

Aboriginal Health and Medical Research Council of NSW

Corporations (Aboriginal and Torres Strait Islander) Act 2006

(CATSI Act) – Amendment Bill Exposure Draft Response 2021

The AH&MRC Acknowledges the Traditional Owners of the lands on which the AH&MRC stands, the lands of the Bidjigal and Gadigal people of the Eora Nation. The AH&MRC pays respect to Elders past, present and emerging.



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Introduction

The AH&MRC is a membership-based organisation and the Peak Body for Aboriginal Health in New South Wales. We represent 47 Aboriginal Community Controlled Health Organisations (ACCHOs) across the state, many of whom fall under the remit of *The Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

The AH&MRC assists ACCHOs to ensure they have access to an adequately resourced and skilled workforce to provide high-quality health care services for Aboriginal communities. The AH&MRC is committed to the delivery of four key priorities:

- Aboriginal Community Control and Innovation
- Education and Workforce
- Research and Data
- Governance and Finance

The AH&MRC welcomes the opportunity to submit this review on behalf of its members.

AH&MRC response to the proposed amendments

The Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) plays an essential role in advancing the interests of Aboriginal and Torres Strait Islander Corporations. The AH&MRC recognises that the amendments proposed by the review seek to strengthen and streamline the Act, particularly about transparency and accountability.

While the AH&MRC generally supports the proposed amendments, it is the position of the organisation and its member services that some provisions take an oppressive approach and will diminish the self-determination of corporations. The amendments such as reviewing the operation of the Act, modernising publication requirements, improving the consistency with the Corporations Act, and the Minor technical edit are supported. Other amendments such as exempting employee-director requirements, implementing remuneration reports, and changes to the determination of membership applications are not supported, noting that they will be detrimental to our members.

ACCHOs are ultimately accountable to the communities they serve, the Board of Directors for each organisation and the staff. The over-governance of these organisations limits the organisation and subsequently the communities' ability to exercise self-determination. Outlined below are several concerns that AH&MRC members have about the amendments as proposed.

Review of the operation of the Act

The AH&MRC and its members agree with the Exposure draft Amendment Bill that the CATSI Act should be renewed every seven years and that reviews should be completed within 12 months. The AH&MRC and its members consider that it is pertinent that reviews must strongly consider the views of corporations registered under the CATSI Act.

Powers and functions of the Registrar

Subsection 453-2(4) empowers the Registrar to require the production of books immediately if reasonable in all the circumstances. The circumstances under which this request is warranted but must be well defined to ensure that Corporations registered under the CATSI Act are not placed under the significant burden or expected to comply with legislation in ways that is not achievable.

Membership applications, member contact details and electronic communication

Proposed subsection 144-10(3AA) allows Aboriginal and Torres Strait Islander corporations to introduce rules into their rulebooks to deal with Membership applications, including the process of resolution whereby applicants have applied through the required channels. It is noted that this amendment may result in diminished scope for Directors to determine to refuse membership applications. As ACCHOs, the AH&MRC Member Services must exercise self-determination by deciding their membership without the intervention of the Office of the Registrar for Indigenous Corporations. The Australian Government has committed to reforming how the Government works with Aboriginal Community Controlled Organisations through the National Partnership Agreement (2019) and the National Agreement (2020). As noted in the National Agreement, "Aboriginal and Torres Strait Islander community control is an act of self-determination". An essential component of community control is community members representing their communities as Board of Directors on Aboriginal and Torres Strait Islander Corporations to determine their interest in specific membership applications.

Constitutions

It is noted that Item 127 permits the Registrar to reject changes to a corporation's constitution where the different conflicts with a change made by a special administrator. Special Administrators are implemented in situations where services have been unable to meet their requirements under the CATSI Act and/or are in a high-risk position. Special Administrators operate in environments where difficult decisions must be made to ensure the sustainability of a corporation. Once a Special Administrator is no longer required, the circumstances under which a corporation is operating should have significantly changed from those in which the Special Administrator was appointed if the process effectively served its purpose. As a result, the continued policing of a corporations right to make decisions that ensure best practices for their communities detracts from the very ideals that community control principles are implemented.

