



Australian Government
National Indigenous
Australians Agency



NIAA

Corporations (Aboriginal and Torres Strait Islander) Regulations Amendment 2021 Exposure Draft

Feedback Summary



Background

1. In December 2019, the Minister for Indigenous Australians, the Hon Ken Wyatt AM, MP, announced a comprehensive review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The review was led by the National Indigenous Australians Agency (NIAA).
2. To date, the review has included 4 phases of consultation. Phase 1 was from December 2019 to February 2020 and sought feedback in relation to those aspects of the CATSI Act that should be considered as part of the review.
3. A second phase of consultation was undertaken from July 2020 to October 2020 and sought feedback on a range of proposals outlined in a draft report that was published on the NIAA’s website. Following this phase of consultation, the NIAA published a final report that made 72 recommendations. Fifty of these recommendations were given effect through the *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021* (CATSI Amendment Bill).
4. Phase 3 of consultation sought feedback on an exposure draft of the CATSI Amendment Bill; the final of which is currently before Parliament. This phase was approximately 4 weeks and went from July 2021 to August 2021.
5. The most recent and final phase of consultation was undertaken in November 2021 regarding the exposure draft of the *Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021* (CATSI Amendment Regulations). The CATSI Amendment Regulations give effect to recommendations made in the CATSI Act Review Final Report. They also support changes in the CATSI Amendment Bill.
6. In particular, feedback was sought in regard to two specific questions: whether the upper threshold for a small corporation should be \$250,000 or \$500,000 in consolidated revenue; and whether all corporations should be required to produce a remuneration report or only medium and large corporations.
7. This fourth phase of consultation closed on 26 November 2021 and received 22 responses from corporations, industry and individuals, including 10 email submissions and 12 written submissions. Written submissions have been published on the NIAA’s website, where permission was received to do so.

Size classification threshold

8. Item 1 of the exposure draft outlines the size classification thresholds for the new size classification framework in the CATSI Amendment Bill. The new size framework is based on a single criterion of consolidated revenue and replaces the existing framework that uses a complex tripartite criteria framework.
9. The new framework is based on that of the Australian Charities and Not-for-profits Commission (ACNC). The current ACNC size classification thresholds are based on revenue and will be changing from 1 July 2022. Table 1 below outlines the current and new thresholds for the ACNC.

Table 1. Current and new ACNC thresholds

Size	Current ACNC threshold	New ACNC threshold
Small	<\$250,000	<\$500,000
Medium	\$250,000 - \$1 million	\$500,000 - \$2.99 million



Size	Current ACNC threshold	New ACNC threshold
Large	>\$1 million	>=\$3 million

10. Reporting requirements for CATSI corporations are dictated by size classification. Corporations classified as small are only required to lodge a general report with the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar), and are not required to lodge a financial statement. Currently the upper limit for a small corporation is \$100,000. Changing this to \$500,000 would see around 72% of CATSI corporations classified as small with minimal reporting requirements—an increase of 10% compared with current numbers.
11. Based on concerns about reducing transparency, as part of the exposure draft consultations we asked respondents whether the upper limit should be \$250,000 or \$500,000. The response was very clear. Of the 22 respondents, 14 submissions supported the \$500,000 threshold, while only four supported the \$250,000 limit. Four responses did not comment on this issue. Many responses cited the preference to align with the ACNC classifications. For instance, Dr Ross Mack stated, *'since the ACNC definition of a small organisation is turnover below \$500,000 I believe we should do the same. Some Indigenous corporations are also registered as charities with the ACNC so it would make sense to follow their lead.'*
12. Another respondent stated, *'we believe the threshold for small corporations should be \$500,000 per year which is still a small turnover.'*
13. Those that supported the lower threshold of \$250,000 referred to the potential for more corporations to get into difficulty as they would have lower reporting requirements.
14. A joint submission from CPA Australia and Chartered Accountants Australia and New Zealand also supported the move to consolidated revenue away from gross operating income used for the current size classification framework, but recommended the Office of the Registrar of Indigenous Corporations (ORIC) issue guidance around what constitutes revenue.
15. Based on the feedback we will adopt the higher threshold of \$500,000 in alignment with the ACNC.

