



17 September 2021

Senator Claire Chandler
Chair
Senate Finance and Public Administration Legislation Committee
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Dear Senator

Re: Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021

The National Native Title Council (NNTC) welcomes this opportunity to present the views of the native title sector regarding amendments being implemented by the *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021* (Bill).

The NNTC is the peak body for Australia's Native Title Organisations representing Native Title Representative Bodies and Service Providers (NTRB/SPs) recognised under the *Native Title Act* (NTA) as well as Registered Native Title Bodies Corporate (RNTBCs) established under the NTA, and other equivalent Traditional Owner Corporations (TOCs) established under parallel legislation such as the Victorian *Traditional Owner Settlement Act*. RNTBCs and TOCs are required to be incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), with many of the NTRBs also incorporated under this legislation.

Background

The Preamble to the CATSI Act confirms that, for the purposes of the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Racial Discrimination Act 1975*, it is intended that the CATSI Act should be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders.

The NNTC has for a long time shared the view with other peak bodies and organisations that amendments are required to the CATSI Act to ensure that it more effectively supports the advancement and protection of First Nations People, including through facilitating more effective governance, and economic and community development.

The NNTC made a submission to this Committee in January 2019 regarding the *Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018* that subsequently lapsed. In that submission the NNTC stressed the need for a

comprehensive review of the CATSI Act, particularly with regard to its effectiveness as a special measure for the advancement and protection of First Nations people.

The NNTC welcomed the review and consultations that were subsequently undertaken by the National Indigenous Australians Agency (NIAA) in 2020 about potential amendments to the CATSI Act. This was the first comprehensive review of the legislation since it commenced in 2007, and in October 2020 the NNTC provided a detailed submission in response to the NIAA's CATSI Act Review Draft Report.

The NNTC understands that the current Bill is primarily informed by recommendations in the NIAA Final Report of the CATSI Act Review dated 30 October 2020 (Final Report). The NNTC supports many of the recommendations in the Final Report while having expressed reservations about a number of others in its submissions.

An exposure draft of the Bill was made available for review in July this year but regrettably the four week consultation and comment period was inadequate for many of the NNTC's members to review, consult their constituents, and comment in detail on the 93 page document. Nonetheless, the NNTC made a submission on 8 August 2021 regarding the exposure draft following receipt of feedback from a number of its members.

Separate Division of CATSI Act for RNTBCs

The primary concern of the NNTC and many of its members is that the Bill will not implement recommendation 62 in the Final Report of the CATSI Act Review. This recommendation proposed a separate division of the CATSI Act dedicated to those provisions specific to RNTBCs, and the NNTC and its members strongly support this recommendation.

RNTBCs are very different to other corporations incorporated under the CATSI Act, or companies incorporated under the *Corporations Act 2001*. RNTBCs are not entities established voluntarily by a group of individuals to pursue a common purpose, nor are they entities that can be conveniently reconfigured, replaced or wound up.

RNTBCs are incorporated because the NTA requires native title holders to establish a corporation to represent and manage or hold their native title rights and interests in trust. They must be incorporated under the CATSI Act and unlike other corporations, RNTBCs must be designed and supported to exist in perpetuity, as the native title rights and interests they hold or manage will continue forever and be exercised by succeeding generations of native title holders.

The Aboriginal or Torres Strait Islander people that an RNTBC represents and who can become members are uniquely defined by the traditional laws and customs of their society, and this is formally recognised by the judgments and determinations of the Federal Court of Australia. It is estimated that there will be more than 300 RNTBCs when all native title determinations have been finalised in the next few years.

An RNTBC, in addition to its obligations under the CATSI Act and the general law, has critical statutory functions to perform under the NTA, including its obligations to hold or manage the native title rights and interests of its society in accordance with the NTA and the detailed provisions of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (PBC Regulations).

An RNTBC also has fiduciary obligations to all those determined to be native title holders, even if they are not members of the corporation, and decisions on the native title matters that it deals with are subject to the traditional decision-making processes of native title holders.

As the NNTC has emphasised in previous submissions, for the CATSI Act to justify its continuing existence as a special measure it must advance the interests of First Nations People and it can do this most effectively by supporting the effective governance and operation of their representative institutions, the most fundamental of which are their RNTBCs.

The NNTC and its members remain adamant that a separate division within the CATSI Act is required for RNTBCs because of the detailed and varied sources of their functions and obligations and the complex cultural, social, economic and regulatory environment in which they operate when compared to other CATSI corporations.

With the amendments currently proposed by the Bill there will be more than 40 sections or subsections in the CATSI Act that are specific to RNTBCs. Very few RNTBCs have the capacity to identify these provisions scattered throughout the 600 pages of the CATSI Act and fully comprehend how they interact with the NTA, the PBC Regulations and the general law, and the RNTBC responsibilities and obligations that flow from these laws.

Supporting the directors and members of RNTBCs to more easily identify the CATSI Act provisions that apply specifically to them by consolidating these in a separate division would enhance the governance and operation of RNTBCs, streamline their management and regulation, and support future policy reform processes and further legislative developments relevant to RNTBCs.

Conclusion

The NNTC is aware that the NIAA is undertaking further work on a number of other policy recommendations in the Final Report relevant to RNTBCs and the CATSI Act, with a view to implementing some of these through legislative change in the future.

The NNTC notes the statement at paragraph 294 of the 'Summary Report of the CATSI Amendment Bill exposure draft consultation' that recommendation 62 will be considered further by the NIAA as it undertakes policy development work on these other outstanding recommendations in the Final Report.

The NNTC urges the Committee to recommend that the NIAA prioritise this work on recommendation 62 and create a standalone division in the CATSI Act for RNTBCs as soon as possible.

Yours sincerely,

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Chief Executive Officer