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National Indigenous Australians Agency  
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**Submission on exposure draft of the *Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021***

The Kimberley Land Council (KLC) welcomes this opportunity to comment on the Exposure Draft to the *Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021 (CATSI Regulations)*, notwithstanding the relatively short timeframe in which to do so.

The KLC is the recognised Native Title Representative Body (NTRB) for the Kimberley region under s 203AD of the *Native Title Act 1993 (Cth) (NTA)*. The KLC has statutory functions and provides advice and support in relation to governance and compliance to Registered Native Title Bodies Corporate (RNTBCs) and related Aboriginal Corporations across the Kimberley region. The KLC is also itself a community-based organisation incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act)*.

The KLC makes this submission on the Exposure Draft for the CATSI Regulations with regard to its statutory functions under the NTA, its own corporate governance obligations under the CATSI Act, and the interests of native title holders and their representative organisations across the Kimberley region.

The KLC has reviewed the submission of the National Native Title Council (NNTC Submission) on the CATSI Regulations and supports that submission in its entirety. This submission refers to the KLC's earlier submission on the Exposure Draft for the *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill (KLC Exposure Draft Bill Submission)* made on 8 August 2021, and also makes the following additional submissions in response to specific questions posed by the National Indigenous Australians Agency (NIAA).

**1. Revenue threshold for small corporations**

The KLC supports the new size classification framework in the CATSI Amendment Bill 2021 being based on a single criterion of consolidated revenue rather than a complex tripartite criteria framework. The KLC also supports the upper size threshold for small corporations being \$500,000, rather than \$250,000, so that smaller, startup or less immediately financial able corporations are not disadvantaged by the increased reporting and regulatory requirements, and administrative burdens, imposed on medium and large corporations.

Further to the submission of the Central Land Council, the KLC also submits that the CATSI Regulations should include a further 'caretaker' classification for small corporations with no employees and no initial or reportable income. The size classifications as presently formulated (small, medium and large) do not sufficiently recognise the unique challenges and circumstances of RNTBCs, including the fact that they are mandated by the NTA and often brought into existence without any capacity to comply with basic administrative or legal compliance obligations arising under both the NTA and the CATSI Act.<sup>1</sup>

## 2. Remuneration reports for small corporations

The KLC notes that the Exposure Draft has been drafted to require corporations with consolidated revenue thresholds equivalent to a medium or large corporation for the financial year, to prepare remuneration reports. As to the specific question of whether *all* CATSI corporations should be required to prepare remuneration reports, while the KLC supports measures that improve corporate transparency and accountability for RNTBCs to members and common law holders, the KLC submits that this is an unreasonable requirement and does not support extending this obligation to all corporations.

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). CATSI Act corporations are not analogous to listed corporations under the Corporations Act and the imposition of similar reporting requirements is not justified and will be unreasonably onerous. Moreover, as noted in the NNTC submission, the proposed measures are potentially discriminatory and can only be justified as a special measure if they advance the interests of Aboriginal and Torres Strait Islander people.

## 3. Conclusion

Noting again the short timeframe for stakeholder feedback on the Exposure Draft, the KLC continues to have concerns about the amendments identified above and those problematic amendments identified in the NNTC Submission. We would be happy to discuss our concerns with you.

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<sup>1</sup> See also KLC Exposure Draft Bill Submission at [2(a)-(d)].