

Friday 26 November 2021

National Indigenous Australians Agency (NIAA)

via email: CATSIActReview@niaa.gov.au

Dear NIAA,

Proposed amendments to the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017

Thank you for the opportunity to provide comments on the exposure draft of proposed amendments to the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (**CATSI Regulations**) (the **Exposure Draft**).

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of more than 47,000 is drawn from directors and leaders of not-for-profits, large and small businesses, *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (**CATSI Act**) corporations (**CATSI corporations**) and the government sector.

As with our previous submissions on the review of the CATSI Act (available [here](#)) and the exposure draft of the *CATSI Act Amendment Bill 2021* (the **Bill**) (available [here](#) and [here](#)), our recommendations and observations outlined in this submission should be read in light of the AICD's limited internal expertise in relation to the CATSI Act. However, we have undertaken external consultation with directors and senior executives of Indigenous corporations and Indigenous organisations that informs this submission.

The AICD has presented more than 145 Indigenous Governance Programs to over 1920 participants since 2010, and delivered the Company Directors Course to more than 230 Indigenous business leaders since 2009. These programs are facilitated by faculty who are experienced directors on Indigenous boards. We are currently in the process of appointing an Indigenous sector leader to bolster our expertise and engagement with First Australians. We have also engaged IPS Management Consultants to guide the development of our second Reconciliation Action Plan.

1. Executive Summary

The AICD strongly supports the purpose of the CATSI Act, which facilitates Aboriginal and Torres Strait Islander persons to create and manage Indigenous entities which play a vital role in Indigenous communities.

Our engagement with stakeholders as part of this consultation has highlighted the need for the CATSI Act to empower corporations to focus on the important public function and custodial role these organisations have in Indigenous communities.

The AICD has in submissions on the Bill before Parliament been supportive of amendments that promote a flexible legislative framework that accommodates specific cultural practices and allow

for self-determination. However, we have raised concerns that certain amendments would add a level of complexity, compliance and regulation to CATSI corporations that is unnecessary and out of step with the purpose of the legislation. These concerns carry over to the Exposure Draft in three areas where we consider there is a risk that the requirements will be onerous on smaller CATSI corporations, punitive and not assist in achieving improvements in the governance of CATSI corporations.

1. **Size classification and consolidated revenue thresholds:** The AICD supports size classification and consolidated revenue thresholds being fully aligned with the new Australian Charities and Not-for-profits Commission (**ACNC**) reporting thresholds. To ensure consistency with ACNC reporting thresholds, the small CATSI corporation threshold should be set at \$500,000 annual revenue.
2. **Remuneration report:** The AICD is strongly concerned with the remuneration report requirements in the Exposure Draft. The proposal to disclose individual key management personnel remuneration data at medium and large CATSI corporations goes beyond the obligations imposed on most non-CATSI Act entities and additionally raises considerable privacy concerns. Notably, the proposal does not align with the requirements on charities under new ACNC disclosure obligations. The AICD recommends this proposal is revised through alignment with ACNC remuneration disclosure requirements.
3. **Directors' sitting fees and meeting attendance:** The AICD does not support requiring medium CATSI corporations to disclose director fees and meeting attendance. Disclosure of this nature is not warranted from a transparency perspective for medium CATSI corporations (i.e. less than \$3 million annual revenue) and may expose individual directors to privacy or reputational concerns.

Our comments on the Exposure Draft are limited to these three areas.

2. Size classification and consolidated revenue thresholds

This section responds to Items 1, 9, 16 and 17 of the Exposure Draft.

The AICD welcomes the proposed amendments to simplify the existing size classification and revenue reporting thresholds. Consistent with our previous submissions, we strongly support alignment of size classification and consolidated revenue thresholds with those for ACNC reporting. The ACNC reporting thresholds have recently been increased via *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (**ACNC Regulations amendments**).

The Exposure Draft contemplates the small consolidated revenue threshold being set at either \$250,000 or \$500,000 revenue per annum. We strongly encourage the NIAA to adopt the higher proposed threshold of \$500,000. This approach would align with the new ACNC reporting threshold for small charities and importantly avoid unnecessary reporting and compliance costs on small CATSI corporations.

