land trusts and councils formed under the various State legislation are also required to have their financial accounts audited annually and to make these available to bodies that have supervisory roles. While these organisations would likely be successful in applying for an exemption under the SOG Policy, the reporting requirements remain a useful comparison.

For any co-operative incorporated under the Commonwealth or State or Territory-based legislation, the annual revenue would need to be greater than \$8 million to trigger this requirement.

Incorporation and ongoing compliance costs also vary across the jurisdictions and regulators (Table 7).

²⁷ ASIC, Annual statements. <https://asic.gov.au/for-business/running-a-company/annual-statements/>

Evaluation question findings

Table 7: Reporting obligations under various incorporation statutes

Legislation	Annual confirmation of organisation details	Annual solvency test	Unaudited financial reports	Auditor's reported/ Audited financial reports	Detailed report on organisation's operations and activities	Registration fee	Annual compliance fee
CATSI Act 2006 (Cth)	Yes (all)	No	Yes (unless Consolidated gross income less than \$100,000)	Yes (unless Consolidated gross income less than \$100,000)	Yes (if Consolidated gross income \$5 million or more or if a 'large corporation') ²⁸	Nil	Nil
Corporations Act 2001 (Cth)	Yes (all)	Yes (all)	Yes (all)	Yes (Large proprietary companies, Public Companies) ²⁹	Yes (Large proprietary companies, Public Companies)	An Australian (Pt 2A.1) company having share capital - \$512 An Australian (Pt 2A.1) company not having share capital - \$422	A proprietary company - \$276 A special purpose company (proprietary) - \$56 A special purpose company (public) - \$52 A public company - \$1,281 <i>Plus additional fees apply for each form lodged as part of maintain compliance</i>

²⁸ A large corporation, for ORIC purposes, is a corporation that satisfies at least two of the following criteria in a financial year: (1) consolidated gross operating income of \$5 million or more, (2) consolidated gross assets valued at \$2.5 million or more, and (3) more than 24 employees. Source: <https://www.oric.gov.au/publications/catsi-fact-sheet/corporation-size-and-reporting>

²⁹ With effect from 1 July 2019, 'large proprietary companies' are those that satisfy at least two of the following criteria: (1) have a consolidated revenue for the financial year of \$50 million or more; (2) have a value of consolidated gross assets at the end of the financial year of \$25 million or more; and (3) employee 100 or more people. Source: <https://asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/are-you-a-large-or-small-proprietary-company/>

Evaluation question findings

Legislation	Annual confirmation of organisation details	Annual solvency test	Unaudited financial reports	Auditor's reported/ Audited financial reports	Detailed report on organisation's operations and activities	Registration fee	Annual compliance fee
Associations Incorporation Act 2009 (NSW) ³⁰	No	No	Yes (all)	Yes (Tier 1 associations)	No	If the association name has been reserved - \$138 If the association name has not been reserved - \$178	Tier 1 associations: \$202 Tier 2 associations: \$48
Associations Incorporation Reform Act 2012 (Vic) ³¹	No	No	Yes (all)	Yes (Tier 2 & 3 associations)	No	Model rules - \$37.60 Own rules - \$217.90	Tier 1 - \$60.10 Tier 2 - \$120.20 Tier 3 - \$240.50
Associations Incorporation Act 1981 (QLD) ³²	No	No	Yes (all)	Yes (Level 1 & 2 associations) ³³	No	\$167.85	\$58.60

³⁰ An association is classified into one of two tiers for the purposes of determining its financial reporting obligations: Tier 1 associations have an annual revenue of more than \$250,000 or current assets of more than \$500,000 and Tier 2 associations have revenue of \$250,000 or less and current assets of less than \$500,000. Source: <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/running-an-association/financial-reporting-requirements>

³¹ An association is classified into one of three tiers for the purposes of determining its financial reporting obligations: Tier 1 associations have an annual revenue of less than \$250,000, Tier 2 associations have an annual revenue of between \$250,000 and \$1,000,000, and Tier 3 associations have a revenue of more than \$1,000,000. Source: <https://www.consumer.vic.gov.au/clubs-and-fundraising/incorporated-associations/running-an-incorporated-association/annual-statement/financial-statements-and-auditing>

³² An association is classified into one of three levels for the purposes of determining its financial reporting obligations: Level 1 associations have current assets of more than \$100,000 or annual revenue of more than \$100,000, Level 2 associations have current assets between \$20,000 and \$100,000 and/or revenue between \$20,000 and \$100,000, and Level 3 associations have current assets less than \$20,000 and revenue of less than \$20,000. Source: Queensland Government Office of Fair Trading, 'Incorporated Associations: A guide to starting and operating an incorporated association in Queensland,' September 2021.

³³ In addition, Level 3 associations required to have an audit conducted under the Collections Act 1966 and/or Gaming Machine Act 1991.

Evaluation question findings

Legislation	Annual confirmation of organisation details	Annual solvency test	Unaudited financial reports	Auditor's reported/ Audited financial reports	Detailed report on organisation's operations and activities	Registration fee	Annual compliance fee
Associations Incorporation Act 2015 (WA) ³⁴	No	No	Yes (all)	Yes (Tier 3 associations)	No	Model rules - \$168 Own rules - \$208	Nil (unless application is made to seek approval for not meeting prescribed rules)
Associations Incorporation Act 1985 (SA) ³⁵	No	No	Yes (prescribed associations)	Yes (prescribed associations)	No	\$224	\$107 (prescribed associations)
Associations Incorporation Act 1964 (Tas)	Yes (annual details of committee members only)	No	Yes (all)	Yes (associations with annual revenue of \$250,000 or more)	No	\$165	Within 6 months - \$66.00 Within 6-7 months - \$74.25 More than 7 months - \$90.75
Associations Incorporation Act 1991 (ACT) ³⁶	No	No	Yes (all)	Yes (Medium and Large associations)	No	\$203	Nil

³⁴ An association is classified into one of three tiers for the purposes of determining its financial reporting obligations: Tier 1 associations have an annual revenue of less than \$250 000, Tier 2 associations have revenue of \$250 000 to \$1 000 000, and Tier 3 associations have revenue of more than \$1 000 000. Source: <https://www.commerce.wa.gov.au/publications/financial-reporting-under-new-associations-law>

³⁵ An association is classified as prescribed or not prescribed for the purposes of determining its financial reporting obligations: a prescribed organisation has gross receipts of more than \$500,000 per year. Source: <https://www.sa.gov.au/topics/family-and-community/community-organisations/managing-a-community-organisation/accounts-and-audits>

³⁶ An association is classified into one of three sizes for the purposes of determining its financial reporting obligations: Small associations have less than \$400,000 annual revenue and less than 1000 members, Medium associations have between \$40,000 and \$1,000,000 revenue, and Large associations have more than \$1,000,000 revenue. Source: https://www.nflaw.org.au/sites/default/files/media/Financial_powers_and_reporting_obligations_ACT.pdf

Evaluation question findings

Legislation	Annual confirmation of organisation details	Annual solvency test	Unaudited financial reports	Auditor's reported/ Audited financial reports	Detailed report on organisation's operations and activities	Registration fee	Annual compliance fee
Associations Act 2010 (NT) ³⁷	Yes (requirement to submit documents presented at AGM)	No	Yes (requirement to submit documents presented at AGM)	Yes (all)	Yes (requirement to submit documents presented at AGM)	\$80	\$18
Australian Charities and Not-for-profits Commission Act 2012 (Cth) ³⁸	Yes (all)	No	Yes (Small charities)	Yes (Medium and Large charities)	Yes (all)	Nil	Nil
Co-operatives National Law 2020 ³⁹ <i>The Co-operatives National Law applies to co-operatives in all Australian State and Territories</i>	Yes (all)	Yes (all)	Yes (Large co-operative)	Yes (Large co-operative)	Yes (Large co-operative if concise report prepared for members)	\$33.10 ⁴⁰	Small co-operative - \$82.70 ⁴¹ Large co-operative - \$293.10 ⁴²

³⁷ An association is classified into one of three tiers for the purposes of determining its financial reporting obligations: Tier 1 associations have annual gross receipts of less than \$25,000 or assets less than \$50,000, Tier 2 associations have annual gross receipts of between \$25,000 and \$250,000 or assets between \$50,000 and \$500,000 or holds a licence under the Gaming Machine Act, and Tier 3 associations have annual gross receipts of more than \$250,000 or assets more than \$500,000 or have been declared to perform local government functions. Source: https://www.nflaw.org.au/sites/default/files/media/Financial_powers_and_reporting_obligations_NT.pdf

³⁸ A charity is classified into one of three sizes for the purposes of determining its financial reporting obligations: Small charities have an annual revenue of less than \$250,000, medium charities have an annual revenue of \$250,000 to \$999,999 and large charities have an annual revenue of \$1,000,000 or more. Source <https://www.acnc.gov.au/tools/guides/2021-annual-information-statement-guide>

³⁹ Small co-operatives meet two of the following criteria - annual revenue less than \$8,000,000, value of gross assets less than \$4,000,000 or fewer than 30 employees at the end of the previous financial year. Source: <https://www.consumer.vic.gov.au/licensing-and-registration/co-operatives/what-is-a-co-operative>

⁴⁰ Indicative cost based on Victorian fee structure.

⁴¹ Indicative cost based on Victorian fee structure.

⁴² Indicative cost based on Victorian fee structure.

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Legislation	Annual confirmation of organisation details	Annual solvency test	Unaudited financial reports	Auditor's reported/ Audited financial reports	Detailed report on organisation's operations and activities	Registration fee	Annual compliance fee
Aboriginal Land Rights Act 1983 (NSW)		No	Yes	Yes, if required by NSW Aboriginal Land Council	Yes	No	No
Aboriginal Land Act 1991 (Qld) and Torres Strait Islander Act 1991 (Qld) ⁴³	Yes	No	Yes (all)	Yes, if the Land Trust has annual revenue of more than \$20,000	Yes	No	No
Aboriginal Lands Trust Act 2013 (SA)	No	No	No	Yes	Yes	No	No
Anangu Pitjantjatjara Yankunytjara Land Rights Act 1981	No	No	No	Yes (must be made available to Anangu and can be inspected by Auditor General))	Yes (must be made at AGM to members)	No	No

⁴³ Department of Resources, https://www.resources.qld.gov.au/__data/assets/pdf_file/0004/108724/land-trust-compliance-guide.pdf

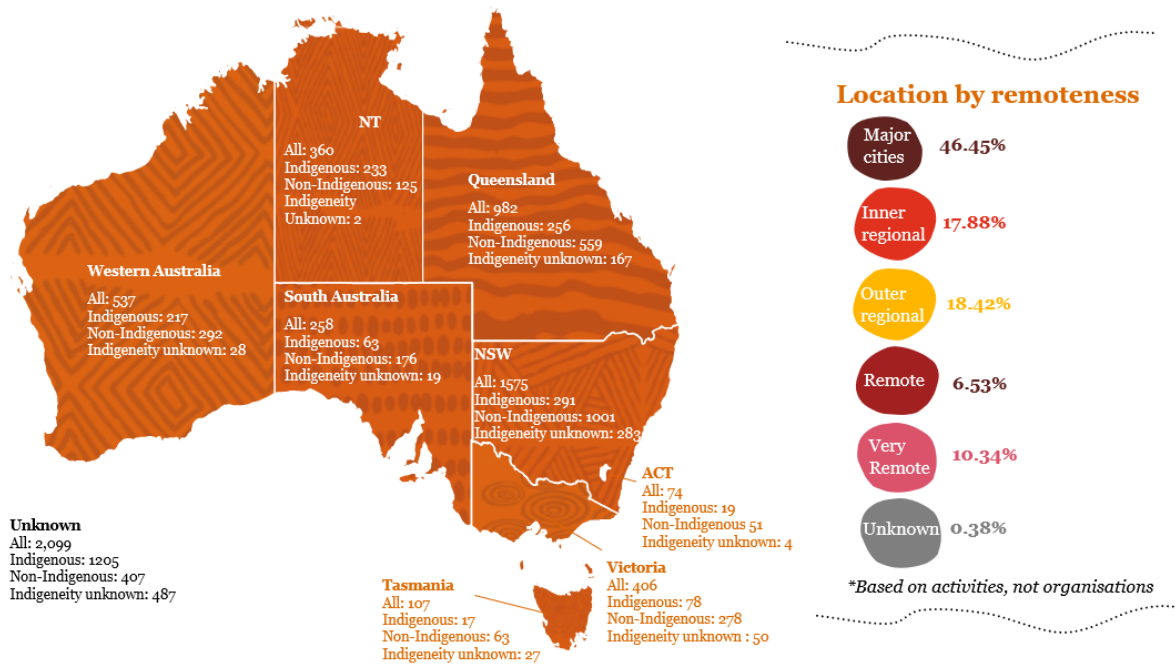
Characteristics of organisations funded under IAS

To understand the appropriateness of the SOG Policy in addressing the needs of IAS funded organisations, it is necessary to first consider the IAS funded organisation ecosystem. Figure 6 and Figure 7 provide an overview of organisation characteristics: location - State/Territory and remoteness, Indigeneity, and entity type of a cumulative number of 6,398 IAS funded organisations since 2014.⁴⁴

The total funding received by IAS funded organisations since 2014 is approximate \$11.6 billion, with the average funding received by each IAS funded organisation being \$1.81 million (GST exclusive) and the median funding \$6,500 (GST exclusive). The largest amount paid to a single organisation since 2014 was \$202.1 million and the top ten funded organisations accounted for 13% (or \$1.585 billion (GST exclusive)) of all IAS funding.

Of the 6,398 organisations, only 1,053 have received more than \$1 million since 2014 and approximately one quarter of these have received \$10 million (GST exclusive) or more. By contrast, 75% of all IAS funded organisations have received less than \$250,000 (GST exclusive) in IAS grants during that period.

Figure 6: State and Territory location of IAS funded organisations 2014-2021⁴⁵



⁴⁴ Data points are based on datasheet '20210616 - SOG Evaluation data', provided by the NIAA to the evaluation team on 22 June 2021.

⁴⁵ Ibid.

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Figure 7: Entity type of IAS funded organisations 2014-2021⁴⁶



Data for organisational type listed as 'Other' represented: Commonwealth Government Statutory Authority: 5, Fixed trust: 5, Hybrid trust: 4, Limited partnership: 1, Local Government statutory authority: 9, Public trading trust: 1, State Government Other Incorporated Entity: 13, Territory Government Other Incorporated Entity: 1, and Territory Government Statutory Authority: 1

Characteristics of in-scope organisations

A total of 95 organisations included in the mapped ecosystem above have come in-scope of the SOG Policy since its inception in 2014.⁴⁷ They represent 1.5% of all 6,398 organisations to receive IAS funding since 2014.

For the purposes of the Evaluation, an in-scope organisation is one that has either transferred its incorporation statute to become incorporated under Commonwealth legislation as a result of the SOG Policy, has successfully sought an exemption to remain incorporated under a State or Territory regulator or is in the process of doing either of these things.

The 95 in-scope organisations have undertaken over 1,000 activities across five of the six IAS program funding streams since the introduction of IAS in 2014 (see Figure 8 below) and the funding described in Table 8.

As of June 2021, 79 of these organisations had received IAS funding totalling \$954.46 million (GST exclusive). More detail in relation to IAS funding for these organisations is shown in Table 8 below.

⁴⁶ Data points are based on datasheet '20210616 - SOG Evaluation data', provided by the NIAA to the evaluation team on 22 June 2021.

⁴⁷ Ibid.

Figure 8: Activities of in-scope organisations across IAS program funding streams⁴⁸

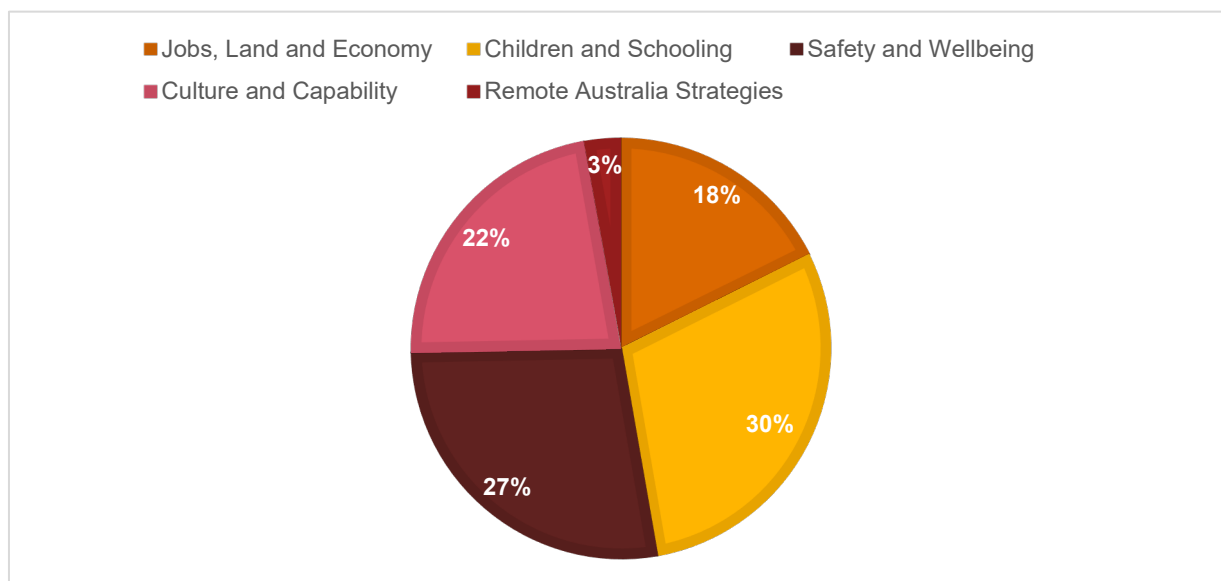


Table 8: Funding of In-scope organisations⁴⁹

	Total amount (GST exclusive)	Average amount per organisation (GST exclusive)	Median amount (GST exclusive)
All IAS Funding (since 2014)	\$954.46 million	\$9.84 million	\$6.28 million
Current IAS Funding (as at January 2021)	\$290.72 million	\$3.63 million	\$2.20 million

In-scope organisations that have transitioned incorporation statute

61 in-scope organisations have transitioned incorporation statute as a result of the SOG Policy. Of those:

- 39 have transitioned to the CATSI Act;
- 22 to the Corporations Act (note another 2 received exemptions to remain registered under the Corporations Act); and
- 8 requested an exemption which was denied, and so subsequently transitioned to the relevant Commonwealth incorporation statute.

These organisations are distributed across the country, as shown in Figure 11 below.

Of the 61 in-scope organisations to transition, as at January 2021, 50 were receiving current IAS funding as shown in Table 9 below.

In the first three years of the SOG Policy (2014–2016), 35 of organisations transitioned incorporation statute. Only six organisations have transitioned incorporation statute since 2019.

⁴⁸ Data points are based on datasheet ‘20210616 - SOG Evaluation data’, provided by the NIAA to the evaluation team on 22 June 2021. Note 0% of in-scope organisations receive IAS funding for the Research and Evaluation funding stream.

⁴⁹ Ibid.

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The 61 organisations have undertaken funded activities across five of the six program areas in the proportions shown in Figure 9. None of these organisations received funding for ‘research and evaluation’ projects (the sixth IAS funded program of work). More than 85% of the organisations have undertaken activities over multiple program areas.

