18 January 2019

Senator James Paterson
Chair
Senate Finance and Public Administration Legislation Committee
PO BOX 6100
Parliament House
Canberra ACT 2600

Via email: fpa.sen@aph.gov.au

Dear Senator

Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018

Introduction

The National Native Title Council (NNTC) welcomes this opportunity to present the views of the native title sector in relation to the *Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018* ("the Bill") to the Committee. The NNTC is the peak body for Australia's Native Title Organisations representing Native Title Representative Bodies and Service Providers recognised under the *Native Title Act* (NTA) (sections 203AD and 203FE) as well as Prescribed Bodies Corporate (PBCs) established under section 55 of the NTA and other equivalent Traditional Owner Corporations (TOC) established under parallel legislation such as the Victorian *Traditional Owner Settlement Act*. PBCs and TOCs are required to be incorporated under

the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, (CATSI), with many of the Native Title Representative Bodies also incorporated under this legislation.

The NNTC has a demonstrated record of 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 CATSI have the potential to provide meaningful rights as a basis for economic and community development for Aboriginal and Torres Strait Islander Peoples.

Background, process and legislative context

CATSI was introduced by the Howard Government as part of what was described as a 'modernising project' to update the previous legislative regime around Indigenous corporations, the *Aboriginal Councils and Associations Act 1976.* CATSI repealed and replaced this earlier legislation and commenced in 2006. CATSI has not been the subject of a comprehensive review since it commenced.

Development of the current Bill commenced in July 2017 with a Technical Review led by Office of the Registrar of Indigenous Corporations (ORIC) at the request of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion. This Technical Review was limited in the scope of matters it considered. The report arising from the Technical Review was never publicly released, however, in August 2018, ORIC released a Discussion Paper canvassing, in general terms, proposals that were said to originate in the outcomes of the Technical Review. The current Bill largely reflects the matters contained in this Discussion Paper.

At the time of the passage of CATSI, concerns were expressed at the imposition of a racially differentiated regime to corporate governance and design aimed explicitly at Indigenous peoples. In this context it is worth bearing in mind that PBCs are *required* pursuant to the NTA to be incorporated under CATSI. In addition, under various other pieces of legislation (such as the Victorian *Aboriginal Heritage Act*) relevant Indigenous organisations are also *required* to be incorporated under CATSI. Further, Indigenous organisations in receipt of funding under the Commonwealth Government's Indigenous Advancement Strategy are (generally) also *required* to be incorporated under CATSI. For many of the nation's approximately 3,300 CATSI corporations then, incorporation under the CATSI Act is not voluntary.

CATSI (and a number of the provisions of the Bill to be discussed further) are necessarily racially discriminatory. They are saved from offending the *International Convention for the Elimination of All Forms of Racial Discrimination* (and therefore the *Racial Discrimination Act 1975 Cth* (the RDA)) only if they can be characterised as a legitimate "special measure" under the Convention. This fact is acknowledged in the CATSI Preamble. To satisfy the definition of a special measure it is necessary for a measure to facilitate the advancement

of the relevant disadvantaged group. The NNTC submits that it is imperative that the Committee bear in mind the fact of the racially discriminatory nature of CATSI and the requirement for each of the measures contained in it, **and in the Bill,** to be able to be legitimately characterised as a special measure in order to avoid offending the RDA.

This conclusion carries with it two implications. First, particularly after 12 years of operation, it is appropriate that CATSI be the subject of a comprehensive review to ensure that it is in operation "appropriate and adapted" to facilitate the advancement of Australia's Indigenous Peoples.

A number of matters spring to mind as relevant to such a broad review of CATSI. The first is that there needs to be a comprehensive analysis of the areas where the provisions of CATSI impose obligations that are divergent from those contained in the *Corporations Act 2001* (Cth.) ("CA"). Each such divergence then needs to be justified as a "special measure" in accordance with the criteria described below. Second, is that the appropriateness of the fundamental equation between a CATSI corporation and a company limited by guarantee under the CA, particularly in the context of a rapidly expanding Indigenous private sector needs to be assessed. Third, areas where legitimate additional special measures are desirable should be considered.

One example of this third area lies in the structures that are available to PBCs in the management of monies derived from native title rights and interests. The current structures around the management of native title monies by PBCs are complicated, confusing and often lack transparency. They involve a complex combination of native title, charitable trust and taxation law. The current arrangements often provide a positive *dis*incentive for native title holders to utilise native title monies for long term economic development in favour of restrictive charitable trust or immediate disbursement.