Remuneration report

16. The CATSI Amendment Bill amends the CATSI Act to introduce the concept of a remuneration report. The exposure draft of the CATSI Amendment Regulations was drafted to require corporations with consolidated revenue thresholds equivalent to a medium or large corporation for the financial year, to prepare remuneration reports. However, feedback was sought as to whether all CATSI corporations should be required to prepare remuneration reports.
17. Five respondents indicated it should only be large corporations that should be required to lodge a remuneration report i.e. those with consolidated revenue over \$3 million under the proposed new size classification framework; 6 agreed that it should be medium and large corporations only; while 3 said all corporations should be required to lodge a remuneration report. Four responses did not comment on this issue.
18. One response that recommended that all corporations should be required to submit a remuneration report outlined the advantages of reporting including that it makes sure that members are well aware of the organisation's financial situation, and builds reporting capacity which in-turn strengthens governance and sustainability and helps prevent fraud

and financial mismanagement. This respondent also suggested that small corporations should be able to prepare remuneration reports internally to avoid an additional financial burden.

19. Djirra and another submission maintained that the remuneration report provision should be removed altogether, including comments such as, *'Overall we do not believe that the proposal strikes the correct balance between transparency, employment obligations and privacy.'* The Kimberley Land Council (KLC), Australian Institute of Company Directors (AICD), National Native Title Council (NNTC), Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and a further submission expressed concern that a requirement to prepare remuneration reporting is more onerous than obligations under the *Corporations Act 2001* (Corporations Act) stating, *'As submitted in the KLC Exposure Draft Bill Submission, any amendments to the CATSI Regulations to give effect to new financial reporting requirements should not introduce requirements greater than those imposed on comparable entities under the Corporations Act 2001 (Cth) (i.e. listed corporations)'* and *'the AICD recommends this proposal is revised through alignment with ACNC remuneration disclosure requirements.'* Some submissions also suggested other forms of reporting such as aggregated in bands similar to the ACNC, or only requiring corporations with sufficient funds and activities to report.
20. In recognition of those concerns raised in earlier consultation processes, we have modified the implementation of this provision so that remuneration reports will not be publicly available but will only be available to members. Based on the responses to the exposure draft on the CATSI Amendment Regulations, remuneration reports will only be required from medium and large corporations—meaning only 28% of CATSI corporations will be required to prepare and lodge a remuneration report and only those with sufficient resources.

Director sitting fees

21. The issue of reporting on individual director sitting fee payments came up frequently in the responses to the exposure draft. During consultations conducted throughout the comprehensive review of the CATSI Act, the proposal to report individual director sitting fee payments and the number of meetings attended by each director was relatively uncontroversial and generally supported by most participants. However, responses to the exposure draft of the CATSI Amendment Regulations indicated some reservations, particularly about public disclosure.
22. The NNTC, KLC, North Queensland Land Council (NQLC) and a fourth response indicated that sitting fees should not be reported publicly in a corporation's financial report, but should be included in the remuneration report which will be exempt from the public inspection. AIATSIS indicated that reporting of sitting fees should be a decision of the corporation, and the AICD response argued that corporations should not be required to disclose fees and meeting attendance. The AICD contended, *'Disclosure of medium CATSI corporations' directors fees and meeting attendance is not warranted and may expose individual directors to privacy or reputational concerns.'*
23. We have considered whether sitting fees should be included in the remuneration report. The payment of directors' fees is information that would be of interest to a range of stakeholders, including creditors and funding bodies. It is for this reason that it is proposed to retain the requirement that this information be reported in the financial report.

General purpose financial reports

24. ORIC requires corporations that must prepare financial statements to prepare general purpose statements. As member-based corporations that are regulated and required to lodge financial reports, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) and members use those reports to understand the status of the corporation. As such, it is considered that general purpose financial reports are necessary. The CATSI Amendment Regulations aim to make this requirement clear for all corporations.

25. The joint submission from CPA Australia and CA Australia and New Zealand however took issue with this provision. They stated,

‘We do not support the proposal that all corporations that are required to prepare financial reports should prepare “general purpose financial statements”(GPFS)...In line with the reporting requirements for ACNC registered charities, it is our view that NFP corporations with financial reporting obligations should be:

- *allowed to apply Statement of Account Concepts 1 and so be eligible to continue to choose to prepare special purpose financial statement (SPFS) or GPFS as is appropriate, and*
- *be required to comply with only the Australian Accounting Standards that apply to ACNC registered charities preparing and lodging SPFS.’*

26. We contend that corporations that are required to prepare financial statements should be required to prepare general purpose statements for a range of reasons including ensuring:

- The Registrar has access to relevant financial information on which to make informed assessments as to the financial health of a corporation, in particular, whether the corporation may benefit from assistance. It is particularly important for this purpose that the Registrar understands how the figures in corporations’ financial statements have been derived, which requires the consistent application of the Australian Accounting Standards.
- Key stakeholders such as funding bodies, creditors and members have access to complete, relevant and accurate financial statements on which to make informed decisions about the operating position of a corporation. Again, to provide a clear and consistent understanding of financial information, it is useful for stakeholders if they understand the basis of the information which can be provided by the consistent application of Australian Accounting Standards.

