

21 September 2020

National Indigenous Australians Agency  
PO Box 2191  
Canberra ACT 2600

### **CATSI Act review**

Cape York Land Council Aboriginal Corporation (CYLC) performs the functions of a Native Title Representative Body (NTRB) for the Cape York region pursuant to the *Native Title Act 1993* (Cth) (NTA). In our broader Land Council role we support, protect and promote Cape York Aboriginal peoples' interests in land and sea country to positively affect their social, economic, cultural and environmental circumstances. In these capacities CYLC welcomes the opportunity to provide this submission to the National Indigenous Australians Agency (NIAA) regarding the review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

As the Cape York NTRB, CYLC's main interests in the review of the CATSI Act is how it provides for the interests and functions of Registered Native Title Bodies Corporate (RNTBCs). As CATSI Act corporations, RNTBCs must be competent to manage determined native title rights and interests to produce benefits for native title holders. As an NTRB, CYLC is also a CATSI Act corporation with responsibilities to provide support and services to RNTBCs and native title parties. CYLC also has an interest that the CATSI Act is reviewed so that NTRBs may provide better support and service to RNTBCs and native title holders.

### **Greater support for native title corporations**

Through the effective management of native title rights and interests benefits may be produced for native title holders, such as compensation for future acts. RNTBCs and NTRBs are usually involved in processes to produce the benefits, such as through the negotiation of ILUAs. Financial benefits produced are often held by another entity such as a charitable trust on behalf of a sub-group of beneficiaries such as the native title holders whose country is affected by the future act.

However, the subsequent management and distribution of financial benefits to individual beneficiaries is problematic because it is often beyond the capacity of the beneficiary group to run processes to distribute benefits, or decide how to use the benefits to achieve other objectives such as economic development. This can result in benefits being distributed in ways that are not consistent with the purposes of a charitable trust, or benefits are distributed unfairly between beneficiaries, or not distributed at all.

CYLC's experience is that beneficiaries then request assistance from their NTRB to help the beneficiary group establish rules and processes for distributions, and for the NTRB to also assist the running of distribution process and keeping records and accounting for the benefits. Without this assistance from NTRBs native title determinations and the establishment of CATSI Act native title corporations fail to achieve their purpose to provide benefits to native title holders.

NTRBs however are not resourced to support the native title cycle right through to the management and distribution of benefits to native title holders. NTRBs drive processes to identify native title

parties and determine their native title rights, establish and support CATSI Act corporations to manage the rights, support processes to produce benefits from the rights, but NTRBs are not then resourced to support the management and distribution of benefits to individual native title holders. This gap in NTRB support services seriously diminishes the value of the native title system and the CATSI Act corporations that are part of it.

To address this issue, the CATSI Act should be amended to provide native title corporations such as NTRBs with a statutory mandate and resources to provide ongoing support to native title holders to manage and distribute native title benefits so that tangible improvements can be made in native title holders lives. This includes supporting the use of benefits to grow economic development opportunities and help Indigenous communities to thrive.

### **Governance requirements**

CATSI Act corporations, such as RNTBCs, are controlled by members who elect directors to run the corporation on their behalf. New members are accepted into the corporation by the directors if they fit membership eligibility, such as being a native title holder for the area where the RNTBC has jurisdiction. However, issues arise where directors refuse to accept some applicants to be members of the corporation despite the person being eligible to be a member, often because of a trivial personal dispute between a director and the applicant.

The CATSI Act should be amended to provide that directors must decide a membership application at their next board meeting, or within a timeframe of no more than three months. If directors reject an application, but the applicant still considers themselves to be eligible, then the applicant should be able to appeal the rejection, perhaps to the National Native Title Tribunal or ORIC, to make their case. The NNTT or ORIC should then liaise with the directors to establish the reasons for rejection, and then arbitrate to support the rejection or support the application.

Similarly, the CATSI Act should be amended to make it clear that applicants for membership *must* be accepted as members of the RNTBC if they fit the membership criteria as established by the relevant native title determination. At present the CATSI Act does not compel the board to accept an application for membership where the applicant can demonstrate eligibility by reference to their descent from a native title holding group.

### **Consistency between the CATSI Act and other legislative instruments and regulatory frameworks.**

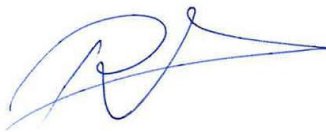
In Queensland, particularly on Cape York, Aboriginal people have other rights and interests in land besides native title, including Aboriginal freehold land rights pursuant to the *Aboriginal Land Act 1991* (Qld) and cultural heritage rights pursuant to the *Aboriginal Cultural Heritage Act 2007* (Qld). Aboriginal corporations, including CATSI Act corporations, have been established to hold and manage these rights and interests.

However, Aboriginal freehold and cultural heritage rights usually coexist with native title rights on Cape York, and elsewhere. In some cases, the relevant RNTBC also performs the functions of the trustee of Aboriginal freehold and/or the cultural heritage body, but in other cases separate corporations have been established under the CATSI Act or other statute to manage the non-native title rights. In situations where separate Aboriginal corporations have been formed to manage different rights and interests in the same area of land the usual result is conflict between the corporations, which consequently results in difficulties to manage and realise benefits from the various sets of rights.

The ideal situation is where one CATSI Act corporation holds and manages native title, Aboriginal freehold and cultural heritage rights so that these rights may be complementarily managed by the one board of directors. Responsibility for multiple functions within the one corporation however may cause internal tensions, such as the need for native title consent for future acts on Aboriginal freehold. The CATSI Act must ensure that corporation rule books and membership eligibility may provide for the corporation to hold multiple sets of rights and manage the rights in a complimentary way that provides the greatest benefits for the corporation's members.

If you wish to discuss any matter raised in this submission please do not hesitate to contact me.

Yours sincerely



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