Figure 9: Activities of in-scope transitioned organisations across IAS program funding streams⁵⁰

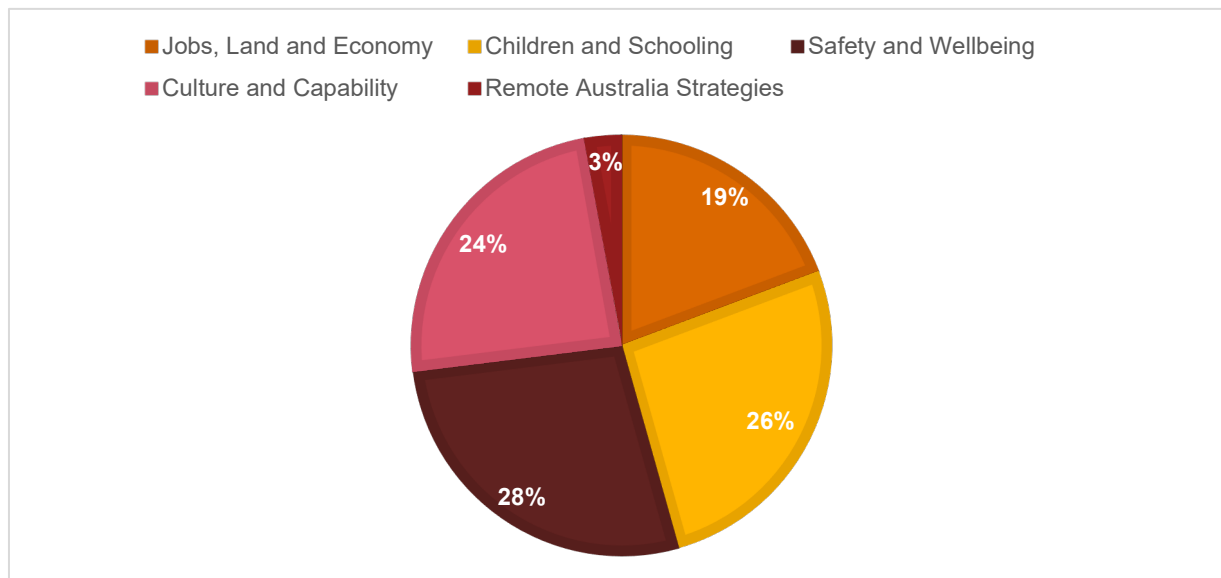


Table 9: Funding of in-scope transitioned organisations⁵¹

	Total amount (GST exclusive)	Average amount per organisation (GST exclusive)	Median amount (GST exclusive)
All IAS Funding (since 2014)	\$674.74 million	\$11.63 million	\$7.43 million
Current IAS Funding (as at January 2021)	\$190 million	\$3.88 million	\$1.77 million

In-scope organisations granted an exemption

A total of 18 in-scope organisations successfully sought an exemption to remain incorporated under State or Territory legislation and therefore a State or Territory-based regulator. These organisations are incorporated under the following Acts:

- Cooperatives Act 1997 (Qld): 1;
- Associations Incorporation Act 1981 (Qld): 1;
- Associations Incorporation Act 1985 (SA): 3;
- Associations Incorporation Act 2015 (WA): 9;
- Associations Incorporation Reform Act 2012 (VIC): 1;

⁵⁰ Data points are based on datasheet ‘20210616 - SOG Evaluation data’, provided by the NIAA to the evaluation team on 22 June 2021.

⁵¹ Ibid.

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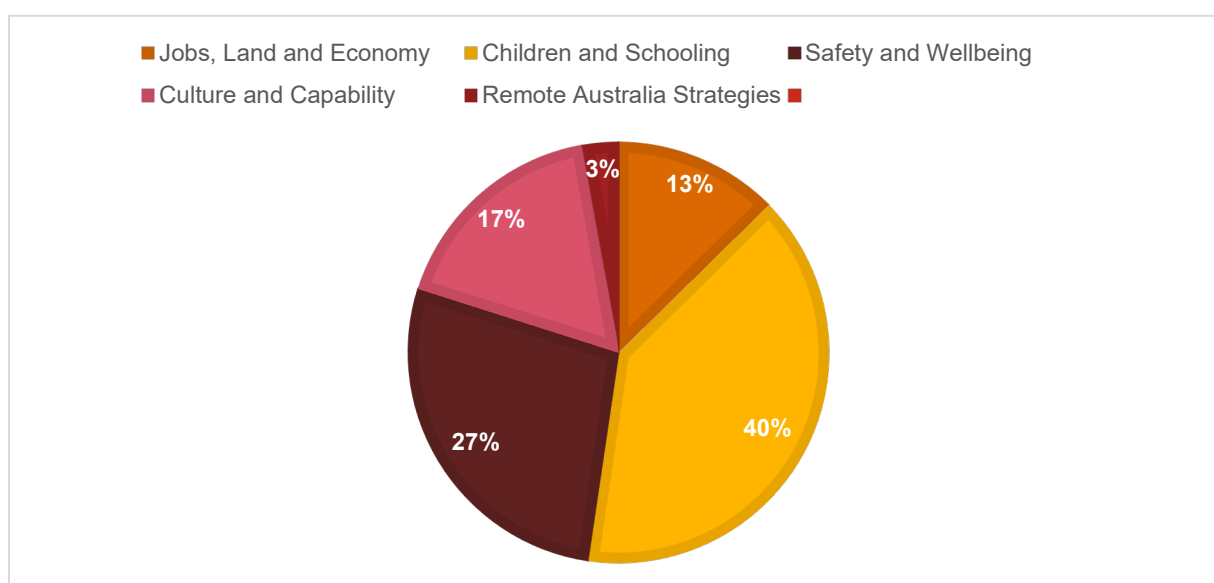
- Co-operatives National Law Application Act 2013 (VIC): 1; and
- Corporations Act: 2.⁵²

Of the 18 in-scope organisations exempted, 16 were granted an exemption on the grounds of “PM&C funding a small proportion of total revenue”.

Of the 18 exempt organisations, as at January 2021, 16 were currently receiving IAS funding to a total of \$71.92 million. The average amount being received by each organisation was \$4.49 million and the median, \$2.24 million.

The majority of the exemptions (14 of the 18) were granted across 2015-16. Three exemptions have been recorded since, and the date of the granting of the exemption for the other organisation is unknown.

Figure 10: Activities of in-scope exempt organisations across IAS program funding streams⁵³



The 18 exempt organisations have undertaken funded activities across five of the six program areas as shown in Figure 10 (again, none of these organisations has been funded under the research and evaluation program stream). The majority (13 of the 18 organisations) have undertaken activities over multiple program areas, including six who have undertaken activities over three or more program areas.

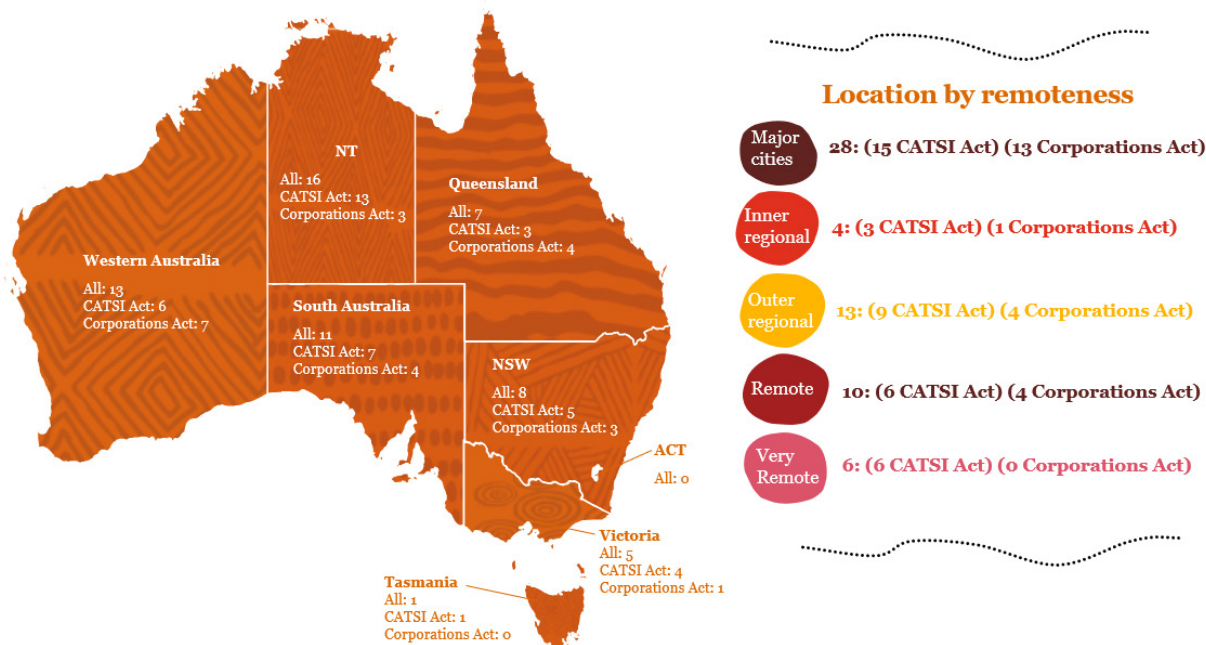
Other in-scope organisations

Of the remaining in-scope organisations, NIAA has advised that as of June 2021, 14 organisations are in the process of transitioning to Commonwealth incorporation (10 to the CATSI Act and 4 to the Corporations Act). Of these, 5 are not currently receiving IAS funding. The majority of these organisations are incorporated associations, governed by the relevant State or Territory-based legislation.

⁵² After being granted an exemption to the SOG policy to remain incorporated under State or Territory legislation, these organisations subsequently transitioned to the Corporations Act.

⁵³ Datasheet '20210616 - SOG Evaluation data'.

Figure 11: State/Territory location of transitioned incorporation statute organisations⁵⁴



IAS funded organisations displaying good governance

IAS funded organisations (Indigenous and non-Indigenous) operate in a diverse ecosystem comprising a wide range of organisational attributes and characteristics. Across the data collection points there was a strong collective emphasis that mirrored the western and Indigenous good governance standards detailed in Section 4 and summaries in the Evaluation checklist for good governance (Table 6).

64 of 66 (97%) IAS funded organisations who responded to the survey question, *how would you rate your organisation's governance practice (i.e. does it have strong oversight, internal accountability mechanisms, clear strategic direction from the Board and cultural legitimacy in your community)?* rated their organisations as having good or very good governance practices. All case study organisations answered similarly.

It is difficult to ascertain whether the IAS funded organisations are displaying qualitative characteristics of 'good governance'. If they meet the revenue thresholds detailed in Table 5 above, then the organisations that are incorporated under the Corporations Act, the CATSI Act or one of the identified State or Territory legislations, they are likely to be demonstrating accountability by regularly reporting and having their financial accounts audited. The data provided by NIAA suggests that this is the case in a significant majority of the IAS funded organisations. Another proxy measurement for 'good governance' is performance, which is explored in further detail below in the response to Evaluation Question #2. As at June 2021, for the IAS funded organisations which had an NIAA risk rating, only 43 were rated 'extreme' risk, while 247 had a high risk rating.

In reference to Indigenous governance, views were consistent with definitions of good or 'effective and legitimate' Indigenous governance produced by the ICG project. Indigenous governance structures do not neatly fit into a western legislative structure; their governance models need to be flexible and adaptive; and the practice of Indigenous governance cannot be separated from traditions and culture.

⁵⁴ Ibid.

Many of these organisations reflected that it can be challenging to implement good Indigenous governance and remain practically effective within a wider non-Indigenous governance environment.

Conclusion - How appropriate is the SOG Policy in addressing its identified need?

The SOG Policy is somewhat appropriate in addressing its identified need of mitigating the risk of service failure or mismanagement of public funds associated with the delivery of programs and services to Indigenous Australians.

The SOG Policy appears to be based on the assumption that incorporation under either the CATSI Act or the Corporations Act results in **stronger transparency and accountability**, both being characteristics identified as necessary for organisations that are well governed. Depending on the size of an organisation (in terms of revenue and assets), incorporation under the CATSI Act and the Corporations Act requires organisations to file annual, independently audited financial statements that are then published on the ORIC and ASIC websites respectively. In the case of larger organisations, annual reports detailing the activities of the organisation must also be filed. This process provides **an additional level of oversight** on the organisation's operations – potentially identifying risks that could result in organisational or service delivery failure before they occur and minimising the risk of fraud. More stringent reporting requirements can lead to boards improving their reporting processes and procedures which is proven to be effective in improving governance practices. It can also result in directors being more financially literate and aware of the risks associated with an organisation's operations, all of which contributes to stronger governance.

However, due to the funding threshold being set at \$500,000 (GST exclusive) and the charitable nature of many IAS funded organisations, **many of the organisations required to transition from State or Territory-based legislation under the SOG Policy were already required to publish audited financial statements on an annual basis**, both with the relevant State or Territory-based regulator and the Australian Charities and Not-for-profit Commission.

For organisations that are transitioning to incorporation under the Corporations Act, the reporting requirements may actually be less unless the organisation has annual revenue in excess of \$50 million, assets worth more than \$25 million and at least 100 employees.

In relation to Indigenous organisations that are required to transition to incorporation under the CATSI Act, the **Registrar also has some additional powers to intervene** in circumstances where there is perceived to be a high risk of organisational failure. To the extent that this reduces the risk of service failure or mismanagement of public funds, this is appropriate. However, it may also be viewed as an additional layer of scrutiny that is not applied to non-Indigenous organisations.

The SOG Policy also results in Indigenous organisations that have incorporated under the CATSI Act and registered with ORIC to access the **free governance support and training provided by ORIC**, which may strengthen a number of the other 'good governance' skills and characteristics if utilised. However, some organisations have reported difficulty accessing this support due to ORIC being under-resourced to respond to the level of demand.

There is at times a **disconnect** between what the SOG Policy identifies as the governance needs of IAS funded organisations (Indigenous and non-Indigenous) and what the organisations identify as indicators and characteristics of good governance. Incorporation under Commonwealth legislation may support organisations to develop some characteristics of good governance, however compliance with SOG Policy is unlikely to aid 'strengthening' all cogs in an IAS funded organisation's governance machinery.

For example, while incorporation under the Corporations Act may strengthen reporting processes, ASIC is not funded to ensure these non-Indigenous IAS funded organisations are governed in ways expected of them by the Indigenous communities' services are being delivered to. Strengthening governance from a non-Indigenous IAS funded organisation perspective needs to be more than financial accountability and extend to cultural safety as culturally responsive service delivery is an indicator of strong governance.

Evaluation Domain	Evaluation Question #2
Appropriateness	To what extent does the SOG Policy contribute to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations?

Sub-questions used to answer the Evaluation question

- A. For each of the core organisational characteristic identified in (1B), what is the organisation failure rate (defined as organisations being subject to external administration, winding up or deregistering) against:
 - i. compliance with grant reporting requirements including performance against KPIs; and
 - ii. NIAA assigned organisational risk profile? What is the distribution of risk profiles amongst in-scope organisations compared to all organisations?
- B. What supports, guidance, monitoring and compliance requirements (including any specific supports for Indigenous organisations) apply under:
 - i. CATSI Act;
 - ii. Corporations Act; and
 - iii. State and Territory-based legislation (corporations and cooperative/incorporated association legislation)?
- C. How adequate and appropriate is:
 - i. the threshold for application of the policy (\$500,000 (GST exclusive) of IAS funding in one year)? Is this threshold an appropriate indicator of higher risk? What alternative funding thresholds exist?
 - ii. the exemption framework to ensure that well-functioning organisations are not unduly burdened?
 - iii. the one-off \$10,000 grant to support in-scope Indigenous organisations with the costs of incorporation under the SOG Policy?

The identified objectives of the SOG Policy as stated in the policy logic are as follows:

Figure 12: SOG Policy identified objectives (policy logic)

1. To ensure high levels of governance and accountability within organisations funded to deliver activities, programs and services to Aboriginal and Torres Strait Islander people and communities.
2. To mitigate against service loss, disruption or gaps.
3. To safeguard against the misuse or mismanagement of public funds.
4. To minimise organisational failures.
5. To build the capacity of Indigenous organisations

The extent to which the SOG Policy contributes to key objectives of improved governance, increased organisational capacity, and reduced organisational failure amongst IAS funded organisations, are measured in this question against IAS funded organisation failure rates; compliance; KPI performance; and risk profile data. Comparisons are made between in-scope and broader IAS funded organisations. Consideration of SOG supports, guidance, monitoring, and compliance requirements, as well policy parameters and their contribution are also explored.

Organisation failure or wind up

ORIC data on organisational failure rates (defined as organisations being subject to external administration, winding up or deregistering) of the 3,000-plus organisations under the CATSI Act from July 2014 – April 2019, show:

- 308 CATSI Act registered organisations deregistered between April 2014 and April 2019; and

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- 13 stated their intent to deregister.⁵⁵

This reflects a rate of between 0.003 and 0.005% of all registered organisations on an annual basis. During the same period, the rate of failure or deregistration for companies registered with ASIC was between 0.002 and 0.003%.⁵⁶ Although deregistration rates have fluctuated there is a general downward trend in full year data from 2015 through 2019 (Figure 13).

There is evidence of only one of the 95 in-scope organisation failing since transition, with that organisation going into liquidation in 2019 following a period of special administration. That organisation identified various operational, governance and financial matters that weakened the likelihood of a successful and sustainable restructure, and ultimately determined that the services be moved onto a better managed and resourced organisation.

Activity reporting requirements

NIAA compliance data on half-yearly performance review reporting required by IAS funded organisations between July 2015 and December 2019 (based on 13,529 activity reports due) shows 39.9% of all IAS funded organisations submitted half-yearly performance reports to NIAA on time (the status of 9% of reports submitted are unknown).⁵⁷

When analysed by Indigeneity status, the data reveals:

- 37.7% of IAS funded organisations that identify as Indigenous submitted half-yearly performance reports to NIAA on time (the status of 9.5% of reports submitted are unknown); and
- 43.6% of IAS funded organisations that identify as non-Indigenous submitted half-yearly performance reports to NIAA on time (the status of 7.9% of reports submitted are unknown).

In comparison to in-scope organisations:

- 49.5% of organisations transitioned to the Corporations Act under SOG submitted half-yearly performance reports to NIAA on time (the status of 8.4% of reports submitted are unknown);
- 36.1% of organisations transitioned to the CATSI Act under SOG submitted half-yearly performance reports to NIAA on time (the status of 11.7% of reports submitted are unknown); and
- 49.8% of organisations granted an exemption under SOG submitted half-yearly performance reports to NIAA on time (the status of 7.7% of reports submitted are unknown).⁵⁸

⁵⁵ Data points are based on datasheet 'Relevant Data Points - July,' provided by the NIAA to the evaluation team on 22 June 2021.

⁵⁶ Australian Securities and Investment Commission, 2021. Australian insolvency statistics – Series 1L Companies entering external administration and controller appointments, January 1999 – August 2021. Released October 2021.

⁵⁷ Data points are based on datasheet 'Copy of Reporting compliance summary since 2014' provided by the NIAA to the evaluation team on 22 June 2021.

⁵⁸ Ibid.