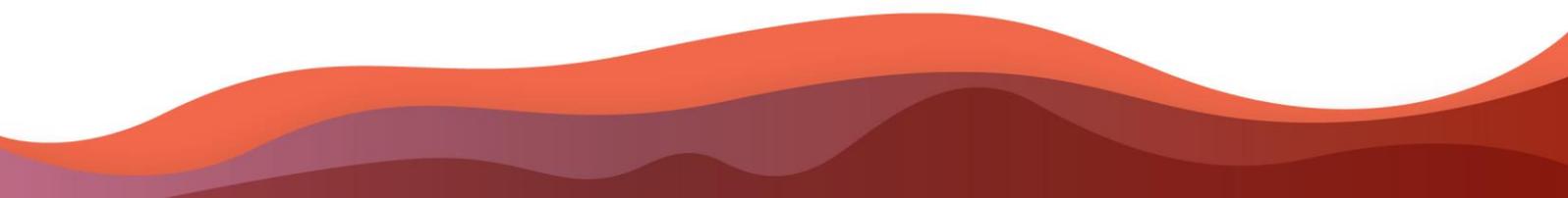
Officers of Corporations

Items 148 to 158 introduce the requirement for a Remuneration Report to ORIC and the same information to be tabled at Annual General Meetings. It is noted that the details of the proposed Remuneration Report would be established in the drafting of the regulations. The AH&MRC and its Members strongly oppose disclosing details regarding the remuneration of Chief Executive Officers and Chief Finance Officers. It is unclear how this would increase accountability and does not adequately consider the context in which these CEOs and CFOs are expected to work. For example, in the ACCHO sector, there are significant discrepancies between the financial delegations, population serviced, and the number of programs delivered dependant on the specific service.

Power to exempt corporation from employee-director requirement

Items 172 and 173 enable the Registrar to grant an exemption to corporations from the requirement for the majority of directors not to be employees. There are specific instances noted within this recommendation, such as in Native Title Bodies and Art studies. The AH&MRC and its Members are concerned that the conflicts of interest which are likely to arise from employees also undertaking director roles on the Board of Directors have not been adequately considered or addressed through this provision.

Modernising publication requirements



It is proposed that existing sections 268-25, 493-1, 526-20, 546-5 and 546-40 be amended to broaden the scope of publications of notices under ORIC. The AH&MRC and its Members agree that ensuring transparency for communities where ORIC notice has been issued to a particular service is essential. It is the position of the AH&MRC and its Members that these sections should require ORIC first to ensure that a notice has been received by the Corporation to which that notice is being issued. It can be problematic for community members to identify through a publication that a statement from ORIC has been given before the corporation being made aware. This can occur where there have been staff changes, Board Directors or relevant contact details as community-controlled organisations accountable to the community ORIC should be required first to attempt to work with the corporation to determine appropriate ways of ensuring that the community are notified about a notice from ORIC.

External Administration and Deregulation

Currently, organisations that traded at a loss for six of the preceding twelve months automatically give ORIC grounds to appoint a Special Administrator. Item 236 replaces the current trigger for establishing a Special Administrator to 'there is a serious irregularity in the corporation's financial affairs. The term 'serious' has been introduced to address concerns that minor financial irregularities may trigger the appointment of a Special Administrator. The AH&MRC and its Member Services remain concerned that this addition is vague and open to interpretation. The last criteria of trading at a loss gives corporations specific guidance to understand where it is likely that ORIC may intervene with the management of their corporation. This criterion must be clearly defined to provide clarity and transparency to both corporations and the Registrar.

Recommendations

The AH&MRC proposes that the review committee consider the following:

- As highlighted in this submission, some of the terminology proposed is broad and lacks clear direction about the scope of the Registrar. We are strengthening the language used in the Amendment Bill to ensure clarity of the Registrars powers and the expectations of Corporations registered under the CATSI Act.
- There are many instances in which this review has aimed to increase transparency and accountability in line with the feedback from the consultations. The approach to increasing transparency and accountability has been to increase the Office of the Registrar of Indigenous Corporation's governance and powers over corporations. This approach should be reconsidered in line with avoiding over-governance and simultaneously increasing transparency for communities.



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