

CATSI Act Review
National Indigenous Australians Agency
Charles Perkins House
16 Bowes Place
Woden ACT 2606

By Email: CATSIActReview@niaa.gov.au

6 August 2021

FEEDBACK ON EXPOSURE DRAFT PROPOSING CHANGES TO THE CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006

Aboriginal Family Legal Services (“AFLS”) wishes to raise drafting issues with some sections of the proposed *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021* (“Bill”). A summary of our concerns, and our respectful recommendations, are as follows:

A. Material Personal Interest

AFLS is concerned that there are no provisions within the *Bill* to provide guidance on the meaning of ‘material personal interest’ in the context of Aboriginal corporations. This omission creates an onerous reliance on case law as a guide for the definition of material personal interest and can create an organisational risk to corporations depending on their interpretation of the principle.

AFLS recommend amending the *Bill* to include a definition of ‘material personal interest’ and include specific guidelines for its application to Aboriginal corporations.

B. Aboriginal Cultural Practices and Director Duties

AFLS is concerned that there are no provisions within the *Bill* to provide guidance on the interplay between Aboriginal cultural practices and expectations in relation to commitments and loyalty to family, and the practical content and application of Directors’ duties. The comfort of Board Directors in raising issues during Board discussions depends on various factors including the experience, level of confidence and personality of the Director, and Board dynamics. These factors are then complicated in the context of Aboriginal corporations by cultural considerations, including in respect of communication generally and loyalties to family groups.

AFLS recommend amending the *Bill* to ensure there is clear process for managing the relationship between Director obligation to family expectations and cultural practices, and the application of their duties within the corporation. Without this clarity, there will continue to be a subjective element to the assessment of the actions of a Director and whether they comply with the best interests of the corporation.

C. Remuneration Disclosures

AFLS recognizes the demand for disclosure of senior executive remuneration to ensure transparency and accountability, per recommendation number 33 of the CATSI Act Review final report and proposed items 148 to 158 of the *Bill*. However, AFLS contends that there are other considerations, particularly relating

to discovery of remuneration disclosures by family members, which have negative implications for senior executives. In particular, when family members of Aboriginal executive members find out how much money their relative makes, this can cause havoc and create serious issues within the family and the local Aboriginal community.

AFLS recommend amending the *Bill* to ensure discretion of the exact amount of remuneration paid to a senior executive, whilst still ensuring transparency by creating salary caps for executive members and disclosing those salary caps. Remuneration, as dictated in a senior executive's employment contract, should be a private agreement between the person and the organisation which employs them.

AFLS also wishes to identify some sections of the proposed *Bill* that we support. In particular:

D. Deregistering a corporation

AFLS notes that per the recommendations of the CATSI Act Review final report, items 246 to 248 in the *Bill* enable corporations to apply for voluntary deregistration even if the conditions for voluntary deregistration are not all met, provided they specify which conditions are not met and the reasons why they are not met. AFLS welcomes this as an opportunity to allow a corporation to apply for voluntary deregistration even when all members have not voted on such a resolution.

AFLS does contend that the process of obtaining agreement from 100 per cent of members for voluntary deregistration should itself be reviewed and made consistent with the corporation's General Meeting requirements. Per the CATSI Act, the number of members to make a quorum is a maximum of 10 for a corporation with 91 members or more. Obtaining agreement from 100 per cent of members is onerous and often not possible, as members frequently move away and lose touch with the corporation.

We respectfully request you address the issues raised above in the *Bill*.

Yours Sincerely



Laney Gould
Policy and Media

Signed for and on behalf of Corina Martin, CEO