Figure 13: Percentage of half-yearly IAS performance review reports submitted on time⁵⁹

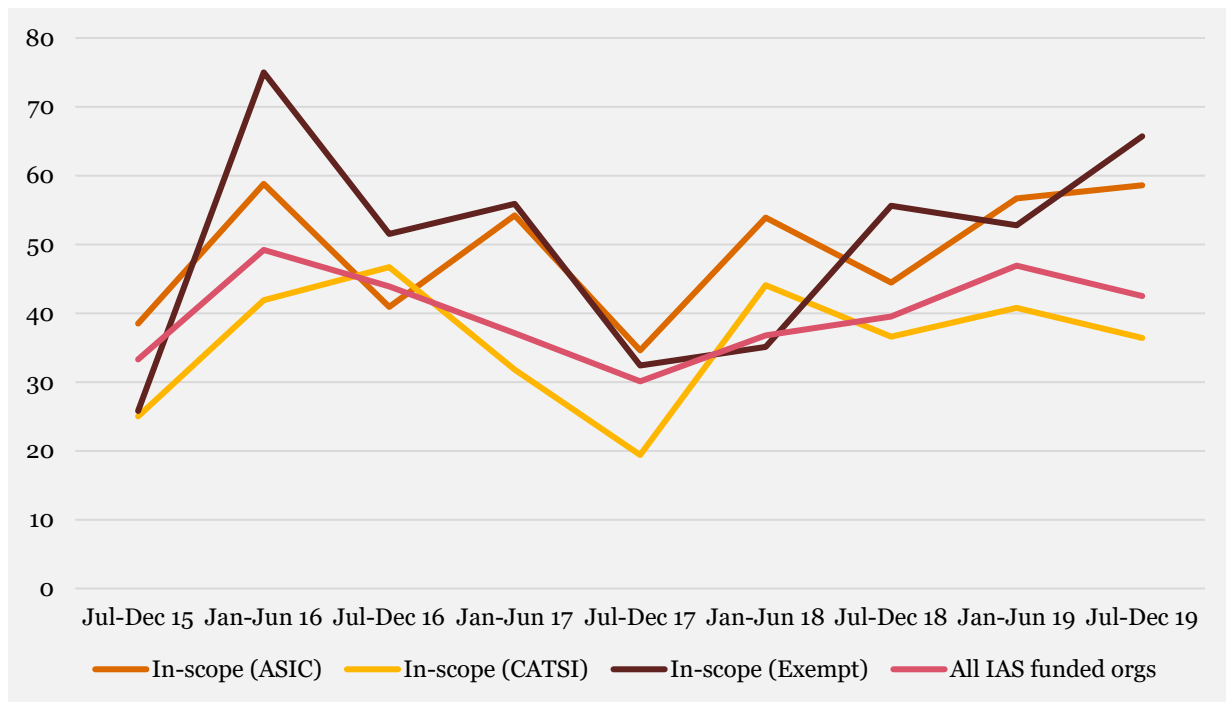


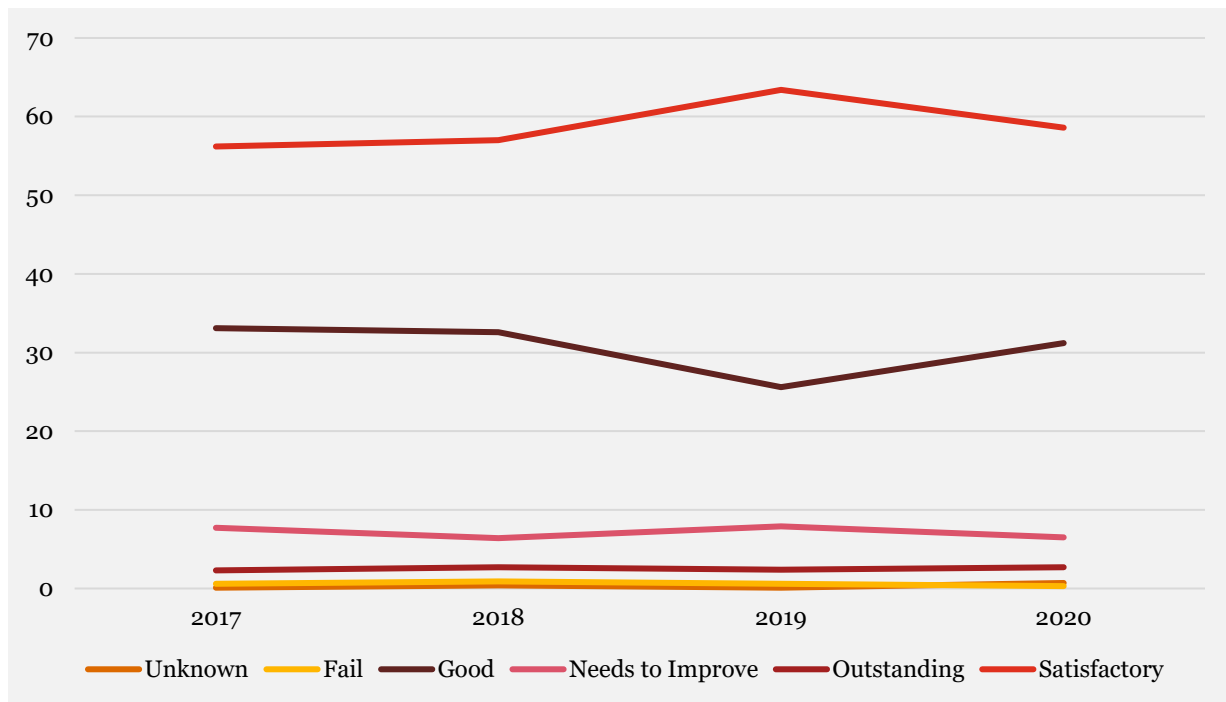
Figure 13 compares the outcomes for the categories of in-scope organisations and all IAS funded organisations over time. It shows that those in-scope organisations granted an exemption from the SOG Policy have had, albeit with some fluctuation between July 2015 and December 2019, the biggest improvement in submitting IAS performance reports on time. Organisations who have transitioned to Corporations Act also outperformed ‘all IAS funded organisations’, while those that transitioned to the CATSI Act have consistently been the least likely to submit performance review reports on time.

Grant activity performance ratings

NIAA IAS performance rating data 2017-2020 shows little movement in the performance ratings of the individual IAS activities that organisations are funded to deliver (Figure 14).

⁵⁹ Data points are based on datasheet ‘Copy of Reporting compliance summary since 2014’ provided by the NIAA to the evaluation team on 22 June 2021.

Figure 14: Performance reporting ratings (percentage) of all IAS funded activities⁶⁰



In comparison, in-scope organisations that have transitioned their incorporation status as a result of SOG have had slightly more movement during this period. An increase in the percentage of in-scope transitioned organisations receiving ‘Satisfactory’ performance ratings for the activities they are funded to deliver correlates with a decrease in those activities receiving a rating of ‘Good’ (Figure 15). Although this can be read as in-scope transitioned organisations performance ratings dropping between 2017 – 2020, the data also shows:

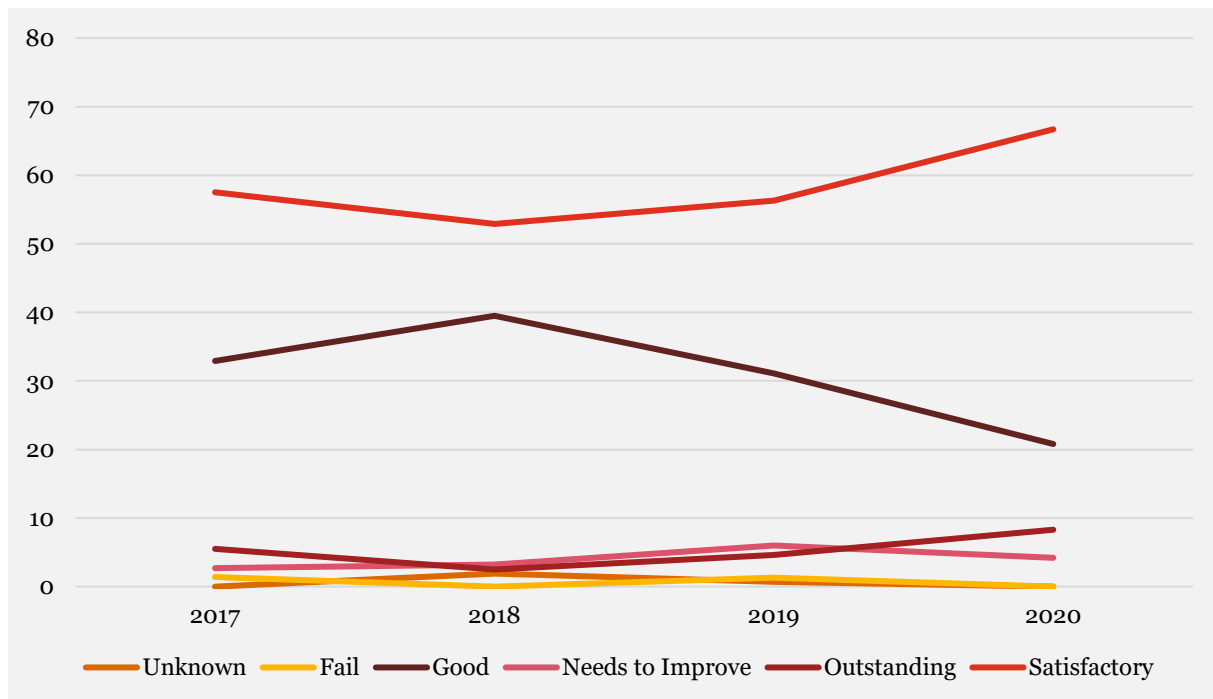
- activity ‘Fail’ ratings remain under 2% across the 4-year period; and
- activity ‘Need to Improve’ ratings remain steady between 2-4% across the 4-year period.

In comparison, all IAS funded organisation Activity ‘Fail’ ratings remain under 1% and ‘Need to Improve’ ratings sit between 6-8% for the same period.⁶¹

⁶⁰ Data points are based on datasheet ‘PRA summary with ABN’ provided by the NIAA to the evaluation team on 22 June 2021.

⁶¹ Ibid.

Figure 15: Performance reporting ratings (percentage) of in-scope IAS funded organisations

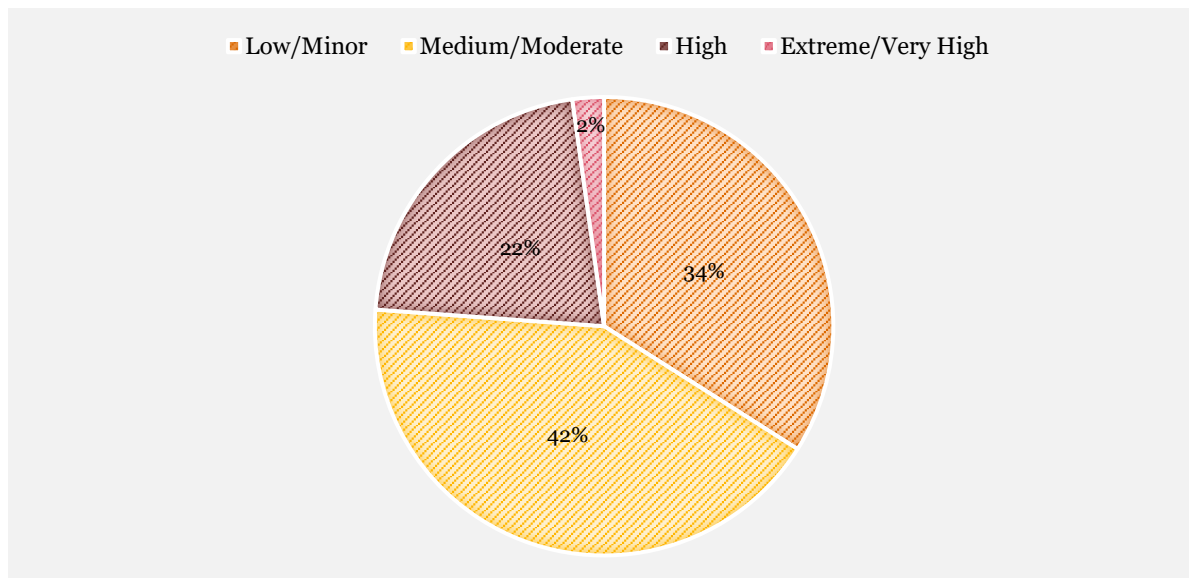


Risk ratings

It was noted in Evaluation Question 1 that an organisation’s risk rating can be an indicator of how well an organisation is governed. The NIAA’s risk rating assessment for IAS funded organisations is called the Organisation Risk Profile (ORP). The Evaluation team were provided the ORP of all IAS funded organisations as of January 2021.⁶²

⁶² Datasheet ‘20210616 - SOG Evaluation data’.

Figure 16: January 2021 Organisation Risk Profile (ORP) (all IAS funded organisations)⁶³



There are multiple factors that can contribute to a high, very high or extreme risk rating. While some of these factors may intercede with governance practices, other external factors such as project delays can also contribute to an organisation having a higher risk rating. Further, regulators noted in consultations that a risk rating may take time to change if an organisation has recently transitioned under the SOG Policy as improving compliance standards takes time. It is also feasible that the NIAA’s risk requirements or perception of risk have changed over time.

Risk data on in-scope organisations – based on the 2018, 2019 and 2021 risk profile information provided by NIAA, indicates only 16 of the organisations changed their incorporation status after the 2018 risk review was completed. Of these, eight (or 50%) recorded no change in ORP noting that 5 of these remained ‘low’. For seven transitioned organisations, the ORP worsened and only one of these organisations showed an improvement in ORP after changing incorporation status.

There is no evidence to suggest that changing the incorporation statute improves the perceived risk of an organisation.

In contrast, of the organisations who were granted exemptions and retained their existing incorporation status, only one experienced a worsening ORP during the period from 2018 to 2021. The data supports the fact that a majority of the organisations provided exemptions were largely already in a low-risk category and maintained or improved this status over the 3-year period considered. This appears to support the granting of the exemptions or exclusion of apparently well-performing organisations from the scope of the SOG Policy.

When broken down on a location basis, the organisational risk profile of all IAS funded organisations as of June 2021 is as set out in Table 10 below. While there are a significant number of organisations (approximately 69% of all organisations, largely representing organisations that have received total IAS funding of less than \$250,000) have not been assigned a risk profile, of those that have been assigned a significantly higher proportion of organisations in the Northern Territory are rated ‘medium’ and ‘high’ but the reason for this is unknown.

⁶³ Datasheet ‘20210616 - SOG Evaluation data’.

Table 10: Organisational risk profile by location

Risk Rating	NSW (%)	ACT (%)	SA (%)	NT (%)	QLD (%)	WA (%)	VIC (%)	TAS (%)	Unknown (%)
Low	13.50	24.32	22.39	19.89	12.61	16.57	15.48	14.02	6.99
Medium	9.82	14.86	13.90	40.88	12.72	21.79	9.58	7.48	9.51
High	1.58	0	2.70	13.26	3.05	6.15	5.41	1.87	5.57
Extreme	0.19	1.35	0.77	3.31	0.61	0.74	0.49	0	0.62
Not rated	74.90	59.46	60.23	22.65	71.01	54.75	69.04	76.64	77.31

Similar analysis based on the entity-type (broken down into ‘Government’, ‘Corporations Act’ incorporated and Other) is set out in Table 11. This analysis shows that incorporation under the Corporations Act does not, in and of itself, guarantee a less risky organisation.

The ‘Other organisations’ category, which includes organisations that are incorporated under State or Territory-based legislation as well as under the CATSI Act recorded more organisations that were ranked ‘high’ and ‘extreme’ risk than those incorporated under the Corporations Act. However, when viewed as percentages of the total number of that category of organisations, a greater percentage of ‘Other organisations’ were rated as low, medium and high risk when compared with the organisations incorporated under the Corporations Act. This difference is even more pronounced when comparing ‘Other organisations’ that receive at least \$1 million of IAS funding and organisations incorporated under the Corporations Act.

When considering extreme risk organisations, the position is reversed with a smaller proportion of organisations incorporated under the Corporations Act being classified in the highest risk category.

Table 11: Organisational risk profile by organisation ‘type’

Risk Rating	Government organisations	Corporations Act incorporated organisations	Other organisations (All)	Other organisations (>\$1 million excl. GST total IAS funding)
	(# orgs./ % of rated orgs for this category)	(# orgs./ % of rated orgs for this category)	(# orgs./ % of rated orgs for this category)	(# orgs./ % of rated orgs for this category)
Low	135 / 72.5%	204 / 34%	460 / 38%	270 / 45.5%
Medium	46 / 24.5%	263 / 44%	530 / 44.5%	230 / 40%
High	5 / 2.5%	116 / 20%	163 / 14.5%	69 / 11.5%
Extreme	-	11 / 2%	32 / 3%	24 / 4%
Not rated	828	1605	2000	24

Supports, guidance, monitoring, and compliance requirements

Through introducing a requirement for in-scope organisations to incorporate under the CATSI Act or Corporations Act, the SOG Policy operates on the assumption that ORIC and ASIC are better placed to oversee and scrutinise the governance of IAS funded organisations. Further, the requirement for Indigenous organisations to incorporate under the CATSI Act specifically assumes that ORIC is best placed to provide consistent oversight and support to Indigenous IAS funded organisations, strengthening governance structures.

To test this assumption, the Evaluation team has outlined the supports that ASIC and ORIC provide to organisations both during the transition stage and for ongoing compliance, as well as the supports provided by State or Territory-based regulators to provide a point of comparison.

Table 12: Supports and guidance offered by regulators



ASIC

Organisations that incorporate under the Corporations Act are not actively pursued by ASIC and it is not within ASIC's scope to take active steps to help organisations comply with the SOG Policy. When organisations register under ASIC, they are provided with a starter pack that includes guidance and information about compliance. There is also a pack designed specifically for Indigenous organisations. Outside of providing compliance information, ASIC has very little direct interaction with registered organisations.



ORIC

ORIC directly engage with IAS funded organisations to support them in the transition process and ascertain the level of support an organisation might need to transition incorporation. This support includes access to LawHelp, which connects organisations with a law firm that can provide pro bono legal services to assist the organisation to transition to the CATSI Act.

ORIC also provides ongoing compliance support to organisations, including access to the ORIC helpdesk and AURA, ORIC's recruitment agency that assists small-to-medium-sized organisations in recruiting staff to executive positions. This ongoing support includes assisting organisations at risk of failure.

ORIC has greater scope to provide governance support to organisations experiencing challenges, as unlike ASIC whose first responsibility is to creditors, ORIC's first responsibility is to the Indigenous community. ORIC also offers access to training courses, including the option for directors and officers to undertake a Certificate IV in Indigenous governance, which is focused on compliance and a regulatory approach to governance.

In addition to support from ORIC, Indigenous organisations can access training and resources through AIGI. AIGI provide resources and training designed to assist Indigenous organisations to operate in a way that respects cultural governance, while also maintaining compliance with regulatory bodies.



State or Territory-based regulators

There was not a uniform approach to how State or Territory regulators support IAS funded organisations to transition to Commonwealth legislation as a result of the SOG Policy. For example, NT Licensing took the initiative to support in-scope organisations to prepare to transition to the CATSI Act. This support involved training organisations to upskill to meet the governance requirements of ORIC. In comparison, NSW Fair Trading did not take active steps to support organisations to transition as it is not generally within its scope to become involved in governance matters.

When an organisation is incorporated under State or Territory-based legislation, the regulator may provide support and oversight as follows:

- undertaking annual review of audited financial statements;

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- providing information to assist organisations with an understanding of the compliance requirements under legislation;
- supporting strong governance structures through requiring an up-to-date constitution, list of members and established management committees;
- increasing support for organisations incorporating for the first time to increase governance knowledge;
- tailoring compliance requirements to an organisation's annual turnover;
- assessing financial statements with reference to solvency, types of grants obtained and how grants have been obtained; and/or
- where there are compliance issues with reporting, or the organisation is showing risk of failure, review reports in greater detail.

SOG Policy parameters

\$500,000 threshold

The SOG Policy applies to organisations receiving \$500,000 (GST exclusive) or more in IAS funding per annum. The threshold was determined based on an assumption that IAS grants of \$500,000 (GST exclusive) or more represent a higher risk investment and therefore organisations granted this level of funding should be subject to higher levels of accountability. To provide consistent accountability and scrutiny over IAS funded organisations receiving this amount of funding, the SOG Policy stipulates a requirement to be incorporated under the Corporations Act or the CATSI Act.

There was consensus throughout consultation with IAS funded organisations, regulators and NIAA staff that \$500,000 (GST exclusive) is a reasonable and an accurate indicator of higher risk. It was reported, a benefit of the threshold is that it allows organisations receiving small or one-off IAS grants to be out-of-scope of the SOG Policy. Further, to lower the threshold could result in organisations choosing not to apply for IAS grants to avoid having to comply with the SOG Policy.

However, the data provided by the NIAA indicates that when considering the risk rating of all IAS funded organisations in June 2021 while 83.8% of all organisations rated 'extreme risk' had received more than \$500,000 (GST exclusive) in total IAS funding (and total funding of \$194.98 million (GST exclusive)), 45.2% of all organisations rated 'high risk' had received less than \$500,000 (GST exclusive) in total IAS funding (but a total of \$1.35 billion (GST exclusive)).

While the quantum of IAS funding provided creates a delivery risk from the NIAA's perspective, it does not necessarily equate to a greater likelihood of service failure or mismanagement of funds by the funded organisation, or of weak organisational governance.

That the SOG Policy should take into account other indicators of risk in addition to the funding amount was supported by regulators.

Regulators reported that addressing organisational governance through a grant threshold is an ad hoc response, as it results in only those organisations with over \$500,000 (GST exclusive) in IAS funding being subject to a governance policy. ASIC and Licensing NT argued that the application of a governance policy should be based on the entity that receives the funds, rather than the level of funding being distributed. Specifically, Licensing NT highlighted that governance risk exists in any organisation regardless of the amount of IAS funding being received.

Application of the SOG Policy does not account for an organisation's risk of insolvency or the percentage of IAS funding as a proportion of overall revenue. Organisations can currently request an exemption from transitioning incorporation statute if they can demonstrate that the IAS grant funding received is a small portion of total revenue (25% or less), and as such changing incorporation statute may unfairly impose additional requirements on its operations and business model. This, however, may sit better as part of the policy selection criteria rather than as part of an exemption process.

