



# North Queensland Land Council

Native Title Representative Body Aboriginal Corporation

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Our Ref: CATSI Act Amendment Bill

6 August 2021

National Indigenous Australians Agency  
Canberra ACT 2600

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

Dear CATSI Act Review Team,

***NQLC Submission on the Exposure Draft of the Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021***

The North Queensland Land Council (NQLC) welcomes this opportunity to comment on the exposure draft of the *Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021* ("Amendment Bill").

The NQLC makes this submission in its capacity as the Native Title Representative Body (NTRB) for an area extending from the Daintree and Bloomfield Rivers in the north to south-east of Sarina and west to beyond Richmond and Croydon.

The NQLC provides legal advice to native title groups to secure recognition of their native title rights and interests; establishes the prescribed body corporate (PBC) to hold the recognised native title rights and interests on behalf of the common law holders; and provides services to support the PBC fulfil its legislative and cultural responsibilities. All PBCs are registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* ("CATSI Act").

NQLC's comments are restricted to the impact of the Amendment Bill only as they relate to Registered Native Title Bodies Corporate (RNTBC).

**Proposed Items 100 and 110-113 – AGMs for small corporations**

1. The NQLC requires further clarification with respect to the proposal that allows small corporations that generate little or no income from their operations to pass a resolution to not hold an Annual General Meeting for up to two years.
2. As it is presently drafted this provision will apply equally to all CATSI Act corporations excepting entities registered under the *Australian Charities and Not-for-profits Commission Act 2021*.
3. NQLC questions whether this provision should apply uniformly to RNTBCs or whether a separate provision be developed which takes into account the particular functions exercised by a PBC. Ordinarily, RNTBCs are eligible to receive PBC Support Funding from National Indigenous Australians Agency (NIAA). Applications for PBC support funding are:
  - (a) coordinated through NTRBs or service providers; and
  - (b) dispersed through NTRBs or service providers.

4. However, certain RNTBCs have elected not to apply for PBC Support Funding and may have no other sources of income. Accordingly, they are likely to have consolidated revenues of less than \$1,000. This may be indicative of deep dysfunction rather than a lack of activity and excusing them from holding an AGM, or the next two AGMs on the basis that criteria under proposed new section 201-175(1)(c)-(e) have been met may be contrary to the interests of native title holders.

#### **Proposed Item 102 – Changing meeting details**

5. The NQLC supports the proposal to permit a corporation to issue a new notice of a general meeting if the ability to hold a meeting is affected by a death in the community, a cultural activity, or a natural disaster.
6. Further clarification is required to indicate whether the general meeting lapses if not held within 30 days. The purpose of the further clarification is to avoid the possibility of deferring meetings on a rolling basis.

#### **Proposed Item 125 – Replaceable rules**

7. The current proposal seeks to insert a section 66-1(4A) to require corporations 'to ensure their rule books identify the replaceable rules in the CATSI Act, that apply to the corporation, that have been modified or replaced'.
8. Further clarity is sought in relation to this proposal. It is not clear how this would operate in practise. As per the original recommendation it is suggested that all replaceable rules be included in a rule book. The convention which operates in many rule books is that a table lists all the replaceable rules, indicates where the corresponding rule is located in the rule book and whether they have been replaced or adopted unchanged.

#### **Proposed Items 148-158 – Remuneration Reporting**

9. The current proposal recommends that senior executive remuneration be included in annual reports to the Registrar and that the same information is laid before Annual General Meetings in the interests of providing greater transparency for members around the remuneration of key management personnel of the corporation.
10. NQLC notes that a number of NTRBs would be obliged to publicly report on the remuneration of their key management personnel. These details are private and confidential as between the board and the relevant individual and only appear as part of a consolidated figure produced in their audited reports.
11. Further, under section 694-85 of the CATSI Act 'chief executive officer function' is defined as those 'person or persons who are primarily and directly responsible to the directors for the general and overall management of the corporation'. There are numerous examples of management personnel who are exercising de facto CEO functions. This may come about because of the authority placed in their hands by reason of formal board delegations or through practises which have evolved over time. However, they would be caught by this requirement and would therefore be obliged to publicly disclose their remuneration.
12. The NQLC notes that while CATSI Act corporations have a higher than usual degree of transparency as compared to companies incorporated under the *Corporations Act* they are nonetheless not public companies.

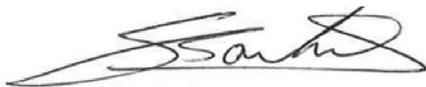
13. Accordingly, the NQLC submits that this proposal be amended to allow for a corporation to apply for an exemption to the operation of this rule to permit salaries of key management personnel to be reported as part of a consolidated figure.

**Implementing changes to the CATSI Act**

14. The NQLC submits that ORIC is not presently funded to adequately meet existing its obligations under the CATSI Act.
15. As the number of native title claims are determined we will see a corresponding increase in the number of RNTBCs. In addition to discharging their usual functions as PBCs, these entities will assume obligations in relation to the:
- (a) management of land;
  - (b) claims for compensation;
  - (c) negotiation of compensation agreements;
  - (d) management of compensation amounts; and
  - (e) economic development activities.
16. These developments will see RTNBCs move into a more sophisticated operating environment characterised by subsidiaries, joint ventures, and the attendant risks of external administration. As such, more than ordinary compliance activities will be required of ORIC.
17. Accordingly, NQLC submits that additional resourcing is required to support ORIC discharge its statutory duties under the CATSI Act.

If you wish to discuss any aspect of this submission, please don't hesitate to contact Philippe Savidis, PBC Support Unit Coordinator by phone on (07) 4042 7000 or email [pbcsupport@nqlc.com.au](mailto:pbcsupport@nqlc.com.au).

Yours sincerely



**Sam Backo**  
**Chair, North Queensland Land Council NTRBAC (ICN 1996)**