

Aboriginal Peak Organisations Northern Territory (APO NT)

CATSI Act Review Team

Submitted via CATSIACTReview@niaa.gov.au

Friday 2 October 2020

RE: APO NT submission to the CATSI Act Review Team

I write to you on behalf of the Aboriginal Peak Organisations Northern Territory (APO NT) to present our submission to the Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act Review Team. I wish to thank the team for reaching out and engaging with APO NT staff on a number of occasions in preparation for this submission.

APO NT welcomes this review and we hope that the outcomes of the review will ensure that the CATSI Act continues to benefit Aboriginal and Torres Strait Islander corporations as intended. APO NT endorses the Central Land Council's (CLC) submission to the Review Team and this submission draws on the key recommendations made by the CLC. APO NT recommends reading the CLC submission in its entirety for a comprehensive response on the discussion paper and reflection on the current CATSI Act.

Established in 2010, APO NT is an alliance of Aboriginal organisations working to promote and protect the rights of Aboriginal people living in the Northern Territory and are committed to improving the conditions across the broader social determinants of health. APO NT is not an incorporated body, however our members, the Aboriginal Medical Services Alliance Northern Territory (AMSANT) and Aboriginal Housing Northern Territory (AHNT), are incorporated under the CATSI Act. APO NT also works closely with Aboriginal organisations across the Territory who are operating under the CATSI Act. APO NT's Aboriginal Governance and Management Program (AGMP) has been working for the past six years to support Aboriginal organisations in the Northern Territory in strengthening their governance and management capacity. This support complements already existing agencies and resources and takes a long term view, recognising that a development approach directed by Aboriginal people themselves is key to achieving sustained and effective Aboriginal governance.

Underlining our work, is the right to self-determination which is expressed in the United Nations Declaration of the Rights of Indigenous People. In Australia, the CATSI Act is an important piece of legislation that helps to facilitate the self-determination of Aboriginal and Torres Strait Islander people. APO NT and AGMP understand that strong and

effective Aboriginal organisations are essential to reduce Aboriginal disadvantage. In particular, Aboriginal organisations are vital to deliver accessible, responsible services in communities; are an important source of employment and training; promote community leadership and role modelling and ultimately bind the social fabric of remote Aboriginal communities, both through the practical contribution they make in providing services and symbolically through the pride they instil in their communities.

The right to self-determination also underpins the work of the Coalition of Peaks, which APO NT is a member. APO NT recommends that any reform of the CATSI Act must be aligned to the Close the Gap Priority Reform areas, in particular areas one to three. APO NT believes that any reform to the CATSI Act should support governance and decision-making structures; recognise community-controlled organisations as an act of self-determination where services are delivered to communities based on our own needs, cultures and relationship to land; and confront institutionalised racism in government mainstream institutions and agencies to ensure Aboriginal and Torres Strait Islander people can access the services they need in a culturally safe way.

APO NT provided a submission in 2019 to the Senate Finance and Public Administration Legislation Committee on the Strengthening Governance and Transparency Bill 2018. In this submission, APO NT were concerned that the Bill had not been based on a transparent, comprehensive review of the CATSI Act and had received limited input from Aboriginal organisations, those who would be most affected by the changes. APO NT recommended that the Bill not proceed before the 2019 Federal election and not pass due to the lack of consultation with Aboriginal organisations. APO NT also supported the recommendations made by the National Aboriginal Community Controlled Health Organisation (NACCHO), in particular, that the CATSI Act should be considered a 'special measure' for the purposes of subsection 8(1) of the Racial Discrimination Act 1975 (Cth) and we still believe that any changes to the legislation should be treated accordingly.

As outlined in the CLC submission on the CATSI Review, APO NT recommends that the CATSI Act be improved, not repealed. In particular, APO NT maintains that the CATSI Act be decriminalised. The current approach is too dependent on penalties and the draft discussion paper does not address the pervasiveness of the criminal provisions in the Act. There are 166 potential criminal offences that may arise from breaching the Act, which are trivial and administrative. Penalties could attract fines up to \$200,000, which is disproportionately burdensome to individuals, given they often function in unpaid roles. However, APO NT does support penalties for genuine matters of dishonesty and negligence.