Similarly, taking into account the proportion of IAS funding against an organisation's total revenue could have the positive implication of broadening the scope of the SOG Policy to include organisations receiving under the threshold, but whose IAS funding represents 100% of revenue.

ORIC suggested small organisations that receive closer to 100% of their funding through IAS but fall below the \$500,000 (GST exclusive) threshold are an example of out-of-scope organisations that could benefit from transitioning to the CATSI Act. Other factors that could indicate risk are Board turnover, independence (or lack of independence) of Directors and ability of organisations to achieve service delivery outcomes none of which are accounted for through a \$500,000 (GST exclusive) threshold.

A financial threshold may also fail to account for cultural governance and the unique challenges that can arise within an Indigenous organisation in terms of balancing cultural authority with legal and financial expertise. Incorporation under the CATSI Act or the Corporations Act is unlikely to be demonstrative of strong cultural governance. Rather, as case study organisations agreed, demonstrating a stable, consistent and qualified CEO and Board of Directors that are respected in the Indigenous community is more likely to support effective and legitimate governance and in turn avoid organisational risk.

Exemption framework

The SOG Policy has an exemption framework to enable in-scope organisations to apply for an exemption from the SOG Policy, and in turn remain incorporated under State or Territory-based legislation. Generally, to successfully receive an exemption, an organisation is required to demonstrate:

- IAS grant funding received is a small portion of total revenue, and as such changing incorporation statute may unfairly impose additional requirements on its operations and business model. A 'small portion' is considered to be 25% or lower; or
- it is required to incorporate under specific non-Commonwealth legislation as part of its licensing arrangements or a condition of funding received through other sources.

The authority to issue exemptions lies with the Minister for Indigenous Australians with advice provided by the NIAA. The Minister may choose to delegate this authority.

There was consensus that while an exemption framework is an important aspect of any Australian Government policy, there is scope to strengthen the SOG Policy's exemption framework as it is not effective in its current state. Reflections from IAS funded organisations, regulators and NIAA staff on how the exemption framework could be strengthened are as follows:

Table 13: Suggestions to strengthen the exemption framework

Allow Indigenous organisations to seek an exemption based on demonstrating cultural governance

Indigenous organisations should be able to seek an exemption on the basis of having a specific governance structure in place for cultural reasons. AIGI shared an example of an Indigenous organisation that had established a governance structure that included representatives from all cultural groups in the area, and a gender balance, however this structure had to be dismantled to comply with the CATSI Act as it was viewed as having too many individuals overseeing the organisation.⁶⁴ The SOG exemption framework should include an avenue for Indigenous organisations to be eligible for an exemption on the grounds of respecting cultural authority and lore if those organisations can demonstrate that they are being well governed.

Allow Indigenous organisations to choose the CATSI Act or the Corporations Act

It would be preferable and more aligned to the principle of self-determination, for Indigenous organisations to have choice about which Commonwealth statute to incorporate under, rather than having to seek out an

⁶⁴ S243-5 of the CATSI Act provides that an Indigenous corporation must not have more than 12 directors or any other limit prescribed by the regulations, although the Registrar does have the ability to exempt an organisation from this restriction if an exemption is sought (s310-1, CATSI Act).

exemption to not incorporate under the CATSI Act. It was also noted, as ORIC does provide Indigenous organisations with additional support, it is likely many Indigenous organisations would choose to incorporate under the CATSI Act and forcing their hand may cause unnecessary discontent.

Reduce the administrative burden of applying for an exemption

The process involved in applying for an exemption can be burdensome on organisations. It was reported that in some instances, the process can take as long as six months during which time organisations are investing time and resources into justifying why they should be able to continue operating their organisation in the same way they have done successfully for years prior.

Nunkuwarnin Yunti and Winnunga, two of the case study organisations that were successful in receiving an exemption to the SOG Policy between 2016 and 2017, reported it was a time-consuming process. The CEO of each organisation reported that due to the delays associated with getting a response to their application for an exemption, they both chose to follow up directly with the Minister of Indigenous Australians. This was reported to require a significant time investment. The CEOs both noted that were it not for consistent emails and phone calls to the Minister at the time, they may not have been successful. Organisations also noted discontent with having to apply for an exemption despite showing the ability to manage IAS funds over \$500,000 while incorporated under State or Territory-based legislation for years prior to the SOG Policy being implemented.

Greater consistency in the granting of exemptions

There are some frustrations with the inconsistent approach to the granting of exemptions. Exemptions are granted at the Minister's discretion, resulting in uncertainty among organisations as to the criteria that will amount to a successful application for an exemption. The inconsistent approach to granting of exemptions was also noted in the ANAO's audit of the IAS which reported some inconsistencies with the application of the exemption framework associated with exemptions being discretionary.⁶⁵

\$10,000 Support payment

Under the SOG Policy, in-scope organisations can access a one-off \$10,000 grant to support Indigenous organisations to transition to the CATSI Act or the Corporations Act. The costs associated with transitioning to, and ongoing compliance under, the CATSI Act and the Corporations Act are set out in Table 7 above. Depending on the inhouse capacity and capabilities of an organisation, other direct costs may include legal and accounting fees to complete the necessary document (including board minutes and resolutions) to complete the transition. This could range for \$100s to \$1000s, depending on the complexity of the organisation. It is reasonable to expect that all in-scope organisations have also incurred indirect costs associated with the diversion of management's time and energy in complying with the SOG Policy.

The majority of transitioned organisations - 50 of the 58 - had accessed this support payment up to 16 June 2021.

There were differing view on the appropriateness of the \$10,000 support payment, with some stakeholders concluding it is an incentive to comply with the SOG Policy rather than a reflection of actual transition costs, and others reporting the payment is unlikely to cover the full cost of transition.

Table 14: Stakeholder perspectives on the \$10,000 support payment

Stakeholder views on the \$10,000 payment as an incentive only

- NIAA staff and most regulators were of the view that the \$10,000 payment acted as an incentive for organisations to comply with the SOG Policy, as opposed to being a representation of the actual cost of compliance;

⁶⁵ Australian National Audit Office, "Indigenous Advancement Strategy, Department of the Prime Minister and Cabinet." Performance Audit, 2016.

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- ORIC highlighted that in-scope organisations required to transition to the CATSI Act should be able to do so without incurring any third-party costs. ORIC reported there are no transition fees charged by ORIC, and organisations have access to LawHelp for pro bono legal support. While there may be indirect costs to transitioning due to commitment of staff and Board time, ORIC noted there is no quantifiable cost to transitioning;
- most NIAA staff reported, the cost of transitioning incorporation statute to Commonwealth legislation is significantly less than \$10,000;
- the NIAA noted, some organisations use the \$10,000 payment to cover the cost of Board meetings in which the decision to transition incorporation statute is approved. However, in their view, decision making at the Board level on this type of organisational change should be within the scope of a Board's regular business; and
- NIAA staff and ORIC did however acknowledge that the resource costs associated with transitioning incorporation statute is difficult to quantify as while there is a low financial upfront cost, the time investment in getting up to standard for incorporation transfer may be burdensome for some organisations.

Stakeholder views on the \$10,000 payment being insufficient to cover all costs

- ASIC raised a different perspective and reported, the one-off \$10,000 support payment is unlikely to be sufficient for those organisations located in regional and remote areas;
- ASIC explained that it can be difficult to find personnel with the expertise to support the transition period. It noted, the amount has to cover a broad range of factors including legal advice, lodgement and continued obligations going forward. Ideally, ASIC reported, there should be ongoing financial support because the compliance requirements – including providing audited financial reports and filing annual statements - are ongoing;
- NIAA staff suggested, if the SOG Policy was amended to accommodate financial support for ongoing compliance, the \$10,000 could be included in organisation's IAS grant so an organisation can utilise it for ongoing ORIC and ASIC compliance costs instead of being limited to using it at the transition stage. Staff also noted, this approach would assist the NIAA in having greater oversight over how the \$10,000 is used by each organisation;
- IAS funded organisations somewhat agreed with ASIC, however, went further and reported, the \$10,000 support payment is unlikely to be sufficient for any organisation; and
- three of the four case study organisations estimated the cost to transition to Commonwealth legislation is over \$10,000, taking into account there is a significant amount of paperwork and administration associated with changing incorporation statute, including having to notify all other funding bodies.

Conclusions: To what extent does the SOG Policy contribute to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations?

There is little to no evidence that IAS funded organisations that have changed their incorporation status in accordance with the SOG Policy have experienced improved governance, increased organisational capacity or reduced organisational failure.

For the purpose of this Evaluation, IAS funded organisation failure rates, Activity performance submission and ratings, and risk ratings are used to measure improved governance, increased organisational capacity and reduced organisational failure. Data relating to each provides high-level insights into in-scope organisations and their performance comparatively against exempt in-scope organisations and broader IAS funded organisations. There is no evidence to suggest a material difference in the organisational risk rating or performance of all IAS funded organisations between those incorporated under the Corporations Act and 'other organisations'.

The number of in-scope organisations – only 95 out of 6,398 – and the relative size of these organisations may be a factor in this. As noted above, most of the in-scope organisations were already independently auditing and

publishing their financial statements, so there is **no evident behavioural change connected with improved governance and attributable to the SOG Policy.**

The **SOG Policy may have greater impact in improving performance and organisational risk if it was more targeted in its approach.** If the funding threshold of the SOG Policy was lowered in combination with an increased focus on organisations that had historically under-performed or been viewed as 'high risk', it may have a wider reach and greater contribution to improved governance, increased organisational capacity and reduced organisational failure. There is a consensus across the stakeholders consulted – IAS funded organisations, regulators and NIAA staff – that other relevant risk indicators need to be incorporated into the SOG Policy's criteria. This could include incorporating a number of the factors currently contained in the exemptions framework.

If the SOG Policy was more targeted, the **exemption framework** could be minimal or removed entirely. Further, the framework does not include an exemption for Indigenous organisations on the grounds of their ability to demonstrate strong cultural governance as defined in section 4.

By requiring Indigenous organisations to transition to ORIC, the SOG Policy is positioning **Indigenous organisations with access to regulator support and guidance.** This may contribute to higher levels of compliance and reporting standards and result in better governance and reduced organisational and service delivery failures over time. Although at this stage there is no quantitative evidence to support this, it is likely that for many smaller Indigenous organisations, access to the support and training provided by ORIC to organisations incorporated under the CATSI Act would be valuable. This may require further funding for ORIC.

The SOG Policy could also embed measures to **better place ORIC to support organisations through the incorporation transition stage**, particularly for smaller, less sophisticated organisations. Specifically, ORIC reported it is not provided with a list of in-scope organisations that need to transition to the CATSI Act as a result of the SOG Policy. This means ORIC is not well positioned to reach out to individual organisations ahead of time to provide tailored support and additional information. Engagement with organisations is therefore reactionary as opposed to proactive.

These findings suggest that the SOG Policy requires significant amendment to increase its contribution to improved governance, increased organisational capacity and reduced organisational failure amongst IAS funded organisations.

Evaluation Domain	Evaluation Question #3
Appropriateness	To what extent is the SOG Policy culturally appropriate, sensitive and responsive for Indigenous organisations?

Sub-questions used to answer the Evaluation question

- A. To what extent is the SOG Policy informed by and responsive to cultural sensitivities and the diverse needs of Indigenous organisations?
- B. What is the experience of the SOG Policy amongst in-scope Indigenous organisations compared to in-scope non-Indigenous organisations?
- C. To what extent does the SOG Policy support collaboration with Indigenous Australians, ensuring diverse voices are heard and respected?
- D. To what extent do the features, attributes and characteristics of good governance (identified in 1A) reflect Indigenous organisations’ structures, values and practices?
- E. To what extent is the SOG Policy strengths based?

The SOG Policy has direct implications for many IAS funded Indigenous organisations. As a policy that affects Indigenous organisations and people, in designing the policy, the Australian Government aimed to develop a policy that was culturally appropriate, sensitive, and responsive to Indigenous organisations. To evaluate the extent to which the SOG Policy achieves this aim, the Evaluation team gathered insights from a range of Indigenous and non-Indigenous IAS funded organisations, as well as NIAA staff and regulators, to understand what is required for a governance policy to be culturally safe, and whether or not the SOG Policy aligns with these requirements.

Design of the SOG Policy

NIAA staff and background documentation provided as part of this Evaluation clearly articulate the SOG Policy as a strength-based policy that puts the best interests of Indigenous organisations at the forefront. NIAA staff involved in the design of the SOG Policy reported a range of Indigenous stakeholders, including CEOs and Board members of Indigenous organisations, were consulted as part of the design phase of the SOG Policy.

The NIAA shared the following examples of how views of Indigenous organisations were gathered and used to inform the SOG Policy. It stated:

- Indigenous organisations raised concerns at the consultation stage when it was proposed the policy would only apply to Indigenous organisations. It was argued this potentially contravened the Racial Discrimination Act 1975 (Cth). These concerns were taken on board by DPM&C at the time and helped influence the policy being developed to include all organisations (Indigenous and non-Indigenous) receiving IAS funding over the threshold; and
- feedback from Indigenous organisations to DPM&C post-implementation of the SOG Policy in 2014 on the inability of Indigenous organisations already incorporated under the Corporations Act before the introduction of the SOG Policy to remain within that incorporation statute was also taken on board by the Department and changed.

In 2015 Mick Gooda, the then Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission wrote publicly on the SOG Policy, outlining concerns on its requirements, specifically the lack of choice available to Indigenous organisations when incorporating and its potential contravening of the Racial Discrimination Act 1975 (Cth).

“It remains problematic that Indigenous organisations cannot choose to incorporate under State-based schemes or to register under the Corporations Act. Placing strict requirements on Aboriginal and Torres Strait Islander organisations that do not apply to non-Indigenous applicants raises immediate alarm bells for me and for many Indigenous organisations. Sections 9(1) and 9(1A) of the Racial Discrimination Act 1975 (Cth) (RDA) provide broad prohibitions against acts that are directly or indirectly discriminatory on the basis of race, colour, descent or national or ethnic origin. Section 13 of the RDA provides that it is unlawful to discriminate in the delivery of services, including

the provision of grants. This means that a person who provides services to any section of the public cannot refuse or fail to supply those services (either at all or except on less favourable terms or conditions than they would otherwise supply the services by reason of race).

It is my belief that, unless further information about the effect of registration under the CATSI Act comes to light, it is likely that the requirement for some Indigenous organisations to register under the CATSI Act may be in breach of section 13 of the RDA. The IAS incorporation requirements may also interfere with the right to self-determination and could consequently breach section 9(1) or section 9(1A) of the RDA. Given this, and the concern expressed by Aboriginal and Torres Strait Islander organisations about the incorporation requirement, I urge the Australian Government to reflect on this requirement in the context of the RDA”.

- Mick Gooda, former Aboriginal and Torres Strait Islander Social Justice Commissioner

Perspectives on the cultural appropriateness of the SOG Policy



The NIAA

The Evaluation team heard the perspectives of both NIAA staff involved in the design of the SOG Policy, as well as those involved in the implementation and ongoing oversight of the SOG Policy and its impact on IAS funded organisations. There was a unanimous view that the SOG Policy provides “one blunt instrument” for supporting strong governance.

The chosen instrument is strengthening governance through requiring organisations to comply with the requirements of either ORIC or ASIC. As a result, it is not within the design of the existing SOG Policy to be culturally responsive to the broad, varying and ongoing governance needs of Indigenous organisations. To support the governance of Indigenous organisations, incorporation statute is only one piece of the puzzle and while it is a necessary and an important piece, compliance with ORIC and ASIC alone is unlikely to strengthen organisational governance.

Opportunities for Indigenous organisations are subject to change over time and in order for Commonwealth policies to be culturally responsive, they need to be adapted to reflect these growing opportunities. The SOG Policy has undergone only very minor amendments since its inception in 2014 and has not adapted over time to respond to the changing landscape Indigenous organisations operate within. For example, NIAA staff consulted noted that Indigenous organisations have access to more funding opportunities outside of IAS funding than they did in the past, with an increasing number of philanthropic and non-for-profit organisations seeking to partner with and support Indigenous organisations. However, there is limited support available to assist organisations to improve governance in a way that helps them to engage with these other funding opportunities and meet the governance expectations of potential funders.

It was suggested that a policy designed to strengthen organisational governance could go further than the scope of the existing SOG Policy, for example, by working with organisations to assist them to leverage the wide range of alternative finance available to Indigenous organisations. Culturally responsive governance support could include a community led governance hub for Indigenous organisations to connect and find resources, and tailored support that acknowledges all Indigenous organisations have different needs, and that measures of success are different for each. The extent to which the SOG Policy has supported organisations to access an increased number of funding opportunities is explored in Evaluation Question 5 as an unintended outcome of the policy.

There is a misconception among some, predominantly non-Indigenous IAS funded organisations, that Indigenous organisations are prioritised for IAS funding once they have complied with the SOG Policy. NIAA staff consulted as part of a focus group reported being aware of an instance where this led to a non-Indigenous organisation restructuring to put together a majority Indigenous Board in order to meet the requirements of the CATSI Act. The rationale for this action was that, once incorporated under the CATSI Act, the organisation would be prioritised for IAS funding. NIAA staff reported, irrespective of what the SOG Policy implies, there is no formal lever that prioritises IAS funding to Indigenous organisations compliant with the SOG Policy.



AIGI

The SOG Policy is failing to realise the benefits of cultural governance. A policy that prompts Indigenous organisations to incorporate under the CATSI Act is not recognising the importance of

Indigenous governance models, and specifically how these models may not fit within the constraints of western legislative structures.

Imposing restrictions on Indigenous organisations and requiring organisations to be structured in a way that complies with the CATSI Act limits an organisation's ability to be self-determining. Many Indigenous organisations are so reliant on IAS funding that they feel they need to adapt their structure to incorporate under the CATSI Act and secure this funding, even if it means compromising on cultural governance. For example, it was reported that some Indigenous organisations limited the number of Directors on their Board to comply with the CATSI Act's limit of 12 Directors, despite this meaning not all community groups could be represented.



ORIC

Once an organisation has transitioned to the CATSI Act, ORIC can work with the organisation to embed cultural decision making in the organisation's constitution. In this way, by encouraging organisations to incorporate under the CATSI Act, the SOG Policy supports culturally responsive governance structures.

However, there is frustration among Indigenous organisations who feel that ORIC requires a higher level of reporting compliance, yet incorporation under the CATSI Act does not result in prioritisation of IAS grant funding. ORIC noted that there may indeed be less accountability for non-Indigenous organisations receiving the same level of IAS funding as an Indigenous organisation. Organisations incorporated under the CATSI Act are held to a higher standard of accountability and transparency to their members. This becomes problematic where non-Indigenous organisations are mismanaging IAS funding, but are not under the same level of scrutiny as Indigenous organisations.



ASIC

There is no cultural lens placed over the SOG Policy's support structure. It is a one size fits all policy which may not be responsive to the governance needs of all Indigenous organisations. Specifically, removing an Indigenous organisation's right to choose to incorporate under the Corporations Act interferes with the principle of self-determination



IAS funded organisations

Only a small number of IAS funded organisations who responded to the survey (both non-Indigenous and Indigenous) reported involvement in the design and implementation of the SOG Policy in 2014. Similarly, none of the case study organisations reported being consulted in the design stage of the policy.⁶⁶

Of those that were involved in the consultation process, the majority reported the SOG Policy did not align with the principles of self-determination as it removed autonomy to determine which legislation to incorporate under. To illustrate this viewpoint in more detail, Nunukuwarrin Yunti shared the following as part of the case study interview:

A policy prescribing how organisations must incorporate is a barrier to self-determination as Indigenous organisations and people are stripped of the right to govern in the way they deem to be most appropriate. It is the employees and Board members of the Indigenous organisations that have the best understanding of the Indigenous community they service, and in turn have the best understanding of how their organisations should be structured to meet the needs of their community. The organisation reported that Indigenous organisations should be empowered to make decisions about incorporation that are tailored to individual organisational and community needs. It was noted that while some Indigenous organisations may require more stringent reporting requirements to maintain strong governance, other organisations have an established track record of strong governance and a policy that challenges the strength of these structures is culturally inappropriate.

⁶⁶ As the design of the SOG policy took place in and prior to 2014, it should be acknowledged that key personnel, both from the NIAA and IAS funded organisations may have changes positions/employers by the time this Evaluation took place.