The NNTC in conjunction with the Minerals Council of Australia has developed a proposal to overcome these shortcomings. The PBC – Economic Vehicle Status (PBC-EVS) proposal involves establishment of an optional 'economic vehicle status' (EVS) designation available to PBCs. This would enable the PBC EVS to undertake a broader range of economic development activities, such as providing finance for private businesses, while accessing tax concessions that apply where an organisation is seeking to address disadvantage. Importantly the model would also enable to legacy funds to be rolled into the PBC EVS. The model would also include additional transparency and reporting requirements.

These reforms would be achieved through targeted amendments to CATSI its regulations and associated legislation. The principles behind the PBC-EVS have already been endorsed by the Treasury *Taxation of Native Title and Traditional Owner Benefits and Governance*

Working Group in 2013 and in the 2015 *Our North, Our Future, White Paper on Developing Northern Australia.*

Despite the obvious merit and broad support for proposals such as the PBC-EVS the restricted scope of the Technical Review and the subsequent Discussion Paper have prevented agitation of this, and the other matters identified above.

On this basis the NNTC submits that it would be appropriate for the Committee to include a recommendation that the entirety CATSI be the subject of broad and comprehensive review that is founded upon thorough consultation with affected Indigenous Peoples.

The second implication arises from the requirement for a measure to be characterised as a 'special measure' as enunciated by the High Court in *Gerhardy v Brown* (1985) 159 CLR 70 (*Gerhardy*).

In *Gerhardy* Justice Brennan identified four indicia of a legitimate special measure in the following passage:[1]

> A special measure (1) confers a benefit on some or all members of a class, (2) the membership of which is based on race, colour, descent, or national or ethnic origin, (3) for the sole purpose of securing adequate advancement of the beneficiaries in order that they may enjoy and exercise equally with others human rights and fundamental freedoms, (4) in circumstances where the protection given to the beneficiaries by the special measure is necessary in order that they may enjoy and exercise equally with others human rights and fundamental freedoms.

In his analysis of these indicia Brennan J makes a number of points relevant to CATSI. First, "the beneficiaries of the special measure are natural persons not corporations".[2] His Honour notes in this context that a benefit conferred on an (Indigenous) corporation may lead to benefits to natural persons. Second, that the purpose of a special measure may be gleaned from the terms of the legislation (if relevant) and other circumstances and, finally, that the question of whether a measure leads to "advancement" of a group can only be made by reference to the wishes of that group.[3]

The analysis of 'special measures" contained in *Gerhardy* was more recently affirmed by the High Court in *Maloney v The Queen.*[4]

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[1] *Gerhardy,*133 (Brennan J).
[2] Ibid.
[3] Ibid 135.
[4] (2013) 252 CLR 168 (*Maloney*).

As previously noted to the Committee,[5] the NNTC submits that the Bill before the Committee has not been the subject of consultation adequate to reasonably satisfy the Committee that it represents the wishes of the affected group or that it is appropriate and adapted to facilitate the advancement of Australia's Indigenous Peoples. The NNTC notes that the analysis of the special measures issue contained in paragraphs 265-269 of the Explanatory Memorandum (EM) is inadequate in not addressing this issue.

The point is significant for unless a particular measure or the legislation within which it is contained can legitimately be seen as supported by the affected group and 'appropriate and adapted' to its beneficial purpose it is simply a manifestation of racism. To utilise the example of Part 7 of the Bill to illustrate this point. The amendments proposed in Part 7 authorise the mandatory collection and disclosure of remuneration information in relation to "key management personnel" in CATSI corporations. There is no equivalent power with respect to CA corporations generally. Therefore, the provision is an example of racial discrimination. It cannot be saved from this characterisation simply on the basis of an unsupported assertion by Executive Government that this racism is for the benefit of Indigenous People. Such an approach would have saved South African apartheid from a characterisation of racism.

A further example of the procedural deficiencies in relation to the Bill is apparent when the terms of the *Native Title Legislation Amendment Bill 2018* is considered. An Exposure Draft of this Bill has been circulated by Government which has also advised of an intention to introduce a final form of the Bill to Parliament in February 2019. Schedule 8 of the Exposure Draft Bill proposes amendments to CATSI as this apply to PBCs. Specifically, Clauses 1-3 of Schedule 8 proposes amendments to s 487-5 of CATSI. The main effect of the proposed amendments is to give the CATSI Registrar the ability to appoint a special administrator to a RNTBC if they are of the view that the corporation is conducting its affairs "in a way that is contrary to the interests of the common law holders or a class of common law holders."

