



9 December 2021

Committee Secretary
House of Representatives Standing Committee on Indigenous Affairs
PO Box 6021
Parliament House
Canberra ACT 2600
Email: IndigenousAffairs.reps@aph.gov.au

Dear Sir/Madam

CORPORATE ENGAGEMENT WITH ABORIGINAL AND TORRES STRAIT ISLANDER CONSUMERS

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission related to corporate engagement with Aboriginal and Torres Strait Islander consumers.

About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include 34 Australian and international asset owners and institutional investors with over \$1 trillion in funds under management.

Through research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership to strengthen investment outcomes. Active ownership allows institutional investors to enhance the long-term value of retirement savings entrusted to them to manage. ACSI members can achieve financial outcomes for their beneficiaries through genuine and permanent improvements to the environment, social and governance (ESG) practices of the companies in which they invest.

In addition to the potential harm that companies can cause to Aboriginal and Torres Strait Islander peoples through lack of proper consultation, investors can also bear significant financial risk.¹ Material investment risk can arise where a company's approach to engagement with Aboriginal and Torres Strait Islander peoples is inadequate, misaligned with societal expectations, or where there is a gap between a company's stated approach and its activities on the ground.

ACSI's perspective comes from our long-standing practice of engagement with listed companies in relation to their management of financially material ESG risks and opportunities. ACSI engages with listed companies where issues arise, such as mis-selling of products to Indigenous consumers, to ensure accountability for failures (for example, ensuring that accountability is reflected in executive rewards).

Our comments are particularly relevant in respect of items one and two of the Terms of Reference, respectively '*The way the corporate sector supports meaningful engagement with Indigenous consumer*' and '*How to strengthen corporate sector cultural understanding and how this is demonstrated through their engagement with Indigenous consumers*'.

ACSI supports the Standing Committee on Indigenous Affairs conducting this Inquiry, to advance better practice in corporate engagement with Aboriginal and Torres Strait Islander peoples. We hope that the outcomes of the Inquiry will help set clearer expectations and work to improve standards.

Overview - The importance of stakeholder engagement

Companies rely on a range of stakeholders to operate and succeed, including governments, employees, communities, investors, consumers and suppliers. Effective engagement with stakeholders is key to maintaining a company's social licence to operate and protecting the success of the company over the long-term.

It is therefore important for investors that their investee companies understand the stakeholders relevant to

¹ For example, from potential litigation, reputational loss, operational delays etc.

their business and manage the relationships responsibly. Where companies fail to engage effectively with their stakeholders or manage their impacts, the financial risk is significant. Mere compliance with regulatory requirements will not always be sufficient to ensure that a company effectively manages its risk and maintains its social license to operate. Companies should ensure that Aboriginal and Torres Strait Islander consumers understand their legal rights as consumers, particularly when they are entering into contracts to purchase goods or services, recognising the specific vulnerabilities that they may face.

The way the corporate sector supports meaningful engagement with Indigenous consumers

In annual reporting by ASX200 companies in 2020, only 38 per cent of companies disclosed information related to their engagement with Aboriginal and Torres Strait Islander peoples, or their approach to managing the risks that arise from poor engagement.² While there may be many examples of good practice, they are not always visible. There are also some significant examples of poor practice.

The destruction by Rio Tinto of significant sites in the Juukan Gorge in 2020 was a clear illustration of a lack of constructive, transparent dialogue. Likewise, Woolworths' plan to establish a Dan Murphy's store in Darwin reflected a lack of awareness of the social, historical and demographic complexity of the local Aboriginal and Torres Strait Islander community.

Awareness of the importance of better practice in engagement is growing, and there are some examples of corporate sector action that recognises the issue. For example, recommendations 6, 7 and 25 of the Australian Sustainable Finance Initiative's Sustainable Finance Roadmap each contemplate better engagement with Indigenous peoples.³ There is also significant interest from investors internationally in these issues. For example, a group of 64 investors internationally have written to Boards of mining companies operating around the world to better understand the issues.⁴ ACSI has recently released [a research paper on company engagement with First Nations](#) people that outlines some of the issues and potential practices that companies can employ.

How to strengthen corporate sector cultural understanding and how this is demonstrated through their engagement with Indigenous consumers

According to the UN Guiding Principles on Business and Human Rights (UNGPs),⁵ companies should be particularly sensitive to their human rights impacts on vulnerable populations, including Indigenous peoples. Many Aboriginal and Torres Strait Islander peoples continue to face disempowerment and disadvantage, which can increase their vulnerability as consumers. Companies should be aware of heightened vulnerabilities of specific groups among their stakeholders and take action to mitigate the risk of adverse impacts on them.

The experiences of Aboriginal and Torres Strait Islander peoples are a feature of the operating environment of many Australian companies. As the *Independent Panel Review into the proposed Dan Murphy's development in Darwin* stated, 'reconciliation has become an essential part of Australian corporate integrity, if not identity'.⁶

For companies to understand their impacts on Aboriginal and Torres Strait Islander peoples, it is important to engage constructively with them. Companies need to invest in strengthening their capacity for meaningful consultation. This applies to consumers and also more broadly other Aboriginal and Torres Strait Islander peoples who are impacted by company operations.

Company boards should have appropriate oversight and accountability mechanisms, and ensure that they have adequate information to assess the company's relationships with its Aboriginal and Torres Strait Islander consumers and identify areas of risk and opportunity. High-quality, timely information about stakeholder concerns is crucial to ensuring that the company is mitigating negative impacts on consumers, and long-term risks to the company. Likewise, companies should have effective grievance mechanisms to ensure they are effectively responding to any grievances and remedying any harm. Robust company disclosure of policies and practices should also promote better practice across the market.

In addition to company action, it is important to have a legislative framework that improves engagement between companies and First Nations people. While long-term investors expect companies to manage risk well, (which can require action beyond compliance with minimum standards), the legislative framework

² This data was captured through ACSI's ESG reporting: <https://acsi.org.au/research-reports/esg-reporting-trends-in-the-asx200-2/>. This statistic refers to disclosure of any type of engagement with First Peoples, including policies related to First Peoples, employment and procurement practices, impacts on land, cultural heritage management etc.

³ ASFI, Australian Sustainable Finance Roadmap: <https://www.sustainablefinance.org.au/roadmap-1>

⁴ Church of England Pensions Board, 'Global investors engage top mining companies on Indigenous community rights % social licence': <https://www.churchofengland.org/news-and-media/news-and-statements/global-investors-engage-top-mining-companies-indigenous>, October 2020.

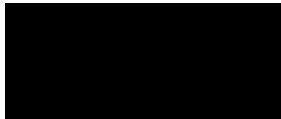
⁵ UN Guiding Principles on Business and Human Rights: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶ Independent Panel Review into the proposed Dan Murphy's development in Darwin: [Independent Panel Review \(woolworthsgroup.com.au\)](https://www.woolworthsgroup.com.au), 28 April 2021.

provides a critical baseline. Therefore, legal minimums that drive better practice engagement with First Nations people act to provide increased assurance that risks will be adequately managed and mitigated. The recent partnership between the Australian Government and the First Nations Heritage Protection Alliance to work jointly on reform of Aboriginal cultural heritage protection laws is a step in the right direction.

I trust our comments are of assistance. Please contact me or Kate Griffiths, ACSI's Executive Manager – Public Policy and Advocacy, should you require any further information.

Yours faithfully



Louise Davidson AM
Chief Executive Officer
Australian Council of Superannuation Investors