IAS funded organisations acknowledged the SOG Policy’s exemption framework, however challenged the assumption that an exemption framework provides autonomy. Nunkuwarrin Yunti shared the following to explain why an exemption framework does not equate to a self-determining policy:

The use of the term ‘exemption’ under the SOG Policy is problematic in terms of cultural appropriateness. It was explained that historic racist Commonwealth policies and laws enforced by the Australian Government that marginalised Indigenous communities often had an ‘exemption’ framework. The use of the term ‘exemption’ under the SOG Policy may therefore trigger generational trauma for Indigenous people and act as an unintentional reminder of life for Indigenous people during mission days. Further, the notion that Indigenous organisations only have the autonomy to make decisions about incorporation statute for themselves once an exemption is sought completely undermines the principle of self-determination.

Organisations highlighted that Indigenous organisations should have the choice to incorporate under the legislation the executive chose, without having to seek an exemption to the SOG Policy. Submissions noted that ORIC has more power to intervene in an organisation than ASIC which results in Indigenous organisations being under more scrutiny than non-Indigenous organisations. Indigenous organisations should therefore have the right to incorporate under the Corporations Act.

Importantly, of those organisations that support the notion that Indigenous organisations should incorporate under the CATSI Act, most still considered that the choice of whether to do so should be determined by the organisation’s CEO and Board, rather than a default requirement to qualify for over \$500,000 (GST exclusive) in IAS funding.

Conclusion - To what extent is the SOG Policy culturally appropriate, sensitive and responsive for Indigenous organisations?

There appears to be a discrepancy between how the SOG Policy aims to support self-determination and success of Indigenous organisations and how Indigenous communities view operating as a self-determining and successful organisation.

While the SOG Policy aims to support Indigenous organisations to improve governance through incorporation under the CATSI Act, it also **removes the right for in-scope Indigenous organisations to have autonomy of choice** over which legislation to incorporate under. To this end, the SOG Policy does have strengths-based intentions as it aims to support the capacity growth of Indigenous organisations. However IAS funded organisations consider that the policy affords lack of choice and autonomy which results in it being a policy that is culturally inappropriate.

It was acknowledged among Indigenous IAS funded organisations that ORIC may be better resourced to offer governance support and training than other regulators, however **autonomy of choice** over which body to incorporate with was a more important priority to Indigenous organisations.

5.2 Effectiveness

Evaluation Domain	Evaluation Question #4
Effectiveness	To what extent is the SOG Policy being implemented as intended?

Sub-questions used to answer the Evaluation question

- A. What are the achievements of the SOG Policy?
- B. With reference to (2A) what evidence is there that:
 - i. organisations which have transitioned their incorporation statute under the SOG Policy have:
 - built their governance capacity. To what extent do organisations which have transitioned to be incorporated under the CATSI Act access support from ORIC? How satisfied are these organisations with the support available from ORIC;
 - improved service delivery capacity and performance (as measured by performance reporting, compliance with reporting requirements and management of funds);
 - decreased likelihood of organisation failure; and/or
 - reduced organisational risk profile assigned by the NIAA?
 - ii. compared to organisations incorporated under other mechanisms, organisations who are incorporated under Commonwealth legislation have:
 - improved service delivery capacity or performance (as measured by performance reporting, compliance with reporting requirements and management of funds); and/or
 - decreased likelihood of failure or winding up?
- C. What other factors (outside of incorporation statute) may have contributed to organisations improving their governance or service delivery?
- D. What benefits and challenges do in-scope Grant Recipients report in:
 - i. complying with the terms of the SOG Policy;
 - ii. the transition process to incorporation; and/or
 - iii. for Indigenous organisations incorporated under CATSI Act, accessing support services from ORIC?

This question focuses on implementation of the SOG Policy and the relationship between the SOG Policy logic's inputs, outputs, and outcomes (medium-term) as shown in Figure 1 'Policy Logic.'

As part of determining the extent to which the SOG Policy is being implemented as intended, the focus is on evidence of transitioned organisations': improved governance and service delivery capacity; performance (as measured by performance reporting and compliance with reporting requirements); and decreased likelihood of organisation failure and reduced ORP. Comparisons where appropriate, and the data allows, are made with organisations incorporated under State or Territory legislation. Also analysed are what other factors external to incorporation statute contribute to organisations improving their governance or service delivery, and the benefits and challenges of all in-scope organisations in transitioning to and complying with incorporation under Commonwealth legislation.

Evidence of improved governance capacity, service delivery capacity and performance

IAS funded organisation survey participants were asked to rate their organisation's governance practice (i.e. does it have strong oversight, internal accountability mechanisms, clear strategic direction from the Board and cultural legitimacy in your community?):

73% rated their organisation's governance practice as 'very good'

When asked whether incorporation under Commonwealth legislation helps to achieve good governance:

56% either agreed or strongly agreed that incorporation under Commonwealth legislation helps to achieve good governance.

From this group, of those who had transitioned incorporation statute to Commonwealth legislation in accordance with the SOG policy:

58% either agreed or strongly agreed that incorporation under Commonwealth legislation helps to achieve good governance.

And, when asked if the SOG policy had strengthened their capacity to deliver IAS funded activities:

50% stated the SOG policy had strengthened their capacity to deliver IAS funded activities.

Key themes summarised from IAS funded organisations (in-scope and out-of-scope SOG organisations) outlining how and/or why incorporation under Commonwealth legislation did or did not help to achieve good governance and strengthen capacity to deliver IAS funded activities, are:

- **CATSI Act**

- **(pros):** incorporation has provided a greater degree of accountability and transparency.
- **(cons):** incorporation imposed additional reporting requirements creating an administrative burden, yet no change in the strength of the organisation's governance.

- **Corporations Act**

- **(pros):** incorporation has provided a greater awareness and understanding of effective financial management, and better know how on developing high-quality governance frameworks and continuous improvement.
- **(cons):** incorporation had not resulted in any improvements as any strong governance characteristics the organisation could identify under the Corporations Act were already evident when under State or Territory-based legislation.

ORIC, ASIC, State and Territory-based regulators and NIAA staff also raised pros and cons of incorporation under Commonwealth legislation and noted the following:



ORIC

ORIC reported that it is difficult to comment on whether the SOG Policy has built the governance capacity of organisations as it is a policy largely concerned with administrative organisational change. An organisation that complies with Commonwealth legislation may make positive changes to improve the efficiency and quality of reporting processes, however this would not guarantee good governance as there are a range of characteristics that sit outside of compliance that contribute to good governance. These characteristics are detailed in Chapter 4.



ASIC

ASIC reported that while, in theory, requiring organisations to incorporate under Commonwealth legislation imposes a higher standard of reporting and accountability than under some other regimes, it may not translate to less organisational failure. ASIC notes that the act of transitioning incorporation statute alone could not be seen as evidence of improvement to governance, rather this could only be measured over time and with consideration of a range of additional factors. This view is consistent with the data findings presented in Evaluation Question 2, which show in-scope organisations have experienced little to no improvement in performance standards or risk ratings since the implementation of the SOG Policy, although noting the limited size and longevity of this sample.



State or Territory based regulators

Consulted State or Territory regulators commented that it is difficult to attribute improved governance capacity to the SOG Policy as, at the time of transition, all organisations came with different levels of governance. For example, NT Licencing shared that some organisations that transitioned from the *Associations Act* (NT) to the CATSI Act already had strong governance, and it is therefore unlikely these organisations will show improvements in risk ratings post-transition, as they already had high standards of reporting and performance. The difficulty in attributing improved governance capacity to the SOG Policy is further illustrated through the data which provides a comparison of the risk profiles of in-scope organisations that have transitioned under the SOG Policy. Data identifies a decrease in the percentage of transitioned organisations to receive a low/minor risk rating from November 2018 to January 2021.⁶⁷ Comparatively, organisations granted an exemption experienced an increase in low/minor risk ratings.⁶⁸ While this could indicate incorporation under State or Territory-based legislation supports stronger governance, it is crucial to interpret the data within the context of exempt organisations demonstrating a strong track record of governance prior to seeking an exemption. This supports the view of State or Territory-based regulators that in-scope organisations have different governance starting points making it difficult to measure the impact one policy has on overall governance strength.



NIAA

NIAA staff that participated in focus groups reported that governance of IAS funded organisations has steadily improved over the years, however this is due to a broad suite of supports and Commonwealth policies of which the SOG Policy is only one instrument.

⁶⁷ Datasheet '20210616 - SOG Evaluation data'.

⁶⁸ Ibid.

External factors contributing to improved governance and service delivery

Regulators, NIAA staff and IAS funded organisations unanimously reported that there are a wide range of factors that contribute to improved governance outside of incorporation statute. Incorporation statute and subsequent compliance with regulatory bodies is only one of the factors that contributes to an organisation's governance strength and ability to deliver quality services. A detailed description of the factors external to incorporation statute that improve governance is provided in Evaluation Question 1 and includes:

- employment and retention of a suitability qualified CEO and management team;
- a Board of Directors with technical and cultural expertise;
- access to tailored governance support and training;
- compliance with reporting requirements of a range of funding bodies;
- knowledge of the Indigenous community the organisation is delivering services to, including the community's values, traditions and customs; and
- ongoing capacity building including training in areas of funding management, systems and processes. It was suggested that this could be built into IAS grants to ensure organisations had the capital to invest in training staff and upgrading systems.

As part of the case study interviews, Winnunga explained that compliance with a regulatory body is only one piece of the puzzle that contributes to quality governance practices and effective service delivery. Winnunga shared:

The strength of an organisation's governance is therefore more tied to the ability of an organisation to maintain a stable board, CEO and finance team with the right skills and expertise. The CEO iterated that an organisation with these features and the ability to engage an external accountant to produce a quality audited report, is likely to have strong governance irrespective of which legislation it is incorporated under. As a health organisation, Winnunga also reports regularly to a number of accreditation bodies, and is affiliated with the peak Indigenous health body the National Aboriginal Community Controlled Health Organisation (NACCHO), providing additional layers of accountability outside of incorporation statute.

IAS funded organisations that completed the online survey agreed that the factors that impact day-to-day governance are broad, and therefore the impact of the SOG Policy on governance is limited as reflected in the survey outcome below. .

29% IAS funded organisations (Indigenous and non-Indigenous organisations) stated SOG policy had affected their day-to-day governance (operational and/or strategic).

Compliance, transition, and support (benefits and challenges)

The experience of IAS funded organisations in transitioning incorporation statute, and in complying with regulator requirements, differed slightly across consulted organisations, with one case study organisation sharing at length about the ease of process, while 100% of survey respondents considered that the transition process was challenging.

Benefits

One of the case study organisations reported a number of benefits associated with the transition process to the CATSI Act, and to ongoing compliance with ORIC's reporting requirements. During the case study interview, BRADAAG summarised these benefits as follows:

BRADAAG's transition to the CATSI Act occurred simultaneously with the organisation going into special administration. A special administration is a type of administration only available under the CATSI Act and is generally requested by an organisation seeking to protect essential community services and their organisation's future in delivering it. The BRADAAG Board request to go into special administration was a condition the CEO stipulated as part

Evaluation question findings

of her employment and a decision made to support BRADAAG to rebuild its governance structures and arrangements. Prior to the current CEO commencing her role, BRADAAG was experiencing significant governance challenges that cumulated in instances of fraud. Voluntary administration enabled the organisation to start over and to put in place governance arrangements to support greater accountability and oversight. The transition stage therefore involved the election of a completely new Board of Directors by BRADAAG's membership and development of a new organisational constitution and handbook.

The CEO reported that the transition process was straightforward and did not pose any notable cost implications. BRADAAG was not made aware of the \$10,000 support payment that the NIAA provided organisations to support transition and therefore did not access the grant, however noted that it could not see how it would have absorbed the grant given there are no significant costs associated with transition.

BRADAAG's CEO reported knowing the right people and organisations to contact in order to transition incorporation statute, which streamlined the process. It was acknowledged during the consultation process that organisations that do not have staff with the same level of connections and/or pre-existing knowledge about the CATSI Act and ORIC may not be able to transition as easily as BRADAAG.

Once incorporated under the CATSI Act, BRADAAG reported that compliance is straightforward. The organisation shared that it reports annually to ORIC as part of its compliance requirements under the CATSI Act. As part of its annual reporting requirements, it must provide ORIC with an Audited Financial Report, a General Report and a list of the Board of Directors. The organisation shared with the Evaluation team that it did not consider the reporting requirements to be onerous or time consuming. The CEO explained that an annual Audited Financial Report and a documented list of the Board of Directors is within its standard business operations, and therefore emailing these documents on to ORIC does not require any additional resources. The CEO noted that while the General Report can take a little bit of time to put together and finalise, over all it viewed the reporting requirements as minimal and useful for maintaining rigour of governance processes.

Other IAS funded organisations consulted as part of the Evaluation did not identify benefits of the transition process or ongoing compliance with the SOG Policy. While not directly reported by IAS funded organisations, synthesis of findings across other Evaluation Questions suggests the one benefit to organisations in complying with the SOG Policy is that ORIC can offer a range of support to organisations both at the transition stage and in terms of ongoing compliance. ORIC can provide a safety net to failing organisations through offering guidance and support to help prevent an organisation going into administration. ORIC can also provide no fee training to Board members.

There are also benefits to the NIAA as a grant provider as it can have greater oversight of an organisation's governance structures providing a safeguard over its investment.

Challenges

Half of IAS funded organisations who had transitioned incorporation status and responded to the survey viewed the transition process as challenging. Examples provided by survey respondents to explain what they found challenging largely centred around there being a lack of clear information about the SOG Policy and what was required of the organisation in order to comply with the policy.

50% transitioned organisations agreed or strongly agreed that transitioning incorporation statute was challenging. The balance were neutral in response to the question.

Half of transitioned organisations also reported that the ongoing compliance required to maintain incorporation statute post transition can also be challenging. Organisations that had transitioned to the CATSI Act explained that they considered ongoing compliance to be challenging due to the additional reports they are now required to submit to ORIC.

50% transitioned organisations agreed that maintaining their incorporation statute required under the SOG policy is challenging. The balance disagreed or were neutral in response to the question

Case study organisations and organisations that provided submissions to the IAS Senate Inquiry raised that transitioning to the CATSI Act and compliance with ORIC is costly, administratively burdensome and unnecessary for achieving strong governance.

Winnunga and Nunkuwarrin Yunti described having a history of demonstrated strong governance under existing governance structures and protocols and therefore did not consider it beneficial to transition to the CATSI Act. Both organisations noted that the costs associated with transition and the additional time staff would need to spend on meeting ORIC's reporting requirements acted as a further deterrent from transitioning.

DASA did transition its incorporation statute to the Corporations Act under the SOG Policy and iterated that compliance with the SOG Policy had not strengthened its capacity to deliver IAS funded activities. It was reported that strong internal leadership and the ability to meet accreditation were markers of strong governance within the organisation. It had consistently achieved both, stating it had a strong compliance history and established a reputation in community and amongst other service providers for quality service delivery. Incorporation under the Corporations Act, it was argued, had not assisted in this.

Conclusions – To what extent is the SOG Policy being implemented as intended?

The broad intention of the SOG Policy is to mitigate against service delivery and organisational failure through improving organisational governance of IAS funded organisations by requiring incorporation under Commonwealth legislations. While the SOG Policy has been implemented as intended, it has not achieved all of the desired outcomes at this time.

The majority of in-scope organisations have transitioned to Commonwealth legislation since the SOG Policy's inception or have sought an exemption to the policy. This has achieved **some positive results for governance practices** of IAS funded organisations as ASIC and ORIC provide more stringent oversight than State or Territory regulators. According to the Australian Institute of Company Directors, more stringent reporting requirements are likely to put pressure on a Board to improve reporting processes and procedures which is proven to be effective in improving governance practices. Further, ORIC has the capacity to provide additional support to Indigenous organisations at risk of non-compliance, which most State or Territory regulators are not funded to provide.

The SOG Policy also presents opportunities for organisations to restructure at the transition stage, including establishing leadership teams to support the transition and then retaining this team to support ongoing capacity building.

However, there is **a lack of evidence** to support that transition to Commonwealth legislation has supported IAS funded organisations to improve performance ratings and lower risk status. This suggests the SOG Policy's implementation has not achieved all desired outcomes. Further, findings also suggest that there are a range of external factors that contribute to an organisation's governance practices that sit outside the ambit of the SOG Policy and its function as a compliance policy.

Evaluation Domain	Evaluation Question #5
Effectiveness	What unintended outcomes (positive and negative) were produced?

Sub-questions used to answer the Evaluation question

- A. To what extent were unintended outcomes (positive and negative) experienced by:
 - i. IAS grant recipients who have changed their incorporation statute under the SOG Policy;
 - ii. other IAS grant recipient;
 - iii. NIAA staff; and
 - iv. ORIC?
- B. To what extent has incorporation under Commonwealth legislation enabled organisations to access other grant opportunities (outside of the IAS)?

Survey respondents and key stakeholders were asked to consider what other impacts they experienced as a consequence of the SOG Policy. As noted elsewhere, the SOG Policy directly impacted less than 2% of all IAS funded organisations.

Unintended outcomes

A theme throughout the Evaluation is the acknowledgment that the SOG Policy has contributed to an increasing number of Indigenous organisations incorporating under the CATSI Act, and that this is a positive outcome of the SOG Policy. Data published by ORIC shows a 15% increase in the number of organisations incorporating under the CATSI Act in the six years following the introduction of the SOG Policy compared with the previous six-year period. Compliance requirements under the CATSI Act support organisations to have increased confidence in their ability to deliver services and become more engaged with ongoing improvement. Therefore, a policy that encourages incorporation under the CATSI Act is positively contributing the governance practices of Indigenous organisations. However, this should be construed as an intended outcome of the SOG Policy rather than an incidental positive outcome.

Only one positive unintended outcome of the SOG Policy was identified in the Evaluation. This was reported by ORIC, who stated that anecdotal evidence suggests Indigenous organisations have access to greater funding opportunities (IAS and non-IAS) when incorporated under the CATSI Act. ORIC therefore noted that through increasing the number of Indigenous organisations that incorporate under the CATSI Act, the SOG Policy may be supporting Indigenous organisations to access more funding opportunities, diversifying and de-risking their funding streams. This is based on an assumption that Indigenous businesses registered with ORIC may be preferred by some funding providers.

The online survey and case study interviews tested the extent to which this unintended positive outcome resonates with IAS funded organisations. Case study organisations all reported that compliance with the SOG Policy had not increased access to funding opportunities, however an example shared by DASA supports ORIC’s anecdotal evidence base that organisations incorporated under the CATSI Act have increased funding opportunities. DASA was required to transition to the Corporations Act following the introduction of the SOG Policy and reported that this has limited its success in tenders for IAS grants. The CEO reported the introduction of the SOG Policy and IAS had led to DASA losing funding from grant pools it long relied on (particularly in relation to individual one-off grants). The reason explained was due to what DASA strongly perceived as a prioritising of Indigenous organisations legislated under the CATSI Act. It stated that it did not matter that DASA had a client base that was 80% Indigenous. As a result, DASA has redirected its funding search to the likes of Primary Health Networks (PHNs) and approaching Federal and Territory departments directly.

While the formal preference to fund Indigenous organisations under the IAS has been introduced progressively over the last few years, there is no requirement to be ORIC-registered to receive this preference (providing Indigenous ownership/control/management thresholds are met).

As shown in the data below, most survey respondents that transitioned under the SOG Policy did not report improved funding opportunities under IAS. 11% of respondents reported having less funding opportunities following transition and only 33% reporting an improvement. Similar responses were received in relation to access to non-IAS funding. This suggests that the SOG Policy does not act as a barrier to funding opportunities for most organisations. Responses were consistent across transitioned organisations incorporated under the CATSI Act and the Corporations Act. These responses were reasonably consistent across Indigenous and non-Indigenous organisations recognizing the small sample size (only 12 transitioned organisations responded to the survey).

56% of transitioned organisations stated ‘no change’ to new funding opportunities under the IAS after changing its incorporation statute.

67% of transitioned organisations stated ‘no change’ to access to funding opportunities outside of the IAS.