27. We propose to retain the proposed wording for Regulation 23 as set out in the CATSI Amendment Regulations and to consider further amendments to the CATSI Regulations in response to any relevant future changes introduced by the Australian Accounting Standards Board.

Proper purpose test

28. Recommendation 14 of the CATSI Act Review recommended that the CATSI Act be amended to include a proper purpose test in relation to inspecting and/or making copies of a corporation’s register of members or register of former members. The exposure draft of the CATSI Amendment Regulations included prescribed purposes for the proper purpose test, including soliciting a donation, selling and advertising goods and services, conducting marketing activities, gathering information for a commercial purpose, and activities that pose a risk of harm to a member or members.

29. The NNTC, KLC, Central Land Council (CLC) and one further submission supported these purposes and proposed an additional prescribed purpose: to prevent non-members other than common law holders gathering information related to the native title obligations of a prescribed body corporate. The NNTC’s submission talked about ‘accessing the registers in order to go behind the consultation and consent process that an RNTBC must undertake to comply with its native title legislation obligations.’

30. We consider that this proposal has merit and propose to include an additional prescribed purpose similar to that put forward by these submissions.



Related party transactions

31. One of the key recommendations in the CATSI Act Review was recommendation 38 that was aimed at streamlining and reducing unnecessary red tape associated with related party transactions. In part, this recommendation is being given effect by the introduction of a provision in the CATSI Amendment Bill that removes the requirement for corporations to seek approval from members for related party transactions below a threshold specified in the CATSI Regulations. In other words, transactions below the threshold need not require resolutions to be passed at general meetings.
32. The exposure draft of the CATSI Amendment Regulations proposed a threshold of \$5,000. The ACNC response agreed with this amount as an appropriate threshold. The NQLC also supported the \$5,000 threshold amount, but further submitted that removal of the need for member approval should also be extended to deeds of indemnity and contracts of insurance such as those noted under section 191(2)(v) of the Corporations Act.
33. We considered this proposal however believe that deeds of indemnity and contracts of insurance pertaining to related parties require member approval and we therefore propose not to adopt this suggestion.

Exemption from timeframe for deciding membership applications

34. The CATSI Act Review recommended that corporations be required to make a determination in regard to a membership application within six months although corporations could apply to the Registrar for an exemption or an extension of this timeframe.
35. The exposure draft of the CATSI Amendment Regulations listed a corporation's application to the Registrar seeking an exemption or extension to this timeframe as a document to be included on the Register of Aboriginal and Torres Strait Islander Corporations.
36. The NQLC reiterated a previous concern stating there should be no timeframe for deciding membership applications.
37. The CLC response recommended that the application should also be added to Schedule 3 of the Regulations that sets out documents that are exempt from public inspection. It contended that it was sufficient for public transparency that the Registrar's decision in regard to an application would be publicly available on the Register of Aboriginal and Torres Strait Islander Corporations.
38. We consider this proposal has merit as there was potential for sensitive information to be included in an application for an exemption or extension. Accordingly we agreed that the application for an exemption or extension of time for deciding a membership application be added to Schedule 3.

Other issues

39. A couple of other issues were raised in response to the exposure draft. Although not specifically covered in the draft Regulations, one response maintained that documentation of Aboriginality should be mandatory for people to set up a CATSI corporation and proposed that a review of corporations needs to be conducted. The CATSI Act does not require all members of a corporation to be Aboriginal or Torres Strait Islander people, only a majority. However, the



CATSI Amendment Bill includes an amendment that enables two-person corporations to be established where only one person is Indigenous, as long as that person has the casting vote. This will also apply to two-member corporations where the members are bodies corporate. It should also be noted that corporations have to provide a statement to ORIC on registration that the majority of members are Aboriginal or Torres Strait Islander people.

40. The other substantive issue that was raised was in regard to the reporting requirement for number and status of employees. One of the determinants of corporation size at present is the number of employees. Therefore, on registration and annually, corporations are required to report on the number of employees, and the Regulations provide a formula for counting full-time equivalent employee numbers (FTE). However, by changing the size classification test, the amendments remove the provisions requiring the number of employees to be reported. We consider it an important piece of data to maintain about corporations, and wanted to expand it to include number of volunteers, paid staff, full-time, part-time and Indigenous staff.
41. We acknowledge however that we have not canvassed this issue through consultation and the NNTC, KLC, CLC and one further submission raised concern regarding this amendment. Therefore, we propose to continue to require reporting of FTE employees as this is not a change from the current situation, and seek the other data items as optional reporting items.