



National
Native Title
Council

15 February 2013

*spirit
of
Change*

ABN 32 122 833 158

638 Queensberry Street
North Melbourne 3051
PO Box 431
North Melbourne 3051

Tel: +613 9326 7822
Fax: +613 9326 4075

The Manager
Philanthropy and Exemptions Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via Email: NFPreform@treasury.gov.au

Dear Sir / Madam

Re: Requirements for Annual Financial Reports Under the ACNC Framework

The National Native Title Council (NNTC) welcomes the opportunity to contribute to the development of the Australian Charities and Not-for-profit Commission (ACNC) framework.

The National Native Title Council is the peak body of Native Title Representative Bodies and Native Title Service Providers (NTRBs/NTSPs) from around Australia being formally incorporated in November 2006. The objects of the National Native Title Council are, amongst other things, to provide a national voice for NTRBs/NTSPs on matters of national significance affecting the native title rights of Aboriginal and Torres Strait Islander people.

NTRBs and NTSPs have played a role in assisting native title groups to negotiate agreements for significant benefits with the public and private sectors. The *Native Title Act* (NTA) has provided a vision for Aboriginal people in shifting attitudes from welfare dependency to financial independence and the ability to make lifestyle choices. Within the native title system, opportunities for achieving economic improvement are mainly under the future acts process through negotiations with the extractive industry. This is allowing native title groups to gain some significant benefits and become more and more involved in the broader economy. Other opportunities within the broader private sector are also having an increasingly positive impact for Indigenous Australians, including where NTRBs/NTSPs are negotiating their own frameworks with organisations that include employment and economic benefits including business development for native title groups and Indigenous communities.

Financial reporting

The Corporations (Aboriginal and Torres Strait Islander) Act (CATSI Act) provides for Indigenous groups to form Corporations and register with the Registrar of Indigenous Corporations. Currently, negotiations of funds and benefits with native title holders or Indigenous communities mostly occur through a corporation registered under the CATSI Act.

In areas where native title has been determined, agreements are negotiated with Traditional Owners through a Registered Native Title Body Corporate (RNTBC), which is commonly called a Prescribed Body Corporate (PBC). The *Native Title Act 1993* (NTA) provides that when there is a determination of native title by the Federal Court, the recognised native title right and interests must be held in trust or managed on behalf of the native title holders by a Prescribed Body Corporate.

Under the NTA and the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations), a PBC must be registered as an Aboriginal and Torres Strait Islander corporation under the Corporations (Aboriginal and Torres Strait Islander) Act (CATSI Act). The CATSI Act has tailored provisions to ensure that PBCs do not have conflicting obligations between the CATSI Act and the NTA.

Financial reporting requirements for corporations registered under the CATSI Act

The financial reporting requirement for Aboriginal and Torres Strait Islander corporations, including PBCs, is set out in the CATSI Act and CATSI regulations.

Under the CATSI Act, Aboriginal and Torres Strait Islander corporations have different financial reporting obligations depending on the registered size *and* income of the corporation. Under the CATSI Act, corporations are classified as small, medium or large.

Corporations registered as small meet two of the following criteria:¹

- Consolidated gross operating income is less than \$100,000
- Consolidated gross assets is less than \$100,000
- Less than 5 employees

Corporations registered as large meet two of the following criteria:²

- Consolidated gross operating income is \$5 million or more
- Consolidated gross assets is \$2.5 million or more
- More than 24 employees

All other corporations are registered as medium and typically meet two of the following criteria:³

- Consolidated gross operating income between \$100,000 and \$5million
- Consolidated gross assets between \$100,000 and \$2.5million
- Between 5 and 24 employees.

The CATSI Act includes tailored provisions for PBCs to ensure they do not have conflicting obligations under corporation law and native title law. One such provision is that native title rights and interests held by a PBC are not included in the assessment of the PBC's assets for reporting purposes. This ensures that a corporation that only holds native title rights and interests is not registered as a large corporation.

¹ Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), s 37-10; Corporations (Aboriginal and Torres Strait Islander) Regulations 2007 (Cth), s 37-10.01.

² Ibid.

³ Ibid.

The table below sets out the reporting requirements for Aboriginal and Torres Strait Islander corporations under the CATSI Act and CATSI regulations.