Further, the thresholds should be assessed in the context of the increased reporting and disclosure obligations that are being contemplated on medium CATSI corporations in terms of remuneration and director pay, discussed below. We consider that it would be unduly burdensome, and have limited transparency benefits, to require a CATSI corporation with, for example, \$260,000 of annual revenue to prepare a remuneration report.

3. Remuneration report

This section responds to Items 10, 12, 18 and 20 of the Exposure Draft.

The AICD retains its considerable concern about the disclosure of the individual remuneration of key management personnel at medium and large CATSI corporations. Our significant concern is based on three issues:

1. The disclosure of individual remuneration outcomes could have considerable individual privacy ramifications, particularly for managers of medium sized CATSI corporations that are community based.
2. The approach in the Exposure Draft is inconsistent with that adopted under the ACNC Regulations amendments. Under the ACNC changes disclosure of remuneration in the Annual Information Statement will only be required of large charities with disclosure at an aggregated level (i.e. individual remuneration outcomes are not reported).
3. Preparing a remuneration report would impose significant compliance costs on medium sized CATSI corporations. The work and assurance to prepare a remuneration report against the relevant accounting standard would necessitate the use of a third-party accountant or auditor with the associated costs this would bring.

By way of example, under the proposed drafting a medium sized CATSI corporation with \$510,000 annual revenue would be required to prepare a remuneration report (assuming the higher small CATSI corporation threshold is adopted). Not only will the CATSI corporation incur compliance costs but will also face the situation where individual staff member remuneration is disclosed. These staff members would face genuine privacy issues, particularly in community-based settings. It is difficult to make the case that this form of disclosure is appropriate or results in transparency benefits that outweigh the compliance costs and privacy concerns. The Government's response to the ACNC Review noted the issue of privacy in accepting the recommendation that remuneration reporting should only apply to large charities.¹

The AICD strongly encourages the NIAA to reconsider this proposal, including undertaking consultation with the ACNC. We recommended that any requirements on remuneration reporting are limited to *large* CATSI corporations, disclosed on an *aggregated* basis. This approach would align with the new ACNC remuneration disclosure requirements.

We also note that were the NIAA to proceed with this requirement that comprehensive guidance will be needed to support CATSI corporations, including their advisors.

The AICD is happy to assist the NIAA in further developing the remuneration requirements, including facilitating consultation with our members who sit on CATSI corporation boards.

4. Directors' sitting fees

This section responds to Item 11 of the Exposure Draft.

Our interpretation of the drafting is that Item 11 would require both large and medium CATSI corporations to disclose directors' sitting fees and meeting attendance as a component of their

¹ Government Response to the Australian Charities and Not-for-profits Commission Legislation Review 2018, 6 March 2020, page 14.

annual financial reports. We note that director remuneration is often captured under 'key management personnel' in relevant accounting standards and as such may - on a strict reading - be caught under the remuneration report proposal (Items 10,12, 18 and 20). We recommend that this drafting uncertainty be resolved.

Consistent with our submission to the CATSI Act review, we do not support the disclosure of director remuneration or the number of meetings attended by each director.² While the AICD encourages organisations to be transparent on directors' remuneration, this good practice should not be conflated with minimum legal requirements. We are particularly concerned that for medium sized CATSI corporations the director fee and attendance disclosure requirements are unnecessary and may expose individual directors to privacy or reputational issues.

We note that disclosing the number of meetings attended by directors was not recommended by the CATSI Act review.³ It is not apparent the policy justification for introducing this disclosure obligation on medium CATSI corporations.

Large CATSI corporations are already required to prepare directors' reports, containing fees and attendance information, and it appears to be duplicative and unnecessary to require this information to also be reported in the financial report.

If the NIAA is minded to retain the director remuneration and meetings attendance reporting obligations, we recommend that it is aligned to, or incorporated into, the remuneration reporting requirements discussed above. As with the remuneration report, our strong view is that these disclosure obligations should only apply in respect of *large* CATSI corporations.

5. Next steps

We hope our comments on the Exposure Draft will be of assistance.

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² AICD submission, Review of the CATSI Act – Phase 2 Consultation, 2 October 2020.

³ CATSI Act Review, Final Report, 30 October 2020, Recommendation 36, page 90.