Australian Government

Australian Charities and Not-for-profits Commission

26 November 2021

CATSI Act Review
National Indigenous Australians Agency

Via email: CATSIActReview@niaa.gov.au

Our reference: ACNCSUB2021/12

ACNC submission – Exposure Draft, CATSI Regulations

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to provide feedback on the draft amendments to the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (Cth) (**CATSI Regulation**).

2. We also refer to two previous submissions we have made as part of the review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**CATSI Act**). Namely:

    a. our submission of 24 September 2020 to the National Indigenous Australians Agency, and
    b. our submission of 17 September 2021 to the Senate Finance and Public Administration Legislation Committee.

3. We stand by those submissions, and parts of those submissions may be relevant as you consider the final form of the CATSI Regulation.

The ACNC's interest in the CATSI Act and the CATSI Regulation

4. There are currently around 1,000 entities that are both indigenous corporations registered with the Office of the Registrar of Indigenous Corporations (**ORIC**) and charities registered with the ACNC (**ORIC-registered charities**). This represents around one third of all corporations registered with the ORIC.

5. By virtue of a transitional reporting arrangement, the ACNC currently accepts financial reports that ORIC-registered charities submit to the ORIC as a substitute for the reporting they would otherwise be required to submit to us. The regulations currently enable the transitional reporting arrangement until the 2023/2024 financial year.[1] If the arrangement cannot be extended, harmonisation between the ACNC and CATSI

[1] Section 10 *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth) and s5 of the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Regulation 2016* (Cth).

GPO Box 5108 Melbourne VIC 3001
Tel 13 ACNC Fax 1300 232 569
acnc.gov.au

legislative frameworks will take on greater importance from that date as a means of reducing the administrative burden for ORIC-registered charities.

6. In order to maintain the transitional reporting arrangement, the obligations and responsibilities imposed on ORIC-registered charities by the CATSI Act and CATSI Regulation should generally align with the obligations and responsibilities that are imposed on all registered charities by the ACNC legislative framework.

Size classification for small charities

7. The NIAA has specifically sought feedback about whether the CATSI Regulation should define a small corporation as one with annual revenue of less than $250,000, or one with annual revenue of less than $500,000. This distinction is important, as medium-sized and small-sized corporations will have different reporting requirements and expectations.

8. The ACNC considers the CATSI Regulation should apply the threshold of $500,000 to define small corporations. This will align the small, medium and large classifications in the CATSI Regulation with the classifications that will apply to ACNC-registered charities for all reporting from 1 July 2022.[2] If the threshold is $250,000, there will be a cohort of ORIC-registered charities that will be characterised as small by the ACNC and medium by the ORIC. While it is not clear whether this would jeopardise the transitional reporting arrangement for these charities, it may be an unnecessary source of confusion for charities and the sector, and lead to similarly-sized charities having different reporting obligations.

9. The ACNC legislative framework determines charity size by referring to revenue at the registered entity level. The proposed CATSI Regulation will use 'consolidated revenue' as the determinant of size, which will include the revenue of subsidiary entities. This distinction means that, even if the threshold of $500,000 is adopted, the ACNC and CATSI classifications will not always align in practice. Some ORIC-registered charities will be considered a different size under the ORIC framework than under the ACNC framework. While different methods of assessing revenue may cause confusion, this inconsistency is unlikely to cause significant problems as long as the transitional reporting arrangement remains in place. Whenever a charity would fall into a different classification with the ACNC and the ORIC, the ORIC classification will generally be the higher of the two. Therefore, the more stringent reporting requirements would apply, as the ORIC is the regulator that such charities report to.

[2] Section 205.1 of the *Australian Charities and Not-for-Profits Commission Regulation 2013* (Cth) as amended by the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (Cth).

10. We also refer to the Australian Accounting Standards Board's development of a Not-for-profit Private Sector Financial Reporting Framework.[3] The AASB has indicated that it is likely to endorse allowing smaller not-for-profits to choose between using consolidated or separate financial statements in the new Tier 3 financial reporting framework. It may be a challenge for the sector if the use of consolidated statements is effectively mandated for ORIC-registered charities, while other charities can choose the model that best suits their needs and obligations.

Remuneration reports

11. The NIAA has also sought feedback about whether the CATSI Regulation should require all corporations to provide a remuneration report in relation to key management personnel, or only medium and large corporations.

12. From 1 July 2022, large charities[4] registered with the ACNC will be required to report on the remuneration paid to key management personnel on an aggregated basis. Therefore, we support the introduction of these requirements for large ORIC-registered charities (those with revenue exceeding $3 million) for consistency.

13. Small and medium ACNC-registered charities will not be required to report on remuneration paid to key management personnel, although transparent reporting of executive remuneration is good practice.

14. We consider reporting on remuneration would create a disproportionate administrative burden on small and medium ORIC-registered charities that would not apply to other registered charities of a similar size.

15. We note that if small charities are excluded from this requirement, and the CATSI Regulation defines small charities as those with revenue less than $250,000, then ORIC-registered charities with revenue between $250,000 and $500,000 will be subject to the remuneration reporting requirement, while similarly-sized charities will be classified as small by the ACNC and will not be required to submit a remuneration report, or, indeed, a financial report. This outcome may be anomalous, and a further reason for the CATSI Regulation to define small charities as those with revenue less than $500,000, rather than $250,000.

[3] AASB Action Alert, Issue 208 (6/21)

[4] Provided the charity has two or more key management personnel. Sections 60.30 and 305.5 of the *Australian Charities and Not-for-Profits Commission Regulation 2013* (Cth) as amended by the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (Cth).

Related party transactions

16. We note the proposed amendments to the CATSI Regulation (in conjunction with the proposed section 287-3 of the CATSI Act[5]). While CATSI Act corporations will still be required to obtain the approval of their members before providing a financial benefit to a related party, this will no longer apply if the total value of the benefit, over the course of a reporting year, is less than $5,000.

17. As we noted in our submission of 24 September 2020, related party transactions represent a high-risk area for non-compliance with the obligations that go with registered charity status. However, the requirement to obtain the approval of members to enter into a related party transaction may be burdensome, and we acknowledge the advantages of lifting this requirement for relatively small amounts of money.

18. In the interests of balancing the efficient operation of charities with the need for oversight and responsible financial management, $5,000 appears to us to be an appropriate threshold at which to activate the requirement for member approval. From 1 July 2023, all charities will be required to report related party transactions in their annual reporting to the ACNC.[6] The ACNC is currently considering what information charities will need to include in the Annual Information Statement regarding related party transactions.

Next steps

19. If you have queries about this submission please contact Mitchell Tucker, Policy Officer, at mitch.tucker@acnc.gov.au or on (03) 8632 4662.

Sincerely

The Hon Dr Gary Johns
Commissioner
Australian Charities and Not-for-profits Commission

[5] Section 165 of the *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021* (Cth)
[6] Required by sections 60.30 and 305.5 of the *Australian Charities and Not-for-Profits Commission Regulation 2013* (Cth) as amended by the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021* (Cth) for medium and large charities and implemented administratively for small charities.