As discussed in detail in Evaluation Question 3, IAS funded organisations are critical of the SOG Policy as it fails to provide Indigenous organisations autonomy of choice over which legislation to incorporate under. This limits the ability of Indigenous organisations to realise self-determination. An unintended negative outcome of the SOG Policy is, therefore, its potential to alienate cultural governance structures by requiring in-scope organisations to adopt a structure designed by Government through legislative instruments rather than one chosen by Indigenous people and informed by traditional Indigenous lore, customs and protocols.

Another unintended negative outcome is that ORIC has experienced hostility from Indigenous organisations as a result of the SOG Policy. From the early stages of the SOG Policy’s development, some Indigenous organisations expressed being disgruntled by the policy and the requirement to transition to the CATSI Act. ORIC was provided to such organisations as a point of contact and therefore received some of the blame for the issues Indigenous organisations perceived with the SOG Policy. ORIC reported that over time it has developed a healthy relationship with Indigenous organisations and this unintended outcome could now be considered a teething problem with the SOG Policy.

The final unintended negative outcome identified is that the SOG Policy requires some IAS funded organisations to invest more time and resources maintaining higher level of compliance required under Commonwealth legislation, and the CATSI Act in particular. While setting higher standards of compliance is not considered a negative outcome, not compensating organisations for the ongoing costs associated with the increased reporting requirements could be perceived as a negative outcome.

Conclusions - What unintended outcomes (positive and negative) were produced?

The SOG Policy has had few unintended outcomes, positive or negative. The main concern with the unintended outcomes of the SOG Policy are linked to the cultural appropriateness of the policy, and its inability to provide Indigenous organisations with complete decision-making authority over governance structures.

5.3 Efficiency

Evaluation Domain	Evaluation Question #6
Efficiency	To what extent is the SOG Policy cost effective?

Sub-questions used to answer the Evaluation question

- A. For each of CATSI Act, Corporations Act, State and Territory-based legislation (corporations and cooperative/incorporated association legislation, what are the costs incurred through incorporation including:
 - i. one-off/setup costs; and/or
 - ii. any ongoing additional costs of maintaining incorporation statute?
- B. What costs does ORIC incur in providing support for in-scope organisations incorporated under the CATSI Act?
- C. What costs does NIAA incur in implementing the policy (including grant funding provided to organisations)?
- D. To what extent are outcomes (for example reduced organisational failure rates) achieved for the additional costs that are incurred? Describe the supports, guidance, monitoring and compliance requirements identified in (2B), any outcomes identified in (4B) and (4D) and the costs identified in (6A).

The policy logic for the SOG Policy articulates a range of inputs (Figure 1 ‘Policy Logic’) required to implement the policy and achieve the desired outcomes.

Inputs focused on in this question are:

- investment by the NIAA to support IAS funded organisations to comply with the policy at the transition stage;
- the \$10,000 support payment available to transitioning organisations; and
- ongoing compliance costs of IAS funded organisations required to maintain Commonwealth incorporation statute for the duration of their IAS funding period.

These costs are measured and analysed against the extent to which the SOG Policy supports organisations to have good governance, to determine the extent to which the SOG Policy is cost effective.

Costs incurred by IAS funded organisations under the SOG policy

Transitioning and Exemption

50 of the 61 Indigenous organisations to date to transfer their incorporation status chose to access the \$10,000 grant (the status of eight are unknown).

IAS funded organisations had varying views on the cost of transitioning incorporation statute. While all organisations agreed that compliance with the SOG Policy requires a resource investment, organisations reflected on the significance of this investment differently.

Some organisations and NIAA staff involved in focus groups reported that the time commitment organisations invested in either transitioning incorporation statute or seeking an exemption, is within the ambits of any organisation’s regular operations and therefore posed no quantifiable additional costs. Organisations and NIAA staff of this view, therefore, considered the one-off \$10,000 transition payment as an incentive only and not a reflection of actual costs associated with transition.

Evaluation question findings

NIAA staff that participated in the focus group explained organisations should experience very minimal setup costs when transitioning to the CATSI Act. Time and resource investment would be the only setup and ongoing costs. The time and resource investment would largely be absorbed within a business's day-to-day finance and reporting operations. Compliance with the CATSI Act should therefore not pose additional costs.

Other organisations are of the view that the resource investment in either transitioning to Commonwealth legislation or to seeking an exemption to the SOG Policy is burdensome for an organisation. For example, case study participants Nunkuwarrin Yunti and Winnunga sought an exemption to the SOG Policy and reported that significant time was required of the CEO to write the exemption application. Winnunga's CEO also reported taking steps to follow up the outcome of the application with the Minister for Indigenous Affairs. The organisations highlighted that applying for an exemption meant the CEO was forced to invest their time in undertaking administrative tasks as opposed to carrying out their day-to-day role. The organisations also reported costs associated with Board members meeting to approve and review a decision to either transfer incorporation statute or seek an exemption.

Organisations of this view therefore reported that while the \$10,000 payment was theoretically designed to cover the costs discussed, practically \$10,000 was not sufficient to cover all costs incurred during the transition period when considering the cost of CEO and Board member time.

Some IAS funded organisations also reported that there are costs associated with updating paperwork and organisational reporting templates as a result of transitioning incorporation statute.

Nunkuwarrin Yunti elaborated on this point and explained that its branded letter templates include its incorporation statute and updating these would pose a significant cost. The organisation also reported that the NIAA is only one of the many funding bodies it reports to and therefore it would need to notify and update every other funding body of its new incorporation statute. The cost of this, in addition to Board time and CEO time, was considered to be more than \$10,000.

IAS funded organisations that responded to the survey and transitioned incorporation statute under the SOG Policy also estimated the cost of transition as over \$10,000, with only 33% stating that the cost of transition was less than \$10,000.

Ongoing compliance

In terms of maintaining compliance with the SOG Policy post-transition, the costs incurred by IAS funded organisations are dependent on the legislation the organisation is incorporated under.

In-scope organisations consulted as part of the evaluation were largely of the view that maintaining incorporation statute under State/Territory legislation or the Corporation Act is insignificant. Organisations noted reporting under State/Territory regulators and ASIC is not burdensome and any documentation the regulators required is within the scope of an organisation's usual business, for example an audited financial statement.

IAS funded organisations unanimously reported that reporting to ORIC may pose additional costs, given reporting requirements are more stringent and therefore may require greater time and resource investment. However, several organisations incorporated under the CATSI Act also reported that the type of documentation ORIC provided would be within the usual business of any organisation to produce and therefore associated costs could not be attributed to ORIC or the SOG Policy.

Of those IAS funded organisations that transitioned incorporation statute under the SOG Policy, survey findings show that 50% stated the estimated cost to maintain incorporation statute in the last financial year was more than \$5,000.

These findings reflect that the estimated cost of compliance differs depending on whether IAS funded organisations attribute compliance to within the scope of day-to-day operational costs associated with running an organisation or consider compliance costs to be in additional to budgeted operational costs.

Costs incurred by ORIC in providing support to in-scope organisations

ORIC did not quantify the costs of supporting in-scope organisations, however it did note it invests in supporting Indigenous organisations to both transition to the CATSI Act and to comply with ORIC's reporting requirements. These costs were reported to be absorbed as part of ORIC's mandate to offer support to Indigenous organisations

seeking incorporation or incorporated under the CATSI Act. The specific support ORIC provides to in-scope Indigenous organisations is detailed in Evaluation Question 2 and includes connecting organisations to pro bono legal services to assist the organisation to transition to the CATSI Act, support to recruit suitable staff and assisting organisations at risk of failure.

Costs incurred by NIAA in implementing the policy

To support the implementation of the SOG Policy, the NIAA offer a \$10,000 payment to in-scope organisations to cover costs associated with the transition period. Data indicates a total of 49 transitioned organisations accessed the one-off support payment representing a total cost of \$500,000.⁶⁹ Outside of this grant, the NIAA did not report any ongoing costs to the Agency associated with the implementation of the policy.

Conclusions - To what extent is the SOG Policy cost effective?

Although implementing the SOG Policy has not been expensive, because the SOG Policy itself is not considered to be particularly effective the SOG Policy is not viewed as being a cost-effective policy.

The SOG Policy currently offers a \$10,000 grant to organisations that have transitioned to cover transition costs. To date, \$500,000 has been incurred. Neither NIAA or ORIC were able to detail other costs associated with the transition, considering working alongside the transitioning organisations to be part of their day to day roles.

Costs incurred by IAS funded organisations in transitioning to Commonwealth legislation and maintaining compliance are difficult to quantify given the varying views of associated costs reported by IAS funded organisations. While some organisations consider transition and ongoing compliance within the scope of usual operational costs, other organisations considered the resource investment to be out of scope of usual operational costs and therefore burdensome.

The SOG Policy does provide some rigour to accountability and reporting for IAS funded organisations, although many of these organisations are already required to regularly undertake these activities under State or Territory-based legislation.

⁶⁹ Ibid.

6 *Recommendations & Observations*

6.1 Recommendations

Based on the findings of this Evaluation, the Evaluation team has made a number of recommendations to strengthen the governance practices of IAS funded organisations through enhancing or modifying the SOG Policy and implementation to ensure that it is an appropriate, effective and efficient approach.

Recommendation 1: Consider amending the SOG Policy to take a more targeted approach, including undertaking a co-design process with IAS funded organisations

The NIAA should amend the SOG Policy to take a targeted approach to determining in-scope organisations, which moves beyond a funding threshold and considers more holistic factors, where known, such as:

- the organisation's NIAA reporting history and its organisational risk profile (ORP) rating;
- the organisation's governance history; and/or
- the proportion of the organisation's total revenue that IAS funding accounts for.

To balance the targeted approach, the NIAA may consider applying a risk-based approach by reducing the funding threshold for the SOG Policy where an organisation is unable to demonstrate sound governance and financial management.

In determining more appropriate parameters, the NIAA should undertake a consultation and co-design process with a wide range of IAS funded organisations to seek their insights.

Recommendation 2: Narrow the exemption framework

On the basis that Recommendation 1 is implemented in full, it is recommended the exemption framework is narrowed to only retain the exemption for organisations that are able to identify and demonstrate that the SOG Policy unfairly imposes additional requirements on its business model.

Recommendation 3: Fund additional governance and compliance costs incurred by in-scope organisations

In addition to the \$10,000 transition funding made available to organisations who are required to transition to a Commonwealth incorporation statute, IAS funded organisations incorporated under the Corporations Act or the CATSI Act may also incur additional ongoing compliance expenses. NIAA should develop grant funding guidance to assist NIAA grants management staff to allocate sufficient IAS funding to enable IAS grant recipients to meet any additional internal and external governance and compliance costs.

Where additional IAS funding has been provided to assist with ongoing compliance costs, the NIAA performance reporting framework could be amended to require organisations to report at a high level on how grant funding has been used to maintain good governance practices.

It is noted that building the community-controlled sector is a Priority Reform under the National Agreement on Closing the Gap.

6.2 Other observations

Although outside the scope of the Evaluation, the Evaluation identified the following opportunities to strengthen organisational governance beyond compliance.

Further develop ORIC's governance assessment tool to better support Indigenous organisations to assess levels of good governance and areas for improvement

NIAA should work with ORIC and AIGI to develop and expand ORIC's existing 'healthy corporation checklist' into an interactive online tool. The expanded tool should go beyond its current compliance focus and enable organisations to self-assess the extent to which the organisation in its current state reflects characteristics of good governance. Through answering a series of questions pertaining to organisational governance, the tool should

provide organisations with an overall governance rating and suggested areas for improvement, including resources to access.

The tool should also be used to assess an organisation's cultural governance and ask a series of questions pertaining to the organisation's number of Indigenous staff in leadership positions, the level of cultural oversight the organisation has and the extent to which the organisation has a relationship with the Indigenous community to which it provides services.

Prioritise the community-controlled organisation sector for funding

Review the policy and grants management guidance on prioritising Indigenous organisations as the direct recipients of IAS funding. To achieve the objective of strengthening service delivery for Indigenous communities, as articulated in the SOG Policy's policy logic, Indigenous community-controlled organisations should be prioritised over other organisations for IAS grant funding. This aligns with Closing the Gap, priority reform area two, which emphasises that the community-controlled sector is best placed to deliver services to Indigenous people and communities and that the Australian Government is committed to increasing the number of Indigenous specific services delivered by community-controlled organisations.⁷⁰

Increase access to Australian Government funded governance support and training for all IAS funded organisations

The Australian Government should invest in increasing access to governance training opportunities for organisations that receive IAS funding. Both Indigenous and non-Indigenous IAS funded organisations should have the opportunity to access governance training modules, workshops and information sessions at no additional cost. ORIC, as the Indigenous specific regulator and body with existing expertise in providing governance training in addition to functioning as a regulatory body could have responsibility for carrying out this function. This would require resourcing ORIC to provide increased access to training and support to IAS funded organisations incorporated under the CATSI Act, as well as to deliver training to IAS funded organisations incorporated under the Corporations Act.

The core expected outcomes of doing so are that:

- all Commonwealth incorporated organisations delivering IAS funded services may access governance training and support programs;
- all CATSI Act incorporated organisations, and not just those at risk of organisational failure, may easily access training and support to strengthen governance structures and processes; and
- both Indigenous and non-Indigenous organisations incorporated under the Corporations Act are supported to strengthen cultural governance capabilities.

⁷⁰ Australian Government, Closing the Gap in Partnership, National Agreement on Closing the Gap – Priority Reform Two.



Appendices




Appendix A - Data matrix **76**

Appendix B - Case Studies **80**


Appendix C - Online Survey Response Summary **92**

Appendix A - Data matrix





Evaluation domain 1: Appropriateness

Evaluation questions	Alignment to policy logic	Link to 'IAS values question'	Methods	Data/information sources (new or existing)
<ul style="list-style-type: none"> How appropriate is the SOG Policy in addressing its identified need? 	<p>The policy logic articulates a number of needs and objectives. In order to ground the evaluation, it will be necessary to define 'good governance' for the purposes of responding to the needs and objectives outlined in the Program Logic. It will also be necessary to understand the characteristics of grant recipients funded under the IAS.</p> <p>With reference to the Program Logic this question will enable exploration of:</p> <ul style="list-style-type: none"> needs as articulated in the Program Logic; and features of good governance based on literature 	 	<p><i>Qualitative:</i></p> <p>Desktop review</p> <p><i>Quantitative:</i></p> <p>Data analysis</p>	<p>Desktop review will include:</p> <ul style="list-style-type: none"> publicly available literature on features of good governance particularly focussing on Indigenous governance excellence; Capacity Strengthening for Indigenous Organisations (2012) report; and Joint Committee of Public Accounts and Audit Report 437 (2013). <p>Data analysis of NIAA administrative data on the number of IAS funded organisations by the following specified characteristics:</p> <ul style="list-style-type: none"> Indigenous status; geolocation; incorporation statute; and number of in-scope organisations including the number of in-scope exempt organisations.
<ul style="list-style-type: none"> How does the SOG Policy contribute to improved governance, increased organisational capacity and reduced organisational failure amongst 	<p>The policy logic specifies a number of objectives, which are expected to be addressed by the SOG Policy including increased organisational capacity and reduced organisational failure. This question will enable:</p> <ul style="list-style-type: none"> exploration of the interdependencies between objectives, particularly in relation to the interdependence 		<p><i>Qualitative:</i></p> <p>Desktop review</p> <p>Semi-structured phone interviews</p> <p><i>Quantitative:</i></p> <p>Data analysis</p>	<p>Desktop review of publicly available information on support mechanisms under State/Territory and commonwealth legislation.</p> <p>Phone interviews with NIAA, ORIC, AIGI and State/Territory regulators.</p> <p>Data analysis of:</p>

Data matrix

Evaluation questions	Alignment to policy logic	Link to 'IAS values question'	Methods	Data/information sources (new or existing)
IAS funded organisations?	<p>of the SOG Policy and objectives of Commonwealth legislation</p> <ul style="list-style-type: none"> • exploration of whether objectives are being achieved; and • consideration of how the SOG Policy parameters contribute to the achievement of objectives. 			<ul style="list-style-type: none"> • NIAA administrative and performance data by specified characteristics from Evaluation Question 1; and • ORIC data on organisation compliance and failure rates by specified characteristics from Evaluation Question 1. <p>State/Territory regulator data on organisation compliance and failure rates by specified characteristics from Evaluation Question 1.</p>
<ul style="list-style-type: none"> • To what extent is the SOG Policy culturally appropriate, sensitive and responsive for Indigenous organisations? 	<p>The policy logic specifies a number of objectives in relation to improving governance, particularly for Indigenous organisations. The SOG Policy requires a different incorporation arrangement for Indigenous organisations compared to other organisations. This question will enable:</p> <ul style="list-style-type: none"> • exploration of the experience of Indigenous people and organisations in interacting with the SOG Policy; • exploration of the extent to which the objectives have been informed by collaboration with Indigenous people; and • exploration of the extent to which the objectives reflect Indigenous organisations' structures, values and practices. 		<p><i>Qualitative:</i></p> <p>Desktop review</p> <p>Semi-structured phone interviews</p> <p>Semi-structured face to face consultations</p> <p><i>Quantitative:</i></p> <p>Anonymous online survey of IAS grant recipients</p>	<p>Desktop review of:</p> <ul style="list-style-type: none"> • the terms of the SOG Policy • submissions made to the Senate inquiry on Commonwealth IAS tendering processes (2016). <p>Phone interviews with NIAA, ORIC, AIGI and State/Territory regulators.</p> <p>Face to face consultations with up to four Indigenous organisations focussing on those organisations who have been required to change their incorporation statute or seek an exemption from the SOG Policy.</p> <p>An anonymous online survey of IAS grant recipients will be developed and disseminated to a representative sample of 500 IAS funded organisations.</p>


Data matrix

Evaluation domain 2: Effectiveness				
Evaluation questions	Alignment to policy logic	Link to 'IAS values question'	Methods	Data/information sources (new or existing)
<ul style="list-style-type: none"> To what extent is the SOG Policy being implemented as intended? 	<p>The policy logic specifies a number of inputs and outputs and outcomes. This question will enable:</p> <ol style="list-style-type: none"> understanding of the relationship between the inputs and the outputs; identification of the outputs being delivered; exploration of what outcomes have been achieved; and exploration of what has worked well, implementation challenges and what factors have contributed to these (enablers/barriers). 	 	<p><i>Qualitative:</i></p> <ul style="list-style-type: none"> Desktop review Semi-structured phone interviews Semi-structured face to face consultations <p><i>Quantitative:</i></p> <ul style="list-style-type: none"> Data analysis Anonymous online survey of IAS grant recipients 	<p>Desktop review of <i>Outcomes of Special Administration statistics</i>, ORIC.</p> <p>Phone interviews with NIAA, ORIC, AIGI and State/Territory regulators.</p> <p>Face to face consultations with up to four Indigenous organisations focussing on those organisations who have been required to change their incorporation statute or seek an exemption from the SOG Policy.</p> <p>An anonymous online survey of IAS grant recipients will be developed and disseminated to a representative sample of 500 IAS funded organisations.</p> <p>Data analysis (refer Evaluation Question 1) of:</p> <ul style="list-style-type: none"> NIAA administrative and performance data by specified characteristics; ORIC data on organisation compliance and failure rates by specified characteristics; and State/Territory regulator data on organisation compliance and failure rates by specified characteristics.
<ul style="list-style-type: none"> What unintended outcomes (positive and negative) were produced? 	<p>The policy logic specifies a range of outcomes. These will be explored in relation to Evaluation Question 4.</p> <p>This question will enable:</p> <ul style="list-style-type: none"> identification of any unintended outcomes (positive and negative) produced by the SOG Policy for IAS grant recipients, NIAA staff and ORIC; and 	 	<p><i>Qualitative:</i></p> <ul style="list-style-type: none"> Semi-structured phone interviews Semi-structured face to face consultations <p><i>Quantitative:</i></p> <ul style="list-style-type: none"> Anonymous online survey of IAS grant recipients 	<p>Phone interviews with NIAA, ORIC, AIGI and State/Territory regulators.</p> <p>Face to face consultations with up to four Indigenous organisations focussing on those organisations who have been required to change their incorporation statute or seek an exemption from the SOG Policy.</p> <p>An anonymous online survey of IAS grant recipients will be developed and disseminated to a representative sample of 500 IAS funded organisations.</p>

Data matrix

Evaluation questions	Alignment to policy logic	Link to 'IAS values question'	Methods	Data/information sources (new or existing)
	<ul style="list-style-type: none"> exploration of the extent to which incorporation has enabled organisations to access other grant opportunities (outside of the IAS). 			