Clause 9 of Schedule 8 proposes the insertion in s 66-1 of a new s 66-1(3B) into CATSI that would require a PBC's constitution to include provisions for dispute resolution between the PBC and a common law holder. Clause 8 amends s 63-1 to include such dispute resolution provisions within the definition of "internal governance rule requirements".

While these proposals are restricted to those CATSI corporations that are PBCs, each of the issues of the content of internal governance rules, circumstances of appointment of special administrators and membership rules are dealt with in the current Bill. In the NNTCs submission it would be appropriate for Parliament to at least be ware of the detail of the proposals the Executive Government is intending to put before the Parliament in this context when considering the proposals contained in the current Bill.

[5] In correspondence from the NNTC CEO to the Committee Chair dated 17 December 2018.

On this basis the NNTC also submits that it would be appropriate for the Committee to include a recommendation in its report on the Bill to the effect that further consideration of the Bill be delayed so as to allow a process of full and thorough consultation with affected Indigenous Peoples on the specific terms of the proposed legislative amendments.

With these significant contextual and procedural matters noted, the balance of this submission addresses the particular matters contained in the Bill.

Part 1 Classification of Aboriginal and Torres Strait Islander Corporations

The current Act classifies corporations as small, medium or large based on an assessment of gross operating income, consolidated gross assets and number of employees. The relevant amounts are prescribed in the regulations.

The proposed reforms alter the basis of classification to be based purely on revenue. The specific revenue thresholds are said to be prescribed in the Regulations.

ORIC has suggested that it is intended the prescribed amounts will equate with the levels prescribed in relation to the CA for companies limited by guarantee. These are: small – less than $250,000; medium – between $250,000 and $1 million; and, large – above $1 million. These classification levels are also those utilised by the Australian Charities and Not for Profit Commission (ACNC). The EM notes that 30% of CATSI Corporations are also registered with the ACNC. Of course, this fact also means that **70%** of CATSI Corporations are ***not*** ACNC registered.

The principle that the reporting requirements of CATSI corporations should equate to those of CA corporations is generally supported. However, the proposed amendments raise some concerns. First, while it has the potential to reduce the reporting requirements for some small corporations it also has the potential to increase the reporting requirements for a number of current mid-size corporations.

Second, and more fundamentally, the equation of all CATSI corporations with companies limited by guarantee under the CA is inappropriate. While all CATSI corporations have a member (as opposed to shareholder) structure as do companies limited by guarantee under the CA not all CATSI corporations are established for public or community purposes as is usually the case with companies limited by guarantee.

Many CATSI corporations are established for private business purposes. These companies equate more closely with Proprietary Limited corporations under the CA. In respect of a Proprietary Limited corporation the CA has only two classifications; small (revenue < $12.5m) and large (revenue > $12.5m). The proposed amendment would only operate to

continue or increase the regulatory burden on CATSI corporations of this nature. In addition, it continues the false perception that CATSI corporations are necessarily "social enterprises" when this is manifestly not the case as indicated by the fact that 70% of CATSI corporations are **not** ACNC registered.

Part 2 Constitutions (Rule Books)

This Part is directed at two issues. The first is to require that "Replaceable Rules" as defined in CATSI s 60-1 which currently operate by default as part of a CATSI Corporation's constitution by virtue of CATSI must, within two years, be explicitly incorporated into the corporation's constitution. The second issue is to bestow a discretion on the ORIC Registrar to refuse an application for Registration in the event the Registrar forms a view the proposed constitution is not "fit for purpose"

Any proposal to increase clarity of rule books and how they relate to CATSI is notionally worthwhile. However, the NNTC submits the current proposal imposes a significant and unnecessary burden on all the existing 3,300 CATSI corporations. Under the proposal all existing CATSI corporations across the country would be obliged to hold Special General Meetings to replicate rules already contained in CATSI into their rule books within two years. This obligation would arise whether or not there is any evidence the existing structure has caused any confusion.

Any similar proposal with respect to all the 3.3 million corporations under the CA would be met by the broader community with astonishment and consternation. Indigenous Australians are entitled to express the same views. A preferable approach is to make the proposed amendments prospective. This would allow existing CATSI corporations to make the necessary changes at an appropriate time and if there was a perceived need.

