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Dear CATSI Act Review Team,

NNTC Submission on the Exposure Draft of the Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021

The National Native Title Council (NNTC) welcomes this opportunity to comment on the exposure draft of the *Corporations (Aboriginal and Torres Strait Islander) Amendment Regulations 2021* (Amendment Regulations).

The NNTC makes this submission in its capacity as the peak body for Australia's Native Title Organisations representing Native Title Representative Bodies and Service Providers and Registered Native Title Prescribed Bodies Corporate (RNTBCs) recognised under the *Native Title Act* and other comparable legal entities such as Traditional Owner Corporations recognised under the Victorian *Traditional Owner Settlement Act*.

While the NNTC supports many of the amendments included in the CATSI Amendment Bill 2021, it has raised concerns about several matters in its previous submissions to the CATSI Act Review.

The comments below regarding the Amendment Regulations should be understood in the context of the NNTC's several previous submissions and are provided on the basis of the NNTC's understanding that the CATSI Amendment Bill 2021 is likely to proceed in its current form without significant amendment.

1. Revenue threshold for small corporations

- 1.1. The CATSI Act Review Final Report recommended the CATSI size classification framework be aligned with the Australian Charities and Not-for-profits Commission (ACNC) size classification.
- 1.2. The NNTC has noted in its submissions on the CATSI Act that some corporations and other organisations do not consider that alignment with the ACNC framework is necessarily the most appropriate and is aware that the NIAA considered other frameworks before settling on the current proposal.

- 1.3. Over the past 12 months quite a number of NNTC members have confirmed their support for simplifying the size classification and aligning it with the ACNC framework. The NNTC therefore considers that the upper consolidated revenue threshold for a small corporation should be \$500,000 which would be consistent with the ACNC framework.

2. Remuneration reports

- 2.1. In its previous submissions the NNTC has emphasised its support for measures that will increase corporate transparency and accountability to members and native title holders. However, it has expressed concern at proposals that are more onerous than those required by the Corporations Act, particularly if they would result in greater public disclosure of personal or corporate information. Such measures are potentially discriminatory and can only be justified as special measures if they advance the interests of Aboriginal and Torres Strait Islander people.
- 2.2. The concerns of the NNTC and some of its members include the proposal for medium and large corporations to prepare reports disclosing the remuneration paid to individuals classified as key management personnel.
- 2.3. The NNTC notes that these concerns have been partially addressed by the Amendment Regulations, as they exempt remuneration reports from public disclosure, while making continuing to make this information available to members.
- 2.4. The NNTC notes that disclosure of this information is not required under the Corporations Act for most corporations, and the ACNC requirement from July next year is for large corporations to disclose the remuneration paid to responsible persons and senior executives on an aggregated basis.
- 2.5. The NNTC does not support extending this obligation to all corporations.

3. Fees paid to directors

- 3.1. As noted above, the NNTC supports measures that increase corporate transparency and accountability to members and native title holders. However, any public reporting of fees paid to directors should be no greater than that required for comparable corporations under the Corporations Act.
- 3.2. The NNTC notes that the ACNC will only require large corporations to disclose fees paid to directors on an aggregated basis, and this information is included in the same report that identifies the remuneration paid to senior executives.
- 3.3. The NNTC considers that the fees paid to directors of CATSI corporations should be exempt from public disclosure and submits that if a large or medium corporation is required to provide this information it should be included in the remuneration report which will be exempt from public disclosure, rather than in the financial report as currently proposed.

4. Inspection and access to registers of members and former members

- 4.1. The NNTC supports the prescribed list of prohibited purposes in the Amendment Regulations that restricts non-members from inspecting a corporation's register of members or former members except for a proper purpose.
- 4.2. However, the NNTC considers that an additional prohibited purpose should be included to prevent non-members (other than common law holders of native title) from accessing the registers in order to go behind the consultation and consent and other processes that an RNTBC must undertake to comply with its native title legislation obligations.
- 4.3. The NNTC submits that this additional prohibited purpose could be framed as 'gathering information related to the native title obligations of a Registered Native Title Body Corporate (unless the person is a common law holder)'.

5. Contents of general reports

- 5.1. The NNTC does not support the amendments contained in paragraphs 17(ca), (cb) and (cc) that would require a general report to include information on the number of employees who are full-time, part-time, indigenous, paid or volunteers. There has been no notice or consultation about these provisions, and no rationale has been provided to support these amendments. They appear to have been inserted primarily to facilitate data gathering by ORIC, rather than to support good governance or alignment with ACNC requirements or the Corporations Act.
- 5.2. There is no requirement under the Corporations Act or by the ACNC for corporations to provide information of this nature, and the NNTC considers that these proposed amendments are discriminatory and add a level of reporting that is unnecessary and unjustified.

Conclusion

While the NNTC supports those parts of the Amendment Regulations that will assist in giving effect to the many positive recommendations in the CATSI Act Review Final Report, it does not support the small number of amendments identified above that are inconsistent with the requirements of the Corporations Act and the ACNC, and cannot be justified as special measures.

The NNTC considers that these problematic amendments should not proceed in their current form, and I would be happy to discuss our concerns with you.

Yours sincerely



Jamie Lowe
Chief Executive Officer