

6 October 2017

CATSI Review  
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Via Email: [CATSIreview@oric.gov.au](mailto:CATSIreview@oric.gov.au)

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of  
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Dear Sir or Madam

Thank you for the opportunity to provide comments to the Technical Review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) to consider technical amendments to strengthen and improve the CATSI Act and align it with recent changes in corporate law and regulation, particularly in the Corporations Act 2001.

The National Native Title Council (NNTC), as always, is committed to working closely with the Government to assist in the development of improved policy and legislative reforms that will better support Indigenous controlled organisations and empower their communities. Appropriate improvements to the CATSI Act has the potential to provide meaningful rights as a basis for economic and community development for Aboriginal and Torres Strait Islander Peoples.

The NNTC has been an alliance of Native Title Representative Bodies and Native Title Service Providers (NTRBs/SPs) from across the country since 2005, having been formally incorporated in November 2006. The objects of the NNTC are, amongst other things, to provide a national voice for the Indigenous native title sector on matters of national significance affecting the native title rights and interests of Aboriginal and Torres Strait Islander people.

In September 2017 the NNTC adjusted its constitution to allow Prescribed Bodies Corporate (PBCs) and Traditional Owner Corporations (TOCs) to become members of the organisation. Over the next year or so, the NNTC will be working closely with PBCs and TOCs to develop priorities that will better support the Indigenous Native Title Sector.

The following submission provides brief comments by way of a response to several of the Terms of Reference referring to the Technical Review.

1. *Whether any part of parts of the CATSI Act could be amended to create a more efficient and effective regime of registration, regulation, enforcement, support and administration.*

The NNTC would support a comprehensive review of the legislation that governs Aboriginal Corporations, and we believe that a separate stand-alone chapter that can meet the sui generis needs of native title corporations should be provided in the CATSI Act. Such a chapter could bring all the relevant provisions together in a coherent and consistent manner. It would also mean the CATSI Act would be a more efficient and effective regime for native title corporations, in particular Prescribed Bodies Corporate (PBCs).

#### *Dispute Resolution*

For example, a discrete chapter in the CATSI Act would better address dispute resolution matters that are unique to native title corporations. Common disputes relate to membership and many have their basis in access to and use of PBC resources, including access to funds held on trust by the PBC.

The NNTC supports the suggestion in the submission of Native Title Services Victoria (NTSV) for a mandated staged approach to dispute resolution with the disputants only able to escalate the dispute to the next stage if they provide evidence that the previous stage has been exhausted.

Stages of such an approach would be:

1. An attempt to resolve the dispute internally.
2. Engage the NTRB/SP to assist.
3. Escalate to the NNTT.
4. Referred to ORIC.
5. Judicial relief should always remain open to any party to a dispute.

Disputants would not be able to move from stage 2 to 3 and then onto 4 without evidence that the dispute could not be resolved at the previous stage.

#### *Automatic Membership to a PBC*

Another common cause of disputes stems from the refusal of membership by Directors of people who satisfy all the membership criteria including status as a native title holder. These disputes are often deep seated and can have a number of different sources. The NNTC therefore supports the submission of NTSV for automatic membership of native title holders to a PBC.

Automatic membership for native title holders would not preclude PBCs exercising their right to remove members in accordance with their rule books for behaviour that is not in the best interests of the corporation.

2. *The appropriateness of the current size classification of corporations (small, medium and large) and the meeting and reporting requirements for Aboriginal and Torres Strait Islander corporations, and whether these can be simplified and streamlined.*

*And*

3. *The desirability and appropriateness of increased alignment of any provisions of the CATSI Act with provisions of the Corporations Act, including whether the current applied provisions are still effective.*

In many respects the CATSI Act requires more onerous meeting and reporting compliance for small Aboriginal Corporations than the requirements set out under the Corporations Act. As a general principle, the NNTC would suggest that where provisions of the CATSI Act are more onerous than those of the Corporations Act, the CATSI Act should be adjusted to align with the Corporations Act.

5. *Amendments that would provide greater flexibility in the design of corporate structures for Aboriginal and Torres Strait Islander corporations, particularly to promote increased economic activity.*

And

6. *Amendments to improve consistency and interaction with native title legislation.*

The NNTC believes that the CATSI Act must provide a basis to support economic and community development for Aboriginal and Torres Strait Islander Peoples. In this respect native title has played an important role in achieving improved socio-economic circumstances and economic independence for native title groups, as well as individuals, families and communities. The native title system provides significant employment and training opportunities and should be considered as a key factor and driver of indigenous policy development and implementation.

There have been a large number of native title claims settled throughout Australia with the subsequent creation of many Traditional Owner corporations (Prescribed Bodies Corporate and Registered Native Title Bodies Corporate - PBCs) all registered under the CATSI Act. As at October 2017 there were 173 registered PBCs with this number continuing to increase into the future as more native title claims are settled.

The NNTC therefore believes that the Review should consider how best the CATSI Act can engage with NTRBs, NTSPs and PBCs to achieve positive and sustained Indigenous economic and social improvement to protect and leverage from hard won native title rights and interests.

#### *Indigenous Economic Development Corporation*

Finally, the NNTC continues to advocate for the introduction of an Indigenous Economic Development Corporations (ICDC) as a special purpose vehicle to manage land related payments and other income to better support Indigenous economic independence as well as long term social and economic benefits for Indigenous communities. The ICDC has been supported through many processes including the Native Title and Tax Working Group and the North Australia White Paper. Details of the proposal are set out in the submission provided by NTSV with the ICDC forming an integral part of the advocacy efforts of the NNTC over a number of years.

A discrete chapter under the CATSI Act for native title corporations could set out specific provisions that would accommodate the availability of an economic vehicle for native title groups.

*Conclusion*

The NNTC acknowledges that some of the issues raised above may go beyond the scope of the terms of reference for the Review. Nonetheless, the NNTC believes that these matters would strengthen the legislation and better support native title organisations to deliver positive economic benefits, not only for native title groups but the broader Indigenous community. In this regard, the NNTC would welcome further opportunity to comment on the Draft Bill as it is developed.

I trust you find these comments useful and constructive, however if you have any queries or require any further information please do not hesitate to contact me at your convenience.

Yours faithfully

A handwritten signature in black ink, appearing to read 'CBetts', written in a cursive style.

Carolyn Betts

A/Chief Operating Officer