



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

www.naccho.org.au

Submission to the

**‘Inquiry into the
Corporations (Aboriginal
and Torres Strait Islander)
Amendment Bill 2021’**

September 2021

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About NACCHO

NACCHO is the national peak body representing 143 Aboriginal community-controlled health organisations (ACCHOs) across Australia. Over 80 of these are CATSI Act-registered organisations. Our members form a national footprint that is accessed by over half the Aboriginal and Torres Strait Islander population. Our clinics provide 3.1 million episodes of care per year for almost 410,000 people across Australia, including over 1 million episodes of care in remote regions.

Collectively, we employ about 7,000 staff, 54 per cent of whom are Indigenous, putting us in the top three largest employers of Aboriginal and Torres Strait Islander people in the country.

NACCHO liaises with its membership, its eight state/territory affiliates, governments, and other organisations on matters of Aboriginal and Torres Strait Islander health and wellbeing policy and planning issues and advocacy relating to health service delivery, health information, research, public health, health financing and health programs.

ACCHOs range from large multi-functional services employing several medical practitioners and providing a wide range of services, to small services which rely on Aboriginal Health Workers/Practitioners and/or nurses to provide the bulk of primary health care services, often with a preventive, health education focus. Our 143 ACCHOs provide services from about 550 clinics. ACCHOs contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive primary health care, and by integrating and coordinating care and services. Many provide home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support.

During the early days of the recent pandemic, NACCHO led the sector's response and engagement with governments to ensure that the impact was minimised amongst Australia's First Nations, in which levels of comorbidity and socio-economic factors (e.g. overcrowding and poverty) meant that much higher death rates were expected. The burden of disease for Aboriginal and Torres Strait islander people is 2.3 times higher than that of other Australians. Until very recently there had been no deaths recorded from COVID-19 amongst our people. Our share of the caseload has been about 0.5 per cent when our share of the national population is 3.3 per cent. It is a remarkable story of success, when compared to the tragic outcomes experienced by First Nations people in other countries

(e.g. the Navajo and Black Feet in North America who have the highest death rates of all groups).¹

This risk remains, but the existence of a national network of ACCHOs has been critical to the success thus far. If the pandemic has shown anything in our sector, it is that ACCHOs are flexible and effective frontline services. Now, more than ever, the network needs to be developed and supported.

Any changes in the CATSI Act need to assist ACCHOs in the vital work that they are doing, not impede it.

Commitment to the new National Agreement on Closing the Gap

NACCHO played a leading role in setting up the Coalition of Peaks that grew into a group of over 50 Aboriginal organisations uniting to negotiate the new National Agreement on Closing the Gap with Australian governments.²

The new National Agreement was developed around four priority reform areas.

Table 2: National Agreement of Closing the Gap: four priority reform areas

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| <ol style="list-style-type: none">1. Shared decision-making: Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.2. Building the community-controlled sector: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.3. Improving mainstream institutions: Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.4. Aboriginal and Torres Strait Islander-led data: Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development. |
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These four priority reform areas reflect what Aboriginal and Torres Strait Islanders have been telling governments for decades. They must be embraced by all parties, if real progress is to be made. The four priorities, and the principles underlying them, form the basis of much of this submission. NACCHO is committed to the objectives underpinning that seminal agreement.

¹ J. Arrazola, M. M. Masiello, S. Joshi, et al., 'COVID-19 Mortality Among American Indian and Alaska Native Persons: 14 States, January-June 2020' in Centre for Disease Control and Prevention *MMW Report*, no. 69, 2020, pp. 1,853-6.

² <https://coalitionofpeaks.org.au/wp-content/uploads/2021/04/ctg-national-agreement-apr-21-1-1.pdf>.

NACCHO recognises that the CATSI Act is a means of facilitating self-determination for Aboriginal and Torres Strait Islander corporations. It provides a vehicle to ensure corporations delivering services to our people remain community-controlled. The CATSI Act was designed to reduce the inequalities faced by Aboriginal and Torres Strait Islanders and has an important role to play in the revitalised Closing the Gap process.

Accordingly, it is an understatement to say that the CATSI Act is important to the Aboriginal and Torres Strait Islander health sector. It is a primary vehicle that has been available, in its original form, since 1976, for Aboriginal and Torres Strait Islander people to control and take responsibility for their own health. It facilitates self-determination and sets out rules for how our members and directors are appointed from our communities. The CATSI Act also provides the rules to establish policies for the governance of our organisations, for their financial management, control and reporting. It has had a significant impact on our costs and benefits to Aboriginal and Torres Strait Islander peoples for about 45 years.

This is why we need to be involved closely in any changes and in ensuring that the changes devised through the Amendment Bill do not undermine the original intention of the CATSI Act.