The NNTC also has concerns with Item 7, which adds an additional discretion for the Registrar to exercise when assessing an application for Registration. Currently the Registrar can exercise a discretion in assessing an application for registration essentially to determine whether a proposed Rule Book satisfies the requirements of CATSI. The proposed additional discretion would allow the Registrar to refuse an application for registration on the basis that the Registrar had formed a view that the proposed Rule Book was not 'fit for purpose'. In this event the registration applicant must have the Registrar's views debated at a Special General Meeting of the proposed members (see Item 19, amending s 32-5).

There is little clarity beyond what is said in the EM, which casts the amendment as attempting to cover *'…how the rules are expressed, for example, where there is an uncertainty in the operation of rules resulting from undue complexity or poor drafting'.*

Then there is the potentially complex interaction with the application of the potentially complex changes to the internal governance rules, including all of the mechanisms to bring the replaceable rules and standing CATSI provisions into rule books, which will need to work seamlessly with the fit for purpose test. Additionally, the NNTC is concerned about the method by which any dispute over fit for purpose might be resolved, requiring a significant onus on the corporation (Item 19).

If the experience with PBC rule books is anything to go by, some aspects of the rules will be very dependent on the group involved. Some operate effectively with relatively simple rules - while others prefer higher levels of prescription. It is worrying to think that there is a mechanism at the threshold of creating a corporation that is potentially at odds with the basis of a native title determination. It's conceivable that there will be differing views on levels of prescription over details such as membership – which to a very large degree will be established by the native title determination itself. Again, the number of directors and rules for meetings will have some direct links to the determination and the NNTC thinks that there needs to be some more clarity about how this test would be applied.

This raises the issue of "model constitutions" (Item 18). The NNTC believes there needs to be far more work done on explaining what these might mean in practice. Adopting an off the shelf approach has an obvious attraction however, it must be much clearer what the models would cover and how they would be categorised. Would there be generic small or large corporation model rules? Or will they be based on scope or area of activity. By this we mean a model set of corporations in the education space, land holding space etc. It is also apparent that until there are model rule books prescribed by the regulations, all of the potentially complex and time-consuming compliance will be required. It also raises the prospect of the Registrar developing a practice of refusing as not "fit for purpose" a rule book that did not mirror the "model constitution". In the native title context this would be disastrous.

This entire element of the Bill needs serious and considered examination. It looks on its face to be a resource depleting exercise, with the creation of further confusion and complexity for little benefit. The NNTC submits that if the similar reforms were proposed for CA corporations there would be a legitimate outcry. We see these provisions as an example of the racially tilted nature of not just the reforms, but CATSI itself.

Part 3 Review of Financial Reports

In the time available to the NNTC a review of the Part 3 provisions appears to indicate that the Part (as stated in the EM) "introduces reviews of financial reports as an alternative to audits under Chapter 7 of the Act." It would appear that these provisions broadly replicate the financial reporting requirements required for CA companies limited by guarantee and

those of the ACNC. Subject to the comments made in relation to Part 1 of the Bill above (in relation to the implicit – and incorrect – assumption that all CATSI Corporations equate to CA corporations limited by guarantee that are also ACNC registered) the principle of applying an equal level of regulatory burden to CATSI corporations as to CA corporations is supported.

Part 4 Subsidiaries and other entities

The NNTC believes there is value in these provisions that are apparently intended to facilitate the creation of subsidiary corporations and joint ventures. As far as can be ascertained in the available time, the provisions would place CATSI corporations in a position of greater equivalence to CA corporations and facilitate the development of economic development within Indigenous communities and the entrepreneurial activity of Indigenous people. These objectives are supported.

Part 5 Meeting and Reporting Obligations

The NNTC believes there is value in proposals that are intended to provide mechanisms to reduce the regulatory and reporting burden on (particularly) small CATSI corporations.

As such, the NNTC believes the proposals to give some flexibility in reporting and staging of meetings has merit. However, as it stands, the Bill inserts a whole new architecture of rules (Items 142-147) in order to navigate a path to an arrangement that suits the circumstances. The NNTC is not convinced that the balance between flexibility and allowing members to be properly enfranchised has been struck with the current proposals. There simply has not been enough time to test them across a diverse field of potential application. We note in particular that the provisions would apply to the many small native title holding corporations (PBCs). In support of these doubts the NNTC notes that other peak Indigenous organisations whose membership largely comprises CATSI corporations (for example the National Aboriginal Controlled Community Health Organisations) have expressed significant concern around the prospect of (defined) small CATSI corporations being able to avoid holding AGMs.

The NNTC also has concerns about the application of the strict liability offences as proposed (Items 148 and 152) and questions whether the criminalising of a failure to comply with the technical requirements of CATSI (Item 169, proposed s 349-1) can legitimately be characterised as a "special measure" for the purposes of the RDA.