Size and income of corporation	Report Required
Small corporation with a consolidated gross operating income of less than \$100,000.	<ul style="list-style-type: none"> • General report only
Small corporations with a consolidated gross operating income of \$100,000 or more and less than \$5million. Medium corporations with a consolidated gross operating income of less than \$5million.	<ul style="list-style-type: none"> • General report • Financial report
Large corporations or any corporation with a consolidated gross operating income of \$5million or more.	<ul style="list-style-type: none"> • General report • Financial Report • Audit report • Directors' report

As indicated in the table above, all corporations registered under the CATSI Act must prepare and lodge a general report with the Registrar of Indigenous Corporations each year. A general report consists of:⁴

- The names and addresses of members and directors
- The name and address of the corporation's secretary (for large corporations) or contact person (for small or medium corporations)
- The corporation's registered office address (for large corporations) or document access address (for small or medium corporations)
- The corporation's assets at the end of the financial year
- The corporation's ABN (if applicable)
- Whether the corporation is a deductible gift recipient under the *Income Tax Assessment Act 1997*
- Whether any directors or the secretary or contact person of the corporation is also an employee.

All corporations, except small corporations with a consolidated gross operating income of less than \$100,000, must prepare and lodge a financial report with the Registrar of Indigenous Corporations each year. A financial report consists of:⁵

- Financial statements for the financial year
- Notes to the financial statements
- A director's declaration

The financial statements and notes to the financial statements need to comply with accounting standards issued by the Australian Accounting Standards Board (AASB). Corporations registered

⁴ Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), s 330-5; Corporations (Aboriginal and Torres Strait Islander) Regulations 2007, s 330-5.01.

⁵ Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), s 333-5(3); Corporations (Aboriginal and Torres Strait Islander) Regulations 2007, s 330-10.01(1).

under the CATSI Act who prepare general purpose financial reports may be eligible for to adopt reduced disclosure requirements. The test is set out under AASB 1053 *Tiers of Australian Accounting Standards*.

Large corporations or any corporation with a consolidated gross operating income of \$5million or more must prepare a directors' report. A directors' report includes:⁶

- A detailed overview of the corporation's business performance during the financial year
- The factors underlying the corporation's results and financial performance.

The CATSI Act has specific provisions for the reporting requirements for certain Aboriginal and Torres Strait Islander Corporations that receive public funding. It also includes a number of exemptions for the reporting requirements.

Proposed financial reporting requirements for entities registered with the ACNC

The exposure draft for the ACNC regulations proposes that the reporting requirements for entities registered with the ACNC will be proportional to the size of a corporation, based on a revenue threshold. Like the provisions under the CATSI Act, there are three tiers of entities for reporting purposes: small, medium and large registered entities. The proposed criteria for determining the registered size of an entity and its reporting requirements is purely revenue-based.

All registered entities must prepare and lodge an annual information statement with the ACNC. The information required in an annual information statement depends on the size of the entity and will include financial information.

As well as an annual information statement, medium and large entities will also be required to prepare and lodge an annual financial report with the ACNC. The financial statements and notes to the financial statements need to comply with accounting standards issued by the Australian Accounting Standards Board (AASB). These standards incorporate the assessment of whether or not a registered entity is a reporting entity or non-reporting entity. Reporting entities may be eligible to adopt reduced disclosure requirements instead of applying the full suite of AASB standards in a general purpose financial report. The test is set out under AASB 1053 *Tiers of Australian Accounting Standards*.

Registered size of an entity

The NNTC is concerned that the criteria for assessing the reporting requirements of entities registered under the ACNC is significantly different to the criteria for assessing the reporting requirements of Aboriginal and Torres Strait Islander corporations registered under the CATSI Act. There is no distinction between the registered size of an entity and the criteria for determining the reporting requirements of an entity under the proposed ACNC reporting requirements. The reporting requirements of entities registered with the ACNC are purely based on the entity's annual revenue. In contrast, the CATSI Act proscribes that the registered size of Aboriginal and Torres Strait Islander corporations involves consideration of two out of the following:

- Consolidated gross operating income
- Consolidated gross assets
- Number of employees.

⁶ *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), s 333-5(3); *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007*, s 333-10.02.

Furthermore, reporting requirements under the CATSI Act are based on both the registered size and income of a corporation.

The contrasting criteria for financial reporting requirements for ACNC entities and CATSI Act corporations means that different reporting standards may apply to an Aboriginal and Torres Strait Islander corporation with a similar make-up to a charitable trust used to manage negotiated funds and benefits. See the examples below.

Example 1

An entity registered under the ACNC and an Aboriginal and Torres Strait Islander corporation registered under the CATSI Act both have:

- A consolidated gross operating income of \$200,000;
- consolidated gross assets valued at \$90,000; and
- 4 employees.