Evaluation domain 3: Efficiency

Evaluation questions	Alignment to policy logic	Link to 'IAS values question'	Methods	Data/information sources (new or existing)
<ul style="list-style-type: none"> Do the outcomes being achieved represent value for money? 	<p>The policy logic specifies a range of inputs, outputs and outcomes. With reference to the policy logic, this question will enable:</p> <ul style="list-style-type: none"> exploration of both setup and ongoing costs of incorporation under Commonwealth and State/Territory legislations; exploration of costs incurred by ORIC in providing support; and comparison of the benefits and costs associated with incorporation under Commonwealth legislation. 		<p><i>Qualitative:</i></p> <p>Desktop review</p> <p>Semi-structured phone interviews</p> <p>Semi-structured face to face consultations</p> <p><i>Quantitative:</i></p> <p>Anonymous online survey of IAS grant recipients</p>	<p>Desktop review of publicly available estimates of the costs of incorporation under various forms of legislation.;</p> <p>Phone interviews with NIAA, ORIC, AIGI and State/Territory regulators.</p> <p>Face to face consultations with up to four Indigenous organisations focussing on those organisations who have been required to change their incorporation statute or seek an exemption from the SOG Policy.</p> <p>An anonymous online survey of IAS grant recipients will be developed and disseminated to a representative sample of 500 IAS funded organisations.</p>

Appendix B - Case Studies



Barkly Region Alcohol and Drug Abuse Advisory Group

Organisational context

Barkly Region Alcohol and Drug Abuse Advisory Group (BRADAAG) was established in August 1984 in the Northern Territory.

It is a non-profit community-based agency incorporated under the ORIC, funded from a combination of Territory and Commonwealth Government funded programs.

BRADAAG is the only provider of Alcohol and other Drug (AoD) services for the Barkly Region, and covers an area of approximately 320,000 square kilometres. The Tennant Creek and the Barkly region is home to nine Aboriginal groups including the Warumungu, Walpiri, Kaytetye and Alyawarra people.

The level of isolation of this remote area service creates challenges in the provision of comprehensive health care. BRADAAG has responded to these challenges by establishing a range of programs that provide a continuum of care for AoD Clients, so they can receive the necessary, appropriate and on-going support to address their needs within their local area.

Relationship with SOG

Current Entity Type: CATSI Act

Transferred to Commonwealth legislation: Yes, 27 April 2017 (did not apply for exemption)

Rationale for exemption decision (Approved/Rejected): N/A

Risk rating: Low/minor

Current IAS funding: \$ 2,111,850

Total IAS funding: \$ 6,521,606.88

Number of Activities (funded & expired): 5

Remoteness: Very remote Australia (Tennant Creek, NT)

\$10,000 paid: No

Transition to the CASTI Act

BRADAAG transitioned to the CATSI Act in 2017 following BRADAAG's current Chief Executive Officer (CEO) commencing her role. The CEO shared with the evaluation team that transitioning BRADAAG to the CATSI Act was a condition she stipulated as part of her employment as she has in-depth knowledge of the requirements of the Act and processes involved with reporting to ORIC. BRADAAG was previously incorporated under the *Associations Act 2003* (NT). While BRADAAG was receiving over \$500,000 in IAS funding prior to transitioning incorporation in 2017, the CEO noted that to her knowledge, BRADAAG was not under any pressure from the NIAA to transition incorporation status and that she was not notified of the requirement upon commencing her role. BRADAAG's decision to move to a framework with stronger standards of accountability and transparency, and increased regulatory support was not triggered by the SOG Policy, however is consistent with the SOG Policy's intent.

BRADAAG transitioned incorporation status within 28 days. The CEO reported that the transition process was straightforward and did not pose any notable cost implications. BRADAAG was not made aware of the \$10,000 support payment that the NIAA provided organisations to support transition and therefore did not access the grant. The CEO highlighted that the transition costs were nominal and that she could not see how a \$10,000 grant could be absorbed during the transition process. However, it was also noted that BRADAAG's CEO knew the right people and organisations to contact in order to transition incorporation status which streamlined the process and

minimised any confusion or uncertainty that other organisations may have experienced in the transition process. It was acknowledged during the consultation process that organisations that do not have staff with the same level of connections and/or pre-existing knowledge about the CATSI Act and ORIC may not be able to transition as quickly as BRADAAG.

BRADAAG's transition to the CATSI Act occurred simultaneously with the organisation going into special administration. As stated earlier, special administration is a type of administration only available under the CATSI Act and is generally requested by an organisation seeking to protect an essential community services and their organisation's future in delivering it. The BRADAAG Board request to go into special administration was a condition the CEO stipulated as part of her employment and a decision made to support BRADAAG to rebuild its governance structures and arrangements. Prior to the current CEO commencing her role, BRADAAG was experiencing significant governance challenges that cumulated in instances of fraud. Voluntary administration enabled the organisation to start over and to put in place governance arrangements to support greater accountability and oversight. The transition stage therefore involved the election of a completely new Board of Directors by BRADAAG's membership and development of a new organisational constitution and handbook.

Incorporation under the CATSI Act

BRADAAG reports annually to ORIC as part of its compliance requirements under the CATSI Act. As part of its annual reporting requirements, BRADAAG must provide ORIC with an Audited Financial Report, a General Report and a list of the Board of Directors. BRADAAG shared with the evaluation team that it did not consider the reporting requirements to be onerous or time consuming. The CEO explained that an annual Audited Financial Report and a documented list of the Board of Directors is within BRADAAG's standard business operations, and therefore emailing these documents on to ORIC does not require any additional resources. The CEO noted that while the General Report can take a little bit of time to put together and finalise, overall BRADAAG viewed the reporting requirements as minimal.

When the organisation first transitioned to the CATSI Act and came out of voluntary administration, ORIC required additional reporting from BRADAAG. This involved monthly reporting and provision of all Board papers. BRADAAG's CEO welcomed these reporting requirements, noting that it supported strong governance, accountability and early identification of risks. The CEO further noted that despite monthly reporting requiring more of the organisation's time than annual reporting, it is preferable in some ways as it enables ORIC to intervene and provide support at the first sign of risk of non-compliance.

ORIC has recently conducted an examination of BRADAAG, following the finding of fraudulent behaviours under BRADAAG's previous management. The current CEO welcomed the examination noting that it was an opportunity for BRADAAG to test the strength of its governance processes and procedures. BRADAAG submitted 960 documents dating back from July 2018 for examination by ORIC to inform how the organisation is now tracking post transitioning to the CATSI Act. The CEO reported that while a formal rating has not yet been provided, ORIC informed BRADAAG that it only had four very minor recommendations for improvement, acknowledging that BRADAAG displayed exemplary levels of good governance since transitioning incorporation status and appointing a new CEO and Board of Directors.

BRADAAG's CEO reflected that ORIC is the most fitting regulatory body for organisations providing services and programs to Indigenous peoples. She highlighted that over 90% of BRADAAG's clients are Indigenous and that BRADAAG prioritises employment of Indigenous staff. As a result, the CEO reflected that it is logical and most appropriate that BRADAAG should be incorporated as an Indigenous organisation. During the consultation it was reported that incorporation under the CATSI Act, and oversight by ORIC, is fit-for-purpose and reflective of a preference for Indigenous organisations to receive IAS funding as Indigenous organisations are best placed to provide services to Indigenous people. To this end, BRADAAG's CEO shared that in her view all organisations that service a majority Indigenous clientele should incorporate under the CATSI Act, even where organisations are receiving under the \$500,000 (GST exclusive) IAS funding threshold.

Opportunities for improvement

BRADAAG shared two overall reflections on opportunities for improvement that would support strengthening of governance:

- **improved information sharing between ORIC and the Australian Charities and Not-for-profits Commission (ACNC):** BRADAAG shared with the evaluation team that as a registered charity, information about BRADAAG, including its financial statements and its Board of Directors, is publicly available on the ACNC website. As an organisation registered with ORIC, BRADAAG reports directly to ORIC. ORIC then shares this information with the ACNC to be uploaded onto the ACNC website. BRADAAG's CEO shared that there is a significant delay period between the date BRADAAG provides information to ORIC, and the date information is updated on the ACNC website. As an example, the CEO shared that BRADAAG provided ORIC with a list of its Board of Directors in March 2021 and the ACNC website is yet to include this information. It was noted that as the NIAA uses ACNC information, outdated information on the ACNC website can have funding implications for BRADAAG. It was highlighted in the consult that BRADAAG was not aware of the cause of the delay.⁷¹
- **greater access to ORIC's governance training:** BRADAAG's CEO reported that she has been working for organisations registered with ORIC for the past eight years and has not been able to enrol herself or her staff in ORIC's governance training sessions due to limited availability.⁷² BRADAAG highlighted that while it was able to access governance training for its Board through other avenues, including the Australian Institute of Company Directors, it would highly value greater access to ORIC's governance training as it is more cost-effective. A suggestion for increasing access to ORIC's governance training is to provide an online governance training platform.

⁷¹ ORIC and ACNC have also noted the delay. Under a Memorandum of Understanding (MoU) between ACNC and ORIC, ORIC provides all data to ACNC on a monthly basis. The MoU has been in place since June 2013 and ORIC has provided monthly datasets (includes general report data) consistently to the ACNC. ORIC has raised with the ACNC the need to update the ACNC register with that data in a more timely manner.

⁷² ORIC reported it prioritises positions at the governance training sessions for directors over management, which may explain this.



Nunkuwarrin Yunti of South Australia Incorporated Ltd.

Organisational context

Nunkuwarrin Yunti of South Australia Inc. Nunkuwarrin Yunti is a multi-faceted Aboriginal Community Controlled Organisation (ACCO) located in Adelaide, South Australia on the lands of the Kurna people.

Founded by the late Aunty Gladys Elphick in the 1960s, it was first incorporated in 1971 and has recently celebrated its 50th anniversary. Nunkuwarrin Yunti was established after Aunty Gladys arrived in Adelaide and identified a distinct lack of culturally appropriate healthcare services available to the local Indigenous community.

Nunkuwarrin Yunti delivers a diverse range of health care and community support services across its five sites. The health care services provided are initiated and operated by the local Indigenous community, ensuring culturally appropriate and self-determined healthcare. Nunkuwarrin Yunti is also a Registered Training Organisation (RTO) and delivers a broad range of course offerings.

Nunkuwarrin Yunti is a registered charity under the Australian Charities and Not-for-profits Commission (ACNC). It is predominantly funded by the Southern Adelaide local health networks as well as the Commonwealth of Australia as represented by the Department of Health.

Nunkuwarrin Yunti is the largest health ACCO in South Australia with seven locations across the State and over 140 staff.

Relationship with SOG

Current Entity Type: Associations Incorporation Act 1985 SA

Transferred to Commonwealth legislation: No, exemption granted on 04 May 2016

Rationale for exemption decision (Approved/Rejected): Approved - PM&C funding representing a small proportion of total revenue

Risk rating: Low/minor

Current IAS funding: \$ 9,890,155.94

Total IAS funding: \$ 24,139,284.19

Number of Activities (funded & expired): 13

Remoteness: Major Cities of Australia (Adelaide, SA)

\$10,000 paid: No

Seeking an exemption

Nunkuwarrin Yunti successfully sought an exemption to the SOG Policy in May 2016 and it remains incorporated under the *Associations Incorporation Act 1985 SA*. Nunkuwarrin Yunti's first application for an exemption was denied and the NIAA provided Nunkuwarrin Yunti with a list of reasons explaining why the exemption was denied. Nunkuwarrin Yunti submitted a response to each of the NIAA's reasons and was then granted an exemption at the Minister's discretion. In granting the exemption, the Minister confirmed that Nunkuwarrin Yunti was able to demonstrate good governance and did not need to transfer to the CATSI Act.

Representatives from Nunkuwarrin Yunti's Executive Team shared that the rationale for seeking an exemption was in part due to Nunkuwarrin Yunti having operated successfully for over 40 years under state-based legislation prior to the introduction of the SOG Policy. Nunkuwarrin Yunti has received funding from the Australian Government since its establishment and therefore received funding well before the introduction of the IAS and the NIAA. Nunkuwarrin Yunti reported that prior to the IAS, most of its Commonwealth funding was from the Department of Health. Funding amounts received from the Department of Health were reported to be comparable to the funding Nunkuwarrin Yunti currently receives under the IAS. Nunkuwarrin Yunti also shared that prior to seeking an exemption, it had recently reviewed and updated its organisational constitution to support increased

Board rotation and governance structures and processes that better reflected community need. Nunkuwarrin Yunti could therefore show an established track record of strong governance structures and the ability to manage funding under its existing incorporation status.

Nunkuwarrin Yunti shared that as an organisation with established governance and business operating structures in place that have been operating effectively for decades, it did not see a need to transition to the CATSI Act. Nunkuwarrin Yunti's current CEO has been working for Nunkuwarrin Yunti for over 40 years (in a range of different roles and almost 11 years as the CEO) and therefore has in-depth knowledge of how the organisation operates, and the needs of the community it services. Nunkuwarrin Yunti is governed by a full Board with a diverse range of skills and expertise, including in Indigenous health and education and government. Nunkuwarrin Yunti also reported that its Board members are active in the community with several being highly respected Indigenous leaders. Nunkuwarrin Yunti's Constitution has been updated at intervals over its years of operation to ensure continuous improvement. Examples of updates have included staggering the terms of each Board member so that a whole new Board does not have to be elected all at once and opening up Nunkuwarrin Yunti's membership catchment by a further 150kms to better reflect its client base reach. To inform the strategic direction of Nunkuwarrin Yunti, the Executive Team and Board are informed by the community's needs and aspirations. Regular community consultations are held to determine Nunkuwarrin Yunti's focus areas and strategic direction.

Further to Nunkuwarrin Yunti's decision not to transition to the CATSI Act was that IAS funding only comprised approximately 20% of Nunkuwarrin Yunti's total income. Nunkuwarrin Yunti noted that transitioning incorporation status to comply with a requirement that impacted a small portion of total funding was not an effective use of resources. Nunkuwarrin Yunti emphasised the excessive cost of transitioning to the CATSI Act and impact on manager time and resources as another factor in seeking the exemption. There was also some discussion during the interview as to whether incorporation under the CATSI Act carries a requirement to include the term 'Indigenous' in the organisation's name. The Nunkuwarrin Yunti Executive Team highlighted that this is an example of the type of uncertainty and questions the organisation have about the exact requirements of incorporating under the CATSI Act which is a reflection of the less than ideal communication strategy rolled out to inform organisations about the practical impacts of the SOG Policy.

Nunkuwarrin Yunti shared that it would have benefitted from access to more information about the requirements and benefits of incorporating under the CATSI Act. Nunkuwarrin Yunti noted that the SOG Policy imposed a requirement on Nunkuwarrin Yunti to transfer to the CATSI Act without justification or rationale as to how this could strengthen the organisation's governance. Specifically, Nunkuwarrin Yunti was not provided with information about why oversight from ORIC is beneficial to Indigenous organisations. Nunkuwarrin Yunti shared that, at the time the SOG Policy was introduced, ORIC had a small team with generalist knowledge creating some uncertainty among organisations about how ORIC could manage oversight of a significant number of Australia's Indigenous organisations, and specifically oversee health organisations. Nunkuwarrin Yunti acknowledged that representatives from ORIC did visit Nunkuwarrin Yunti for an informal meeting on one occasion when the SOG Policy was first introduced, however very little useful information was provided as part of this visit. Nunkuwarrin Yunti noted that if it had access to roadshows or information sessions run by ORIC at the time the SOG Policy was introduced, it may have more closely considered transitioning incorporation status.

Since receiving an exemption in 2016, Nunkuwarrin Yunti reported that it has not interacted with the SOG Policy. Nunkuwarrin Yunti noted that while it has an exemption to the SOG Policy and therefore does not interact with ORIC, it has a strong relationship and an open dialogue with the NIAA as Nunkuwarrin Yunti is still required to submit performance reports to the NIAA for each of its IAS funded activities.

Cultural appropriateness

Nunkuwarrin Yunti strongly advocated the importance of Aboriginal organisations retaining the autonomy to determine incorporation status. Nunkuwarrin Yunti shared during the interview that a policy prescribing how organisations must incorporate is a barrier to self-determination as Aboriginal organisations and people are stripped of the right to govern in the way they deem to be most appropriate. It is the employees and Board members of the Aboriginal organisations that have the best understanding of the Aboriginal community they service, and in turn have the best understanding of how their organisations should be structured to meet the needs of their community. Nunkuwarrin Yunti reported that Aboriginal organisations should be empowered to make decisions about incorporation that are tailored to individual organisational and community needs. Nunkuwarrin Yunti shared that the SOG Policy is therefore problematic as it represents one sweeping requirement that applies to all organisations receiving over \$500,000 (GST exclusive) in IAS funding as if all of these organisations are the

same. Nunkuwarrin Yunti explained that while some Aboriginal organisations may require more stringent reporting requirements to maintain strong governance, other organisations, like Nunkuwarrin Yunti, have an established track record of strong governance and a policy that challenges the strength of these structures is culturally inappropriate.

Nunkuwarrin Yunti further noted that from a community perspective, ORIC can be perceived as a body that intervenes in an organisation's operations despite having limited cultural knowledge and understanding. Nunkuwarrin Yunti shared that when ORIC works with organisations at risk of going into administration, ORIC will often appoint non-Indigenous Board members to assist with improving the organisation's governance. Nunkuwarrin Yunti reported that while those Board members may have the technical skill set to improve organisational governance, they often lack the cultural knowledge and expertise that Indigenous organisations rely on to meet the needs of the Indigenous community.

Nunkuwarrin Yunti also shared that the use of the term 'exemption' under the SOG Policy is problematic in terms of cultural appropriateness. Nunkuwarrin Yunti explained that historic racist policies and laws enforced by the Commonwealth Government that marginalised Indigenous communities often had an 'exemption' framework. The use of the term 'exemption' under the SOG Policy may therefore trigger generational trauma for Indigenous people and act as an unintentional reminder of life for Indigenous people during mission days.

Incorporation under State-based legislation

Nunkuwarrin Yunti is a South Australian organisation with a South Australian client base and therefore Nunkuwarrin Yunti considered that it is only logical to be governed by South Australian legislation. Nunkuwarrin Yunti's reporting requirements under the *Associations Incorporation Act 1985 SA* are streamlined with its reporting requirements under the ACNC as it is also a registered charity. This means that Nunkuwarrin Yunti does not have to duplicate its submission of Financial and Annual Reports as once submitted to the ACNC, the South Australian regulatory body has access to the documentation. As reports submitted to the ACNC are public, Nunkuwarrin Yunti's financial information is publicly available which adds an additional level of accountability. Nunkuwarrin Yunti noted that in addition to reporting requirements associated with its incorporation and registration status, it also submits funding reports to each of its funding bodies and estimates submitting approximately 40 funding reports a year to various bodies including the NIAA.

Nunkuwarrin Yunti reflected that incorporation under a State-based legislation supported the organisation to retain its culture and point of difference as a South Australian Aboriginal organisation. Central to this culture is maintaining a safe space for the Indigenous community where all people feel welcomed, respected and heard. Nunkuwarrin Yunti highlighted that in order to keep the DNA of the organisation, changes to organisational structure should only be made if they support the continued growth of the organisation, and this at times this meant that Nunkuwarrin Yunti had to push back on requirements imposed by funding bodies.

Opportunities for improvement

Nunkuwarrin Yunti highlighted that the intent of the SOG Policy is to strengthen governance and accountability, however the measures the policy adopts to achieve this intention are not appropriate. Nunkuwarrin Yunti shared two suggestions of more appropriate and effective measures for strengthening organisational governance and accountability:

- **governance oversight by a body with specialised knowledge:** Nunkuwarrin Yunti discussed that Indigenous organisations would better benefit from peak body Indigenous organisations that operate in a particular sector providing governance support and oversight. In the health sector, Nunkuwarrin Yunti suggested that the NACCHO, which most Indigenous health organisations are affiliated with, would be a more culturally appropriate oversight body than a government body such as ORIC. Nunkuwarrin Yunti also highlighted the importance of organisations accessing sector specific governance support, which a peak body organisation is able to provide. Nunkuwarrin Yunti did not suggest that a requirement to work with a body such as NACCHO should be imposed on Indigenous organisations, however did suggest that if the Commonwealth Government wanted to direct funding into strengthening the governance of Indigenous organisations, empowering bodies such as NACCHO to offer this support is likely a more effective policy direction.

