Indigenous Business Solutions Pty Ltd

Comments on proposed amendments to CATSI Act.

Part 1 – Classification of Aboriginal and Torres Strait Islander Corporations

The current focus in measuring the size of an Aboriginal Corporation is on revenue only. As some corporations expand their activities and reduce their dependence on grant funding, revenue only may become a less representative measure of the size of the corporation. Consideration should be given to introducing (retaining) an additional benchmark not dissimilar to the ASIC provisions – ie. “Consolidated gross assets of not less than $10 million”.

The proposed wording could be amended to read:

(b) the consolidated revenue for the year, and/ or the consolidated gross assets as at the year end for the corporation and the entities that it controls is less than the amount proscribed by the regulations for the purposes of this paragraph.

Part 3 – Review of financial reports

Can you please clarify the circumstances when you would anticipate that a review would be conducted as opposed to an audit. This situation may/ should present some challenges for an auditor as we would only expect that an auditor would consent to conduct an review when the an earlier period has been audited, or in some instances when they are engaged to conduct an audit subsequent to the period that they are being asked to report on.

Review examination procedures typically focus on analytical review procedures and enquiries of management. Given the environment that many Aboriginal Corporations work in and the nature of the transactions that they may conduct, the application of these types of procedures may not yield much in the way of assurance on the fair presentation of the financial statements or adequately address issues of statutory compliance which would otherwise be achieved through an audit examination.

Part 4 – Subsidiaries and other entities

We are aware that it is common practice for many larger corporations to incorporate commercial interests under ASIC registered entities, often with a sub-holding structure which may in turn own multiple ASIC registered entities.

This approach is often followed as it often allows for streamlining of operational procedures and in some cases will deliberately be used to allow corporation’s to “fly under the radar” with respect to issues pertaining to ORIC compliance.

Case in point, as an example:

If an ORIC regulated entity has an ASIC registered subsidiary which in turn owns a number of ASIC regulated entities, the activities of these ASIC entities will typically fall outside of the scope of an ORIC regulatory examination. Often the more material transactions will be performed within these structures and will not be subject to ORIC compliance or scrutiny.

With this in mind, it is logical that the scope of ORIC regulatory examinations be extended to cover the activities of controlled entities.

As a further example to illustrate this point:

Related party transactions with members or member owned businesses may be transacted out of the ASIC subsidiaries of an ORIC registered entity. Are these transactions intended to fall within scope of the related party provisions?

Part 8 – Related party transactions

The existing regulations dealing with related party benefits are onerous as they require member approval for all related party benefits. A key driver for promoting the advancement of Aboriginal people should be the promotion of Aboriginal Economic Development and in many cases this could/ should mean that corporations actively engage with members or member owned business to promote business activity with or for them – a requirement for all related party transactions to be approved by members or, under the proposed changes for other than small corporations, to seek approval from the Registrar does not support this concept or these activities.

It would be prudent to consider further changes to the regulations, such that related party transactions that are conducted on an arm's length basis (normal commercial terms) do not require members or ORIC approval.

If this is not considered practicable, then further elaboration should be provided as to what the process of seeking approval from the Registrar for proposed related party transactions will look and what assurances will be provided to ensure that this process does not disadvantage corporations by introducing unnecessary delays into the speed with which they can transact in these circumstances.

Part 13 – Independent Directors

The practice whereby independent directors are appointed by a corporation's existing directors as opposed to the corporation's members is counter-intuitive and not in line with best practice governance principles.

The regulations should be amended to allow for the appointment and removal of independent/ specialist directors by the members of the corporation, either at the AGM or at a Special General Meeting.