Partnership, not consultation

NACCHO has been disappointed in the cursory approach to engagement and consultation undertaken by the National Indigenous Australian Agency (NIAA).

Of most recent concern is the rushed process for the consideration of the 27 written submissions on the exposure draft of the CATSI Act Amendment Bill. They were due by 9 August 2021 and yet the Bill was tabled in Parliament just 14 days later. This was not enough time to consider carefully the 27 submissions and it appears that this element of the consultation and feedback process was disingenuous.

Our feedback was provided in the midst of the pandemic when so many of our members and staff were exhausted. To have such a rushed consideration of a submission in which we diverted valuable resources to invest in its preparation was very disappointing.

The Prime Minister announced his Government's commitment to the National Agreement on Closing the Gap and priority reforms – including shared decision making – in a statement to Parliament just a few days prior to the submissions closing. Hence, the Government and NIAA have lost a valuable opportunity here to demonstrate their commitment to the new process of genuine partnerships with Aboriginal and Torres Strait Islander leadership as set out in the priority reform areas of the new National Agreement on Closing the Gap.

The previous steps in the consultation process were also problematic. NACCHO has outlined its serious criticisms in its three earlier submissions and we will not repeat them here.

Previous submissions

NACCHO's previous three submissions were lodged in:

- [January 2019](#) – NACCHO Submission to the Inquiry by Senate Finance and Public Administration Legislation Committee into the Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018;
- [October 2020](#) – NACCHO Submission to the Review of the CATSI Act – Phase 2 Consultation; and
- [August 2021](#) – NACCHO Submission on the exposure draft of the CATSI Act Amendment Bill.

Although we have seen some gains in the drafting of the Bill since we lodged these submissions, most of our key concerns remain unaddressed.

In our submissions NACCHO identified a number of positive improvements. In particular, we supported:

- the modernisation of certain governance arrangements;
- measures conceived to deliver greater flexibility;
- the ability to appoint independent directors for 12-month periods; and
- the ability to redact sensitive personal information to protect vulnerable members.

However, we still have a number of serious concerns with the Bill.

NACCHO's four primary concerns with the Bill as it stands

NACCHO's detailed feedback is contained in the three submissions cited above. Therefore, that information will not be repeated here for a third time. Instead, NACCHO has provided below a summary of its four main concerns with the Bill. These all need to be satisfactorily addressed before we would be able to support the Bill.

1. The cumbersome and disruptive nature of the review process

The Bill includes a cumbersome review process in which there will be 18-month reviews held in every seven-year period. This means that the sector's legislation will be under review 21 per cent of the time, representing an enormous drain on resources and long periods of disruption for the sector and uncertainty for the 80+ NACCHO members operating under the CATSI Act.

Recommendation:

- Either the review intervals need to be lengthened (say, every ten years) or the review period made efficient and targeted (i.e. completed within six months, with a three-month extension granted under exceptional circumstances).

2. Discriminatory standards applied

Some of the changes are discriminatory in that different standards are expected for Aboriginal organisations. The changes set higher standards (e.g. remuneration reports) and penalties for directors and officers than what other Australians are expected to meet under the *Corporations Act 2001* and the regulatory frameworks of ASIC and the ACNC.

These measures will also have the effect of adding to the administrative and compliance burden for corporations.

The Government says that the Bill is compatible with the human rights and freedoms recognised by Australia. However, the process that has been followed thus far in reviewing the CATSI Act and drafting the Bill does not really allow us to make any judgement about whether or not this is the case. That process was not transparent or evidence-based and Aboriginal and Torres Strait Islander stakeholders were excluded from decision-making. That does not augur well for whether the Bill complies with human rights instruments and we also are concerned about whether certain elements may be racially discriminatory. It would be appropriate, in these circumstances, that the Senate Finance and Public Administration Committees seek the views of the Australian Human Rights Commission.

Recommendations:

- Seek the views of the Australian Human Rights Commission on the discriminatory elements of the Bill.
- At the very least, bring the reporting requirements in line with those of the *Corporations Act 2001*.

3. Adopt recommendation 1 of the review (acknowledging the importance of capacity building) and clarify the need for early minimal intervention before punitive measures are taken

Recommendation 1 of the review was rejected (i.e. the inclusion of a statement acknowledging the importance of capacity building). This would help emphasise the ongoing need for close collaboration and coordination with peaks, so that struggling corporations can be assisted well before punitive measures are used. The term ‘capacity building’ does not even seem to appear in the Amendment Bill.

NACCHO’s view is that there has been a cursory response provided that does not justify its rejection. While it may be true to say that ‘capacity building, promoting modern governance ... is already appropriately addressed by the Registrar’s functions and powers’, if this intention is not clearly articulated in the objects of the CATSI Act, then it will be all the more readily overlooked or misunderstood.

While recognising that it is difficult to write a commitment to these principles into law, there could at least be an attempt made to include an overarching statement to this effect.

