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CATSI Act Amendment Regulations
National Indigenous Australians Agency
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Via email: CATSIActReview@niaa.gov.au

AIATSIS Submission: CATSI Amendment Regulations Exposure Draft

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) welcomes the opportunity to provide feedback on the CATSI Amendment Regulations Exposure Draft. AIATSIS is Australia's national institute dedicated to Aboriginal and Torres Strait Islander peoples' knowledge, societies and cultures. We are both the custodian of Australia's national collection of Aboriginal and Torres Strait Islander heritage materials and one of Australia's publicly funded research agencies. AIATSIS has legislative responsibility to provide leadership in Aboriginal and Torres Strait Islander research and provide advice to government on Aboriginal and Torres Strait Islander culture and heritage including native title, land and water management and Indigenous governance. AIATSIS is committed to ensuring Indigenous knowledges, cultures and governance structures are respected, valued and empowered by the laws and policies that concern them.

Since 2016, AIATSIS has contributed to a number of reviews of the CATSI Act including the Technical Review of the CATSI Act (2017), CATSI Review Phase 1 (2020), CATSI Review Phase 2 (2020) and the CATSI Amendment Bill (2021).

We welcome the retention of the CATSI Act as a special measure but believe more could be done to bring the Act in line with the expectations of Aboriginal and Torres Strait Islander people. We are disappointed that many of our recommendations outlined in previous submissions have not been implemented either in full or in part. The attached submission highlights the need for future reform in several key areas, and provides specific feedback on the terms of the Exposure Draft.

Yours sincerely,

Dr Lisa Strelein
Executive Director, Research and Education Group

Enc/s AIATSIS submission on the CATSI Amendment Regulations Exposure Draft

AIATSIS submission to CATSI Amendment Regulations Exposure Draft

1. Small and medium corporation revenue limit

AIATSIS has previously acknowledged the desire to simplify the classification criteria in line with the Australian Charities and Non-for-profits Commission Act 2012 (Cth) size classification framework.¹ In that submission, we also expressed concern at using consolidated revenue as the single criterion for the classification of corporations due to the potential for unintended consequences.² Under the proposed framework, corporations which may have little to no assets and staff may face higher than proportionate reporting burdens where they receive more revenue due to higher land-related payments. This mismatch is a situation unique to RNTBCs due to their position as non-profit corporations and the specific purpose they serve.

We have previously made submissions in support of less onerous reporting requirements for small corporations under the CATSI Act, and in particular RNTBCs in lieu of there being no separate regime dedicated to the conduct of RNTBCs. AIATSIS has previously set out a number of reasons as to why we believe there should be a separate division pertaining to the unique status of RNTBCs.³ On that note, for the above reasons, if the decision to be made is going to be whether the upper revenue limit for small corporations is between \$250,000 and \$500,000, we would advise that that number be at the upper limit.

Setting the revenue limit for small corporations at a higher threshold will lessen the burden for corporations (in particular RNTBCs) whose funding reality is unavoidably impacted by inconsistency.

2. Remuneration report

In previous submissions, AIATSIS has expressed concerns about the potentially discriminatory provisions of the amendments with respect to remuneration reports. Namely, that they would impose additional burdens on Indigenous corporations that are not expected of corporations incorporated under the Corporations Act.⁴ This differential treatment would not be based on relevant difference and for the benefit of Aboriginal and Torres Strait Islander people. In our response to the CATSI Amendment Bill Exposure Draft we submitted the following:

‘Additional requirements relating to disclosure of the remuneration of key management personnel is only required of listed Corporations under the Corporations Act.⁵ The Strengthening for Purpose: Australian Charities and Not-

¹ Strelein and Stone, AIATSIS Submission: CATSI Amendment Bill Exposure Draft (August 2021) 5.

² Strelein and Stone, AIATSIS Submission: CATSI Amendment Bill Exposure Draft (August 2021) 5.

³ Strelein and Stone, AIATSIS Submission: CATSI Amendment Bill Exposure Draft (August 2021) 2.

⁴ Strelein and Stone, AIATSIS Submission: CATSI Amendment Bill Exposure Draft (August 2021) 3.

⁵ Corporations Act s 300A.

for-profits Commission Legislation Review 2018 made some recommendations in relation to disclosure of remuneration, but advised that 'the disclosure of remuneration practices should only be required of large registered entities.' The inclusion of these requirements in the CATSI Act imposes a disproportionate regulatory burden. As we have previously submitted, there is no evidence the change is of benefit to Aboriginal and Torres Strait Islander peoples. The proposal that the CATSI Regulations be amended to require corporations to report how much each Director is paid in sitting fees in their annual financial reports has no equivalent in the Corporations Act and would also appear to have little benefit to Aboriginal and Torres Strait Islander corporations, which should be able to elect whether or not to include this information in their reports.⁶

AIATSIS stands by this previous submission and strongly recommends that this be taken into consideration with respect to this proposed regulation.

If the purpose of the report is to promote fairness and transparency with respect to remuneration of management personnel, we would contend that this is already built into the CATSI Act through other provisions. For example, provision 252-1 sets out that directors of the corporation are not to be paid remuneration unless the constitution of the corporation provides otherwise.⁷ Provision 252-5 imposes the obligation for the corporation to disclose the remuneration and expenses paid to each director of the corporation or a subsidiary (if any) by the corporation or by an entity controlled by the corporation if the corporation is directed to disclose that information.⁸ If Division 252 already promotes fair and transparent remuneration for key management personnel (as it is expressed under section 22A of the Exposure Draft) the imposition of the remuneration report would only add an extra level of administrative burden on corporations without administering any additional benefit.

⁶ Strelein and Stone, AIATSIS Submission: CATSI Amendment Bill Exposure Draft (August 2021) 3.

⁷ Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) 252-1.

⁸ Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) 252-5.