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21 September 2020 National Indigenous Australians Agency  
Level 19, 215 Adelaide Street  
Brisbane QLD 4000

By Email: [CATSIActReview@niaa.gov.au](mailto:CATSIActReview@niaa.gov.au)

Dear Sir/Madam,

### REVIEW OF THE CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006

1. We refer to the above and confirm that we act on behalf of the following Nations and People (**Aboriginal People**), with respect to making these submissions:

- i. Kooma People;
- ii. Bigambul People;
- iii. Ngadju People;
- iv. Djungan People;
- v. Barkandji People;
- vi. Noongar People;
- vii. The Wati of the Central Desert;
- viii. Sullivan/Edwards Family;
- ix. Nanatadjarra People;
- x. Two Gomeri Clans;
- xi. Tweed River Bundjalung People;
- xii. Pitta Pitta People;

2. We write to you to make submissions on the review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act)*.

#### Submissions

3. We submit that the CATSI Act is **NOT** an effective special measure in the terms of Paragraph 4 of Article 1 of the *International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD)* for the following reasons:

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- i. leaves Aboriginal People who are Native Title Holders, and their rights and interests, more vulnerable to corruption or unsolicited conduct within some corporate structures, when in comparison with other Australian corporation regulation;
- ii. does not balance between being a special measure and being overly paternalistic towards Aboriginal People;
- iii. Allows far to much discretion for Directors to approve or reject Native Title Holders from being made members of Aboriginal Corporations which are also Prescribed Body Corporates; and
- iv. does not mandate the continuance of traditional laws and customs of Aboriginal Peoples, and is in **conflict** with the native title regime under the *Native Title Act 1993* (Cth) (**NTA**).

#### Vulnerability

4. The CATSI Act ostensibly establishes a system of corporations specifically to benefit Aboriginal People, for example, a Prescribed Body Corporate (**CATSI Corporation**).
5. In practice, the CATSI Act lacks robust resource allocation to investigate and prosecute fraud and corruption, it allows limited numbers of people to exert control of a corporation whilst excluding Native Title Holders from involvement in the management of their own native title rights and interests, stakeholder consultation, management of compensation payments and finances, and negotiations concerning cultural heritage protection.
6. Without the oversight afforded to organisations established under the *Corporations Act 2001* (Cth) (**Corporations Act**), Aboriginal People have been left without means of overcoming corruption or regulation to prevent corruption and unsolicited conduct within CATSI Corporations. Importantly, this is without appropriate recourse by regulatory bodies including the Office of the Registrar of Indigenous Corporations (**ORIC**) or the National Indigenous Australians Agency (**NIAA**).
7. The CATSI Act establishes rules allowing the directors of a CATSI Corporations to refuse membership sought by Native Title Holders but does not restrict grounds on which membership may be refused. The Act does not require that, at a minimum, certain classes of people be afforded membership.

8. Prior to making a Native Title Decision, as defined under the *Native Title (Prescribed Bodies Corporate) Regulations 1999 (Native Title Decision)*, there are requirements for a CATSI Corporation to consult with Native Title Holders prior to making such a decision. In most cases, this requirement is not followed, nor regulated. CATSI Corporations are able to unlawfully use their members to supplant this requirement, on the basis that those members are Native Title Holders, and therefore no consultation with all Native Title Holders, many of who are not members, is sought. It is not clear what extent of consultation is required, and especially, what prior informed consent should entail to ensure a Native Title Decision is made lawfully and properly.

#### Continuance of Traditional Laws and Customs

9. Both the CATSI Act and the NTA have always been considered and are as stated in their respective Preambles '*special measures*' for the advancement of Aboriginal People.
10. The NTA mandates the continuance of traditional laws and customs of Aboriginal People, including decision making according to those laws and customs, chiefly through section 251B of the NTA.
11. Despite the requirement in the NTA for traditional laws and customs to be preserved and continued, the CATSI Act contains no such requirement. Consequently, the CATSI Act fails to be compatible with the NTA by failing to mandate that CATSI Corporations continue traditional decision-making processes where such processes continue to exist.

#### Balancing Special Measure and Paternalism

12. We submit that Aboriginal People's decision making according to traditional laws and customs continue to be followed broadly across Australia. The CATSI Act perpetuates a view that Aboriginal People require assistance and supervision in making decisions with respect to their Country, their culture, their native title rights and interests, and their ways of life.
13. We submit that the CATSI Act ought to be repealed, and CATSI Corporations be regulated and governed parallel to the rules regulating and governing mainstream Australian Corporations, whilst also better incorporating mandating governance in accordance with traditional laws and customs, for example, provision for specific roles for the appropriate and acknowledged Elders and knowledge holders.

14. We are aware of instances where the operation of the CATSI Act and the ineffectiveness of any response provided by ORIC, has left large portions of Aboriginal Peoples unable to take-part in decision making by a Prescribed Bodies Corporate (**PBC**), operating under the regime established by the CATSI Act. We are aware that many Executive Officers of a PBC have operated the PBC adverse to the interests of the Native Title Holders, and repeatedly prevented Native Title Holders' involvement in Native Title Decisions.
15. Despite notice of the above being provided to the ORIC, no steps have been taken by ORIC or the NIAA.
16. We are aware of an instance that a PBC was placed into special administration, and during that time a large number of Native Title Holders were not involved in decision making by the PBC.. Subsequently, the PBC appointed as a new director with a significant conflict of interest. Native Title Holders were then threatened with legal action if they were to attempt to involve themselves in decision-making with respect to their own native title rights and interests.
17. We submit that the CATSI Act must properly provide mechanisms for Native Title Holders' involvement with the Corporation that holds or deals with their own native title rights and interests. In particular, the exercise of native title decisions with respect to the NTA, must be in accordance with the provisions of the NTA.
18. Should anything further to the above be required, please contact the writer.
19. We seek confirmation of receipt of these submissions and look forward to receiving same.

Yours faithfully



**DAVID STEVENSON**  
Legal Practitioner Director  
ESJ Law