Part 6 Members and membership

In the view of the NNTC the whole of Part 6 of the Bill needs to be very closely considered. The NNTC has serious concerns about how the removal of membership provisions (item 171) will operate, and how in particular native title holders may be denied an expression of rights declared theirs by the Federal Court.

We do support a redaction process if the Bill was to become law, however we continue to object as a matter of principle to the membership lists being made public at all. A similar requirement does not exist in relation to the CA and is unjustified by any discernible beneficial purpose.

We also note that it is at the discretion of directors to approve any redactions (Item 175). We have concerns that this will not be the best method of achieving the aim of preserving individual safety and does not address the fact that this process will need to be done for every entity for which they are a member.

Part 7 Key Management Personnel

These proposed provisions would authorise the mandatory collection and disclosure of remuneration information in relation to "key management personnel". To the NNTC Part 7 is a clear example of the application of double (and racist) standards in respect of CATSI corporations.

The NNTC acknowledges there is value to the CATSI corporation sector in having comparative information regarding the remuneration of senior executives. However, the NNTC believes that, as with other sectors of the community, the collection of such information should be undertaken on a voluntary basis and publication should occur only in an aggregated form. As such there is no need for legislative amendment to achieve these outcomes.

In earlier consultations ORIC attempted to justify this double standard by reference to the requirements of Australian Stock Exchange listed public companies under the CA. The attempt at this equivalence serves merely to highlight this duplicity of standards inherent in the Bill and CATSI generally.

Part 7 is also an example of the use of regulations to deal with many significant and contentious issues within the Bill. In consultations around the earlier Discussion Paper no reference was made by ORIC to this intended devise and the proposed regulations are not presented as part of the Bill and therefore the subject (at this time) of parliamentary scrutiny in the context of the passage of the Bill. The NNTC has been given no indication as

to the proposed consultation process in relation to these proposed regulations. Given the experience to date of the CATSI amendment process, this is a matter of great concern.

Part 8 Related Third Parties

The current CATSI Part 6-6 (Member approval needed for related party benefit) is an example of the racism redolent in the Act. CATSI s 284-1 prohibits related party transactions without approval at a general meeting except in circumstances set out in Division 287. The only equivalent provisions apply to public companies under the CA and to ACNC registered corporations. In the latter case the requirements of the ACNC are that a registered charity must uphold the relevant ACNC governance standard (5) and the disclosure requirements contained in Accounting Standard AASB 124.

The provisions of Part 8 provide some relaxation to the existing prohibition in the case of "small amounts" (defined in yet to be released Regulations).

The NNTC submits that a more appropriate mechanism for facilitating legitimate related third-party transactions by CATSI corporations while still ensuring transparency and accountability would be to adopt the approach applying to corporations limited by guarantee under the Corporations Act. This approach permits such transactions in situations where the transaction is arm's length or legitimate remuneration for services provided. Such transaction must be noted in the corporation's accounts under existing Accounting Standards.

The application of any other standard is simply racist.

Part 9 Special Administration

The NNTC has many reservations around the relatively unconstrained nature of the discretion created in the Registrar to appoint a Special Administrator under Part 11-2 of CATSI. In the NNTC submission this matter would appropriately be the subject of a broader and more detailed examination as part of an overall review of CATSI. These views noted, the specific provisions of Part 9 relating to amendments to existing ss 453-1 and 487-5(1)(a) are appropriate and supported.

Part 10 Voluntary Deregistration

The NNTC supports these proposals that are intended to simplify the mechanisms for voluntary deregistration.

Part 11 – Investigation and Enforcement

The provisions of this Part allow the ORIC Registrar to accept enforceable undertakings in relation to compliance matters and extend the Registrar's power to compel the production of books and records. The NNTC notes that the EM asserts that the additional powers created in the ORIC Registrar merely replicate those available to ASIC under the CA. Accepting this assertion and applying the principle of equivalence between CA Corporations and CATSI corporations the NNTC believes the amendments are appropriate.

Part 12 – Publication of Notices

This Part, in general, replaces the requirement for certain matters to be published in the Government Gazette and allows publication to occur through the ORIC website. The NNTC sees these provisions as uncontentious.

Part 13 "Independent" Directors

This Part gives greater ability to CATSI corporations to determine whether to appoint non-member and/or non-Indigenous directors. While disagreeing with the nomenclature "independent" director, the NNTC supports proposals that reduce regulation and increase freedom of operation for CATSI corporations and accordingly supports these provisions.