The Law Council of Australia has expressed a similar view in its own submission in October 2020 (at pp. 3-4). Hence, we urge the Government to reconsider including recommendation 1 of the review (i.e.: objects of the CATSI Act amended “to better reflect its role by referring to capacity building, promoting modern governance and accommodating Aboriginal and Torres Strait Islander tradition and circumstance”).

The Commonwealth needs to be seen to be committed to capacity building and in working collaboratively with our communities and their organisations. For example, NACCHO has a very positive relationship with the Commonwealth Department of Health, built up over the 50 years of our sector’s history, in which we have, generally, worked collaboratively to address emerging governance issues. However, there are still too many instances when concerns with the governance and/or finances of one of our members are raised far too late for early remedial action to be taken and/or not at all before an intervention takes place and unintended damage occurs within the community. It must be remembered, therefore, that no matter how good the legislation may be – in this case, the CATSI Act – it is always important to consult closely with the sector long before punitive action is put into effect. An overarching statement as suggested in recommendation 1 would go some way in underlining this collaborative approach and clarifying the intent in this respect and the importance of capacity building. Unexpected regulatory action can sometimes lead to far-reaching and unintended consequences in some communities, particularly those where the ACCHO provides the key infrastructure of that community.

Ideally, the powers and functions of the Registrar should be altered to allow for targeted, *minimalist* interventions to address concerns well before serious problems emerge. Such powers would be exercised only in circumstances where either a board has made a request, or where ORIC holds a reasonable belief that doing so is in the best interest of the membership. This creates an opportunity to make adjustments and improvements to corporations as they are established and grow.

Recommendations:

- Adopt recommendation 1 of the review; i.e. include a statement acknowledging the importance of capacity building.
- The powers and functions of the Registrar should be altered to allow for targeted, *minimalist* interventions to address concerns, well before serious problems emerge and extreme and punitive measures are put in place.
 - Such powers would be exercised only in circumstances where either a board has made a request, or where ORIC holds a reasonable belief that doing so is in the best interest of the membership.

4. Small corporations will be permitted to avoid holding AGMs

This may seem like a minor concern, but it is a critical element for some of the more remote, smaller and vulnerable communities. It will have the effect of depriving members of a key mechanism to ensure the accountability of its boards and officials.

NACCHO does not support changes that reduce an organisation's accountability to members. They are counter to the fundamental principle of community control. We do not, therefore support recommendations that allow small corporations to avoid holding AGMs. Transparency and accountability to members is very important and we encourage any revisions to be targeted towards greater transparency around operations and membership. Furthermore, AGMs serve as a touch-point for the communities the corporations serve and provide a familiar means for members to ask questions about their management and results achieved (or lacking).

Recommendation:

- Require all organisations to hold AGMs.

Conclusion

NACCHO supports NIAA's intent in bringing the CATSI Act in line with other Commonwealth legislation with a Bill and with regular reviews and improved governance, but repeats the point that it has headlined in its previous three submissions that the Government needs to involve Aboriginal and Torres Strait Islander leadership in *shared decision making*. This is a point that has also been made strongly by other prominent Aboriginal organisations in their submissions (e.g. Aboriginal Peak Organisations NT, Central Australian Aboriginal Congress, Victorian Aboriginal Community Controlled Health Organisation, etc.).

The rushed consideration of the 27 written submissions in a 14-day period before the Bill was tabled was indicative of a flawed consultation process from the outset. A lack of involvement of organisations like NACCHO in the decision-making process or in a steering group to providing advice, suggests that the Government in this instance has lost a critical opportunity to demonstrate its commitment to the first priority reform area under the new National Agreement on Closing the Gap (i.e. "Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements").

NACCHO is also concerned that some measures will result in an increased administrative and compliance burden for corporations and may even be discriminatory, in particular, remuneration reporting.

NACCHO does not support any amendments that dilute accountability and transparency for members (e.g. less frequent AGMs) or the cumbersome review process that will lead to ongoing disruption and uncertainty. Surely a more efficient review scheme is possible in the 2020s.

We also urge the Government to reconsider the rejection of recommendation 1 of the review. A clear statement acknowledging community capacity and the significance of cultural traditions and safety in the operations of the CATSI Act would earn significant goodwill and help guard against hasty punitive action being taken against faltering organisations when other more collaborative solutions are available.

Notwithstanding these serious concerns, NACCHO does support certain elements in the Bill. In particular, the modernisation of certain governance arrangements and the measures conceived to deliver greater flexibility, the ability to appoint independent directors for 12-month periods, and the ability to redact sensitive personal information to protect vulnerable members.

NACCHO remains open to engaging closely with NIAA, ORIC and others should a more collaborative process be developed. We urge the Senate to withdraw or amend this deeply flawed Amendment Bill.