As the entity registered with the ACNC has annual revenue of less than \$250,000, it is a small registered entity. The Aboriginal and Torres Strait Islander corporation is registered as a small corporation under the CATSI Act. However, as its consolidated gross operating income is more than \$100,000, it has the same reporting requirements as a medium corporation with a consolidated gross operating income of less than \$5 million. In this example, the ACNC entity is only required to prepare and lodge an annual information statement, which is the minimal reporting requirement under the proposed ACNC regulations. However, the CATSI Act corporation is required to prepare and lodge a general report and a financial report, which is beyond the minimal reporting requirements under the CATSI Act.

Example 2

An entity registered under the ACNC and an Aboriginal and Torres Strait Islander corporation registered under the CATSI Act both have:

- A consolidated gross operating income of \$95,000;
- consolidated gross assets valued at \$150,000; and
- 10 employees.

As the entity registered with the ACNC has annual revenue of less than \$250,000, it is a small registered entity. The Aboriginal and Torres Strait Islander corporation is registered as a medium corporation under the CATSI Act. The ACNC entity is only required to prepare and lodge an annual information statement, which is the minimal reporting requirement under the proposed ACNC financial reporting requirements. As its consolidated gross operating income is less than \$5 million, the CATSI Act corporation is required to prepare and lodge a general report and a financial report, which is beyond the minimal reporting requirements under the CATSI Act.

Consistency in financial reporting requirements

Without the creation of a separate category of entity for tax purposes, many Aboriginal and Torres Strait Islander corporations that negotiate funds and benefits, particularly PBCs, will continue to use charitable trusts to deal with those benefits. Under the proposed financial reporting standards for ACNC entities, Indigenous people engaged in an Aboriginal Corporation under the CATSI Act and charitable trusts under the ACNC framework will have to negotiate two different sets of financial reporting standards.

It is noted that the proposed revenue thresholds are consistent with existing thresholds that apply to companies limited by guarantee and those thresholds recently introduced in Victoria for incorporated associations. However, the proposed thresholds are inconsistent with the existing thresholds that apply to Aboriginal and Torres Strait Islander corporations under the CATSI Act.

The proposal for separate criteria for determining financial reporting standards would run contrary to the objective of simplifying the charity law minefield through the introduction of the ACNC framework.

Annual information statements

It would seem that annual information statements would largely consist of the same content required in general reports under the CATSI Act. Certain information required in general reports depends on the size of the corporation and general reports include some financial information, such as the corporation's total income for the year. However, further details on the requirements for annual information statements is necessary to ensure that there is consistency between the reporting requirements for Aboriginal and Torres Strait Islander corporations and for charitable trust used to hold the negotiated funds and benefits of those corporations.

Annual financial reports

The proposed requirements for annual financial reports under the ACNC framework bear a striking resemblance to the requirements for financial reports under the CATSI Act. The financial reports under both laws consist of:

- Financial statements;
- notes to the financial statements; and
- a declaration by the directors or responsible entities.

Both laws apply the AASB accounting standards to determine whether or not a corporation/entity is a reporting corporation/entity and, if so, whether or not it can rely on reduced disclosure requirements. Importantly, the adoption of the AASB accounting standards provides that the financial reports under both the CATSI Act and the ACNC framework must provide a true and fair view of the financial position and performance of the respective corporation/entity.

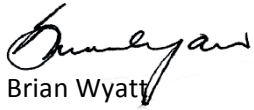
The NNTC supports the consistency between the proposed requirements for annual financial reports under the ACNC framework as with the corresponding provisions under the CATSI Act. However, this reinforces the NNTC's concern that thresholds for determining the registered size of an entity are inconsistent with the corresponding provisions that apply to Aboriginal and Torres Strait Islander corporations under the CATSI Act. Where the requirements for financial reports are the same, the criteria for who submits financial reports should be the same.

Conclusion

The proposed financial reporting requirements for the ACNC indicate that the content required in financial reports will be consistent with the content required in financial reports under the CATSI Act. The NNTC supports this consistency between the two laws. However, the test to determine which reporting requirements apply to an entity is not suitable as it is inconsistent with the test to determine the registered size of a corporation under the CATSI Act. It is not suitable for a PBC and a charitable trust managing native title funds to fall within different tiers for financial reporting requirements when they have the same yearly revenue, gross assets value, and number of employees.

I trust that the above comments are useful for your purposes, however if you have any queries or require any further information please do not hesitate to contact me at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read "Brian Wyatt". The signature is fluid and cursive, with a prominent loop at the end of the last name.

Brian Wyatt
Chief Executive Officer