Part 14 Qualified privilege for auditors

The NNTC notes that the EM asserts that these provisions merely replicate the equivalent provisions under the CA. Accepting this assertion and applying the principle of equivalence between CA Corporations and CATSI corporations the NNTC believes the amendments are appropriate.

Part 15 Resolutions to be the same in all material respects

This Part addresses Division 290 of CATSI, which deals with the technical requirements of certain resolutions authorising related party transactions. Currently Division 290 requires the notice of a meeting intended to consider such a resolution to contain the proposed text of the resolution and requires the resolution that is ultimately passed to be the same as the resolution proposed in the notice. The proposed amendments provide that the resolution ultimately passed can be valid if it is the "same in all material respects".

Subject to the comments made above under Part 8 in relation to related party transactions generally and those made above in Part 7 in relation to the excessive use of as yet unknown regulations (of which Item 252 is a further example) the proposed provision reduces the regulatory burden on CATSI corporations and is appropriate.

Part 16 Unanimous requests for special administration

This part simplifies the procedure for the appointment of a special administrator if the CATSI corporation Board unanimously passes a resolution seeking this course. Subject to the comments above under Part 9 regarding the desirability of a more detailed examination of the existing Special Administrator provisions as part of an overall review of CATSI, the proposed provision reduces the regulatory burden on CATSI corporations and is appropriate.

Part 17 Insolvency

The main provision of this Part lies in item 259 which proposes the insertion of a new s 526-12. The new section would create a presumption of insolvency in situations that are not applicable to CA corporations. Those situations are when an ORIC authorised officer or special administrator provides a written report to the Registrar to the effect that the financial record keeping requirements of (existing) subsections 322-10(1) and 322-10(2) have not been met.

Subsections 322-10(1) and 322-10(2) require that a CATSI corporation must keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance; and

(b) would enable true and fair financial reports to be prepared and audited.

For a period of 7 years.

Financial records are in turn defined in s 700-1 to include:

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and

(b) documents of prime entry; and

(c) working papers and other documents needed to explain:

(i) the methods by which a financial report is made up; and

(ii) adjustments to be made in preparing a financial report.

The NNTC submits that the raising of a presumption of insolvency in situations where a CATSI corporation may have only failed to comply with these provisions in a minor and

technical fashion is excessive and unwarranted. The application of this presumption solely to CATSI corporations is racist. The justification for the proposal is non-existent. The provision is opposed.

Part 18 Conflicting duties under State or Territory legislation

The main provision of this Part lies in item 268 which proposes the insertion of a new s 265-23. The purpose of the new section is explained in the EM as follows:

> Proposed section 265-23 ensures that acts done in good faith, with the belief that the act is necessary to comply with prescribed State and Territory legislation, will not contravene the care and diligence, good faith, use of position and use of information civil obligations. The potential for conflicting duties arises in the context of CATSI corporations that have been granted rights and interests in land under State or Territory legislation to be held for the benefit of Aboriginal and Torres Strait Islander persons.

The proposed provision reduces the regulatory uncertainty for certain CATSI corporations and is appropriate.

Part 19 – Minor Technical Amendments

This Part proposes a range of minor amendments such as deleting references to "telephone or email" and substituting "oral or written". It also (at item 272) proposes to amend subsection 201-15(2). This subsection deals with a board's application to the Registrar to deny a members' request for a general meeting pursuant to that section. Currently, the Registrar has 21 days to consider such an application. It is proposed to increase the period to determine such an application to 28 days. Given the complexities that may be involved in determining such an application the proposed amendment is appropriate.

Conclusion

As noted in the introduction to this submission the NNTC sees significant aspects of CATSI and the Bill as racially discriminatory. The NNTC submits that the Committee recommend that CATSI should be the subject of a comprehensive review to ensure that it is in operation "appropriate and adapted" to facilitate the advancement of Australia's Indigenous Peoples. Further, the NNTC submits that the Committee should include a further recommendation in its report on the Bill to the effect that further consideration of the Bill be delayed so as to allow a process of full and thorough consultation with affected Indigenous Peoples on the specific terms of the proposed legislative amendments.

The NNTC has identified in this submission certain proposals that are appropriate. These matters can be identified and included in matters the subject of further consultation in the context of a broader review of CATSI.

The NNTC would be pleased to assist the Committee in any further aspects of its current inquiry that the Committee sees as appropriate.

Yours faithfully

Mr Jamie Lowe
Chairperson