- **a requirement to display strong governance rather than a particular incorporation status:** Nunkuwarrin Yunti acknowledged that organisations receiving grants of \$500,000 (GST exclusive) and over should have to demonstrate strong governance, as the funding amount is significant. However, Nunkuwarrin Yunti highlighted that the best approach for demonstrating good governance is not through incorporation under Commonwealth legislation. While incorporation status may be a component of an organisation's ability to show good governance, Nunkuwarrin Yunti suggested that a more realistic demonstration of good governance is for organisations receiving large grants to detail governance structures and processes as part of funding applications. If governance challenges can be identified through the funding applications, the NIAA can then work with those organisations to strengthen governance in time for the next funding round. Those organisations that can demonstrate good governance as part of a funding application should be granted the funds irrespective of incorporation status. Nunkuwarrin Yunti reiterated that as the purpose of the SOG Policy is to strengthen governance, a model that takes into account all aspects of governance and not just incorporation status is of greater benefit to organisations.



Winnunga Nimmityjah Aboriginal Health and Community Services Ltd.

Organisational context

Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga) is an Aboriginal Community Controlled Health Organisation (ACCHO) operating in the ACT. It was established in 1988 by local Aboriginal people who saw a need to set up medical services for Aboriginal people in the area. It is governed by a Board of six Aboriginal elected community members. Its purpose is to provide culturally safe and holistic health and community services to Aboriginal peoples in the ACT and surrounding areas.

Winnunga provides healthcare services to over 5000 clients per year and delivers over 60,000 occasions of care each year. It employs over 70 staff and provides the following healthcare services:

- General Practitioners;
- Practice Nurses;
- Aboriginal Health Workers;
- Social and emotional health services;
- Dental services;
- Otitis Media Program and audiologist;
- Aboriginal Midwifery Access Program;
- Chronic Disease and the Patient Incentive Program;
- Outreach for Aboriginal people in custody;
- Allied Health Services – Podiatrist, Dietician, Psychiatrists, and Physiotherapist;
- Medical Student Education Program – ANU and The Canberra Hospital;
- a range of regular family programs including women’s and men’s group; and
- promotional health projects and campaigns.

Winnunga has been the recipient of a number of awards, including the inaugural National Excellence Awards in Aboriginal and Torres Strait Islander Health for Excellence and Innovation in Community Health Outcomes – Winnunga Youth Diversion Program (2007), the 2007 Limelight Award for Leaders in Indigenous Medical Education Leading Innovation in Community Engagement from the Medical Deans Australia and New Zealand, and finalist for the 2004 Deadly Awards in the category of Outstanding Achievement in Aboriginal and Torres Strait Islander Health, Winner of the ACT Aboriginal/Torres Strait Islander Organisation of the Year Award 2018, Winner of the 2018 ACT Health Aboriginal and Torres Strait Islander ‘Team’ NAIDOC Award.

Relationship with SOG

Current Entity Type: Corporations Act

Transferred to Commonwealth legislation: Yes, 24 March 2017

Rationale for exemption decision (Approved/Rejected): Initially sought and received an exemption on 14 April 2016. It subsequently chose to transfer to Commonwealth legislation on 24 March 2017).

Risk rating: Low/minor

Current IAS funding: \$4,552,964.16

Total IAS funding: \$ 5,611,950.16

Number of Activities (funded & expired): 7

Remoteness: Major Cities of Australia (Narrabundah, ACT)

\$10,000 paid: No

Seeking an exemption

At the time the SOG Policy came into effect, Winnunga was incorporated under the Associations Incorporation Act 1991 (ACT), however was in the process of taking steps to incorporate under the Corporations Act. Winnunga's CEO shared that as the health service continued to grow, it identified that incorporation under the Corporations Act was more suited to an organisation of Winnunga's size. Winnunga engaged independent consultants during this period of growth to recommend the most suitable steps for the organisation to support its growth and strong governance. As part of this internal review process, Winnunga made the informed decision to begin the process of transitioning incorporation status to the Corporations Act.

During this process, Winnunga's executive team became aware of the SOG Policy and the requirement to transition to the CATSI Act as an Indigenous organisation receiving over \$500,000 in IAS funding. As Winnunga had already determined that the Corporations Act was the most suitable legislation for its organisation, Winnunga applied for an exemption to the SOG Policy. The exemption was granted in April 2016 as Winnunga was able to demonstrate in its application that the organisation had strong governance processes in place, and that IAS funding represented a reasonably small portion of its total income. The exemption allowed Winnunga to remain incorporated under the Associations Incorporation Act 1991 (ACT), and therefore continue to undertake steps to transition from the ACT legislation to the Corporations Act. Winnunga completed this transition in March 2017 and is now incorporated under the Corporations Act and reports to ASIC.

Transition to the Corporations Act

During the interview, Winnunga's CEO acknowledged that there are benefits to larger organisations transitioning to Commonwealth legislation, as Commonwealth legislation carries higher levels of accountability and scrutiny compared to State or Territory-based legislation. However, Winnunga's CEO explained that its executive did not see the benefit of incorporating under the CATSI Act instead of the Corporations Act. This was in part due to a perception that ORIC too often unnecessarily intervened in the operation of organisations. The CEO also noted that while incorporating under Commonwealth legislation was considered the best fit for Winnunga, incorporation status alone is incapable of strengthening governance. The CEO explained that regardless of which legislation organisations incorporate under, all regulatory bodies require submission of audited financial statements and general reports. The strength of an organisation's governance is therefore more tied to the ability of an organisation to maintain a stable board, CEO and finance team with the right skills and expertise. The CEO iterated that an organisation with these features and the ability to engage an external accountant to produce a quality audited report, is likely to have strong governance irrespective of which legislation it is incorporated under. As a health organisation, Winnunga also reports regularly to a number of accreditation bodies, and is affiliated with the peak Indigenous health body the NACCHO, providing additional layers of accountability outside of incorporation status.

The cost implications of transitioning from State-based legislation to Commonwealth legislation were reported to largely be the amendments Winnunga had to make to its legal structure. Changes to the legal structure carried a name change for the organisation as it went from being an association to a corporation. Winnunga therefore had to cover costs associated with branding updates and notifying all funding bodies that its legal structure and legal name had changed. Winnunga's CEO also shared that when it transitioned to the Corporations Act it had to change its board structure and practices. Examples of amendments to the board structure and practices included having to: more stringently record board activities, appoint board members following a more prescribed protocol and seek board approval for an extended list of items. The CEO noted that while these legal and structural changes carried some cost and resourcing implications, they did not conflict with Winnunga's core business values as board members continued to be voted in by the organisation's member base enabling Winnunga to continue to meet the expectations of the Indigenous community it serves.

Cultural appropriateness

Winnunga's CEO shared that the SOG Policy contradicted principles of self-determination as it presented a barrier to Indigenous organisations incorporating under legislation that the organisation identified as being most suitable to the organisation's needs. As an example to illustrate this perspective, the CEO elaborated on how Winnunga is an Indigenous led organisation with a majority Indigenous staff, board and executive team. With advice and guidance from independent consultants, Winnunga chose to incorporate under the Corporations Act, however the SOG Policy then removed the organisation's freedom to take steps to pursue this choice as it required Winnunga to incorporate under the CATSI Act in order to keep its IAS funding. While Winnunga was successful in seeking an

exemption, it was discussed during the case study interview that a self-determining Indigenous organisation should not have 'jump through hoops' in order to pursue its strategic and operational plans. Winnunga's CEO also noted that receiving the exemption was no small feat, and that she had to personally call the office of the Minister of Indigenous Australians to push for a response to the exemption Winnunga submitted, taking the CEO away from her core business in overseeing the operation of an Indigenous health service.

During the interview Winnunga also shared that while it was in a financial position to transition incorporation status despite the cost implications, smaller Indigenous organisations may not be and therefore the SOG Policy could act as a deterrent to under resourced organisations applying for IAS grants. The Winnunga CEO explained that from a cost/benefit perspective, smaller Indigenous organisations may consider that it is preferable to apply for IAS grants under \$500,000 (excluding GST) to avoid the costs of transitioning to Commonwealth legislation. This acts as a further barrier to self-determination as Indigenous led organisations cannot as freely choose which grants to apply for.

Opportunities for improvement

Winnunga shared a suggestion of a more appropriate and effective measure for strengthening organisational governance and accountability:

- **investing in supporting Indigenous organisations to engage board members with the right skill set and expertise:** Winnunga's CEO emphasised the correlation between a strong board and an organisation's governance. An organisation is set up for success when it has the oversight of a suitably skilled and qualified board that also has a strong understanding of Indigenous community needs. An effective board will be able to support an organisation to have strong governance irrespective of whether the organisation is overseen by a State, Territory or Commonwealth regulator. To this end, the Winnunga CEO suggested that the financial and resource investment the government has made in implementing the SOG Policy may be better directed to supporting Indigenous organisations to engage suitable board members. It was suggested that funding could be provided to organisations so that sitting fees can be paid to board members as this can act as an incentive to attracting skilled board members.



Drug and Alcohol Services Australia Ltd

Organisational context

DASA has been delivering drug and alcohol rehabilitation programs to Alice Springs and Central Australia (NT) for over thirty years.

It is acknowledged that DASA supports anyone working, unemployed, Aboriginal, non-Aboriginal regardless of (dis)ability, culture and sexual orientation. DASA is aware of and responds to the changing cultural diversity in Alice Springs and its surrounds.

It is a growing organisation with a team of enthusiastic and dedicated staff across each of its branches. A range of services are offered to provide rehabilitation from misuse or dependency on alcohol and other drugs, and education to the broader community. These include: Sobering Up Shelter, Outreach team, Aranda House – Residential Rehabilitation Facility, Transitional After Care Unit, Independent Living Program, Methamphetamine Outreach Program, and Alternative to Custody Program.

Relationship with SOG

Current Entity Type: Corporations Act

Transferred to Commonwealth legislation: Yes, 29 May 2017 (did not apply for exemption)

Rationale for exemption decision (Approved/Rejected): Approved - PM&C funding representing a small proportion of total revenue: N/A

Risk rating: Low/minor

Current IAS funding: \$3,726,894

Total IAS funding: \$10,148,862.17

Number of Activities (funded & expired): 8

Remoteness: Remote Australia (Alice Springs, SA)

\$10,000 paid: Yes

Transition to the Corporations Act

DASA first learned of the SOG Policy when it was first made public in 2014. DASA's current CEO had only just begun their role at the time. In an interview for the case study the CEO recalled DASA was not engaged in consultation with the DPM&C in the design of the policy.

From the outset, DASA expressed its disapproval directly to the Minister of Indigenous Affairs at the time, labelling the policy as rushed, badly thought out and demonstrating little knowledge of the complexities of the Indigenous service delivery ecosystem.

DASA at the time was incorporated under the *Associations Act (2003) NT*. Required to transition to Commonwealth legislation, DASA weighed up all its options. The CEO stated that discussions were held internally as to whether DASA should transition to becoming an Indigenous organisation (either fully or split the organisation in two) and register under the CATSI Act. It thought this to be cumbersome and had little confidence in ORIC support so voted against it.

DASA also engaged in the idea of applying for an exemption from transitioning to Commonwealth legislation. Although never formally proceeding with an exemption, the CEO stated the Minister informally granted an exemption to DASA in writing following communication he had received from DASA concerned of the impacts SOG would have on the organisation. This informal exemption was never formally recognised or taken further by DASA, and on 29 May 2017. DASA successfully transitioned to the Corporations Act.

The transition period took approximately 12-months, describing the process as 'tiresome and resource sapping'. Support from DPM&C during the transition process was described as negligible, with Alice Springs-based DPM&C

staff described as lacking knowledge on the policy. When DASA engaged with Darwin-based staff they were mostly redirected to Alice Springs.

DASA estimated the costs to transition were approximately \$14,000. Costs were mostly for consultancy fee (hiring of local law firm) to provide the expertise and time it did not have. It took advantage of the \$10,000 transition payment offered by DPM&C upon receipt of evidence that the transfer has occurred.

Incorporation under the Corporations Act

The CEO reported the introduction of the SOG Policy and the IAS had led to DASA losing funding from grant pools it long relied on (particularly in relation to individual one-off grants). The reason explained was due to what DASA strongly perceived as a prioritisation of Indigenous organisations legislated under the CATSI Act. It stated that it did not matter that DASA had a client base that was 80% Indigenous. As a result, DASA has redirected its funding search to the likes of Primary Health Networks (PHNs) and approaching federal and Territory departments directly.

DASA described it seeing no evidence of the SOG Policy building the governance capacity of the organisation. Similarly, it reported that compliance with the SOG Policy had not strengthened its capacity to deliver IAS funded activities. Strong internal leadership and the ability to meet accreditation were described as markers of strong governance within DASA. It had consistently achieved both, stating it had a strong compliance history and established a reputation in community and amongst other service providers for quality service delivery. Incorporation under the Corporations Act, it was argued, had not assisted in this.

Life previously under *Associations Act (2003) NT* was described as less onerous and easier in terms of meeting various statutory requirements. Although compliance with the SOG Policy had imposed additional reporting requirements and financial costs on DASA, it did not want these factors to overshadow the 'real problems' with SOG – the real problems, from DASA's perspective, being that non-Indigenous organisations with a majority Indigenous client base do not receive the same funding prioritisation as Indigenous organisations incorporated with ORIC. It acknowledged that it had no specific issues with the Corporations Act itself, stating if SOG was to hypothetically end tomorrow it would not race to return to being legislated under Territory legislation. It was more so the broader implications SOG and IAS was having on organisations like itself that requires urgent review.

Appendix C - Online Survey Response Summary

SURVEY QUESTIONS & HIGH-LEVEL RESPONSES

(Responses, in terms of number, in shown **bold**; blanks indicate no respondents chose the particular option)

Introductory questions

I understand and consent to my anonymous survey responses being used as part of the evaluation of the SOG Policy? Yes: **121** No: **1**

Under the SOG Policy some Indigenous organisations are required to change their incorporation statute to become incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) or under the *Corporations Act 2001* (Corporations Act)? Are you aware of this requirement? Yes: **85** No: **31**

Was your organisation involved in the design and implementation of the SOG Policy in 2014? Yes: **4** No: **42** Don't know: Not applicable: **5**

Section 1: This section asks general questions relating to your organisation's characteristics

Is your organisation an Indigenous organisation as defined under the CATSI Act? *At least 51% Indigenous Board members and 51% Indigenous owned (with a minimum five members, of whom at least 51% identify as Indigenous Australians). Yes: **49** No: **22**

Online Survey Response Summary

What is your organisation's current incorporation status?	Incorporated under CATSI Act: 31	Incorporated under Corporations Act: 36	Incorporated under State or Territory Legislation: 3	Other: 1			
How many Full Time Equivalent (FTE) staff does your organisation currently employ	<5: 3	5-20: 23	21-50 : 24	51-100: 6	101-150: 3	>150: 11	
What was your organisation's annual revenue/turnover for the 2019-20 financial year	<\$100,000: 1	\$100,000 < \$500,000: 2	\$500,000 < \$2 million: 23	\$2 million < \$10 million: 25	\$10 million < \$25 million: 11	>\$25 million: 8	Don't know: 1
Has the SOG Policy impacted how your organisation currently uses IAS funding and/or plans to use and apply for future IAS funding	Yes : 5	No: 66					
Has the SOG Policy strengthened your organisation's capacity to deliver IAS funded activities? For example, achieving satisfactory performance ratings	Yes: 18	No: 53					

Section 2: This section asks you to reflect on your organisation's governance

How would you rate your organisation's governance practice (i.e. does it have strong oversight, internal accountability mechanisms, clear strategic direction from the Board and cultural legitimacy in your community)?	Very good: 48	Good: 16	Fair: 2	Poor	Very Poor
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Online Survey Response Summary

What does your organisation view as the key factors to achieving good governance (e.g. trained staff, qualifications, IT infrastructure, financial management, cultural knowledge, community connection etc.)?

66 responses, identifying a variety of factors (as discussed in the Evaluation Report)

What does your organisation view as the key barriers to achieving good governance (e.g. lack of consistent processes, poor communication, lack of accountability etc.)?

66 responses, identifying a variety of factors (as discussed in the Evaluation Report)

To what extent do you agree the period of transitioning incorporation status is challenging?

Strongly agree: **12**

Agree: **25**

Neither agree nor disagree: **22**

Disagree: **5**

Strongly disagree: **2**

Has the SOG Policy impacted your organisation's governance (operational and/or strategic)? For example, whether to transition incorporation status or not; effect of ongoing compliance requirements; effect on any changed organisational governance arrangements.

Yes: **19**

No: **47**

Are there any further comments you would like to make about your organisation's overall governance?

24 responses provided (as discussed in the Evaluation Report)

Online Survey Response Summary

Section 3: This section asks questions about your organisation's experience with implementing the SOG Policy

(Section 3 only completed by the 12 survey respondents that represented in-scope organisations)

Did your organisation transition its incorporation status to become incorporated under the CATSI Act or the Corporations Act following the introduction of the SOG Policy?	Yes: 12	No: 54				
To what extent do you agree that your organisation's governance model has improved as a result of transitioning incorporation status?	Strongly agree: 2	Agree: 3	Neither agree nor disagree: 4	Disagree: 3	Strongly disagree	
To what extent do you agree the period of transitioning incorporation status is challenging?	Strongly agree: 1	Agree: 5	Neither agree nor disagree: 6	Disagree	Strongly disagree	
To what extent do you agree that maintaining the incorporation status required under the SOG Policy is challenging?	Strongly agree:	Agree: 5	Neither agree nor disagree: 3	Disagree: 2	Strongly disagree: 2	Unsure (still in the process of transitioning)
Has your organisation experienced any change in access to new funding opportunities under the IAS after changing its incorporation status?	Yes, less funding opportunities available: 1	No change to funding opportunities: 7	Yes, more funding opportunities available: 4			
Has your organisation experienced any change in access to funding opportunities outside of the IAS after changing its incorporation status?	Yes, less funding opportunities available: 1	No change to funding opportunities: 8	Yes, more funding opportunities available: 3			

Online Survey Response Summary

Has your organisation experienced any benefits not already covered in this survey after changing its incorporation status? Yes No: **12**

Please describe any other benefits your organisation experienced as a result of changing incorporation status. (Examples might include improvements in organisational capacity, cultural appropriateness, service delivery and reduced risk.)

Has your organisation experienced any other challenges not already covered in this survey as a result of changing its incorporation status? Yes: **4** No: **8**

Section 4: This section asks questions relating to the costs your organisation has incurred as a result of the SOG Policy and what types of support were in place to assist your organisation in complying with the SOG Policy.

(Section 4 only completed by the 12 survey respondents that represented in-scope organisations)

What do you estimate to be the cost to your organisation to transition its incorporation status?	<\$1,000: 2	\$1,000 - \$5,000	\$5,001 - \$6,000: 2	\$6,001 - \$8,000	\$8,001 - \$9,000	\$9,001 - \$10,000: 2
In the last financial year, what do you estimate to be the cost to your organisation to maintain its incorporation status? (Costs can include staff time and resourcing as well as any regulatory body fees)	<\$500: 1	\$500 < \$1,000: 1	\$1,000 < \$2,000: 1	\$2,000 < \$5,000: 3	\$5,000 < \$10,000: 2	>\$10,000: 4

Online Survey Response Summary

Did your organisation receive any external financial assistance / support to transition its incorporation status?

Yes, ORIC: **3**

Yes, Other: **4**

No: **5**

To what extent was the support accessed useful to the organisation?

Very good: **4**

Good: **1**

Fair: **2**

Poor

Very poor

Please outline the reasons you did not access support to assist with the transition period?

My organisation did not need assistance: **1**

My organisation was not aware it could access support: **2**

My organisation attempted to utilise support but faced barriers such as costs, delay poor communication or insufficient assistance.

Other: **1**

Are there any other comments you would like to make about your organisation's implementation of the SOG Policy and the improvement and/or challenges faced during implementation.

1 response (as described in the Evaluation Report)

Conclusion

Would you like to make any other comments about the SOG Policy?

16 responses (generally captured in the Evaluation Report)

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