APO NT recommends that administrative issues be determined through an administrative process, rather than a criminal approach. A criminal approach may not be relevant to many corporations in remote areas, because a large number of these organisations are established to manage interests in land. Usually these organisations have no employees or generate any income, which means that reporting might not be feasible or practicable. APO NT understands that the implementation of the CATSI Act is also focused on the misappropriation of Commonwealth funds by corporations. It does not specify recourse

around the misappropriation of any or all self-generated or philanthropic funds. APO NT suggests that red tape be removed from how the CATSI Act is implemented on the ground. The CATSI Act should also not extend the Registrar's powers to issue fines. APO NT does however, support the registrar being able to issue notices for non-compliance reporting, attend meetings to discuss compliance measures with directors, accept and enforce enforceable undertakings, and to publish a notice of breaches on the ORIC website. APO NT supports additional resources being provided to ORIC, for the registrar to take on this regulatory role. To monitor and review the CEOs performance with respect to funding and contract agreements, APO NT recommends periodic appraisals and reviews for the CEO and senior management. This will ensure greater accountability to funders and Aboriginal boards and continuous quality improvement in the management of Aboriginal organisations.

APO NT recommends that the classification of organisation sizes under the Act should not be changed, but suggests an adjustment to the criteria, as mentioned in the discussion paper. APO NT also supports CLC's recommendation for a fourth 'Caretaker' category for Aboriginal corporations that generate no income or employees. This category would capture those organisations that are mainly established as Registered Native Title Bodies Corporate and exist as an organisation to maintain their rights to land and culture. Corporations considered to be 'Caretaker' would be required to hold an AGM if they have not yet held a general meeting; if more than half of the directors have passed away; if there has been a material change in the corporations circumstances or if a member has requested that an AGM be held in that year.

With respect to the unclaimed money account, APO NT recommends that all avenues should be exhausted to identify anyone with an entitlement to funds in the Unclaimed Money Account. Where those enquiries fail, funds from registered corporations based in the Northern Territory should be transferred to the Aboriginals Benefit Account (ABA) established under Part VI of the Aboriginal Land Rights Act (1976), rather than to the Commonwealth Consolidated Revenue Fund. APO NT believes that this would ensure that these funds are used for the benefit of Aboriginal people living in the Northern Territory.

APO NT also stresses that greater engagement and support is required for individuals and organisations who reside in the remote areas as mentioned in the CLC submission. The Registrar and ORIC should be provided with additional resources for capacity building activities to be directed at remote and very remote locations, where there is significant Aboriginal corporation activity. APO NT appreciates capacity training delivered from town centres, but this would be more effective and significantly reduce barriers to director participation, if accessible training is provided on the ground in the communities. APO NT also recommends greater flexibility in the Act for Aboriginal organisations to run AGM's to accommodate the many barriers in remote areas that can prevent AGM's from proceeding on the specified day or time. The current Act is too prescriptive with respect to holding and cancelling AGM's when they can be postponed. This can exert unnecessary financial stress on the organisation.

I must reiterate that the CATSI Act is an important piece of legislation that must be strengthened through any reform, not weakened. The Act is underpinned by the unique cultural and social context that impacts on Aboriginal people, which distinguishes the Act from the Corporations Act and NT Associations Act. While APO NT has provided some broad recommendations on reforming the Act, APO NT urges the Review Team to consider the CLC's submission, which provides more substantive recommendations.

If you have any queries relating to APO NT's submission, please contact Brionee Noonan on 0488 006 680 or via email brionee.noonan@gmail.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Paterson', with a long horizontal flourish extending to the right.

John Paterson

On behalf of the APO NT Governing Group