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| CATSI ACT 2006 |
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| 01/10/2020 | Denise Colbung Report  |

CATSI ACT 2006

REVIEW

In retrospect to CATSI Act 2006 (Implemented 1st July 2007) and Native Title Act 1993 Commonwealth legislative laws.

To highlight some of the topics and discussions surrounding the Phase 2 CATSI Act Review Consultation. I have had sufficient amount of time to examining some of the review feedback provided and would like to add value from a ‘human creation’ perspective, that may or may not shed some light on highlighted issues raised. To make changes we will first need to make necessary changes to the Racial Discrimination Act 1975, Native Title Act 1993, and Heritage Act 2018 (WA) and Commonwealth. To support our CATSIC ACT 2006. If we are to review and change one, we must review and change the others. To fall in line with the United Nations for International Human Rights (Australia) preambles.

1.6: Racial Discrimination Act 1975

The Preamble to the CATSI Act 1975 states in paragraph 4.

Special measures for the advancement of protection of Aboriginal and Torres Strait Islander peoples.

Feedback:

As a First Nations people the CATSI Act nor the Racial Discrimation Act 1975. Does not give support to First Nations people whom still practice ‘Aboriginal Customary Lore’ and timelines when our men and women go away for ‘Business’, it mentions “Sorry Business” but not the former. *(Under 2.3 Article 23 of the United Nations Declaration of the Rights of Indigenous Peoples stated that in 2.3 “Sorry Business” – CATSI ACT 2006).*

I would like to address this and bring attention to partners and their families that are living in this space, today. Common General Rule of thumb under current standing PBC and Rule Books under CATSI Act legislations. The partner and immediate family unit, this can mean a 1st wife, 2nd wife, 3rd and many more as we go down the line. In reflection to our *‘tjukkurpa’* desert people’s law, living in remote areas of Australia. As in-laws they are not required by “Aboriginal Customary Lore’ to participate or attend these cultural formalities and it is ‘taboo’ to do so. I have no quarrel with that and do not intent to speak much more into these mandatory obligation requirements. So, they are not fully covered financially by any legislative law or legal system in which these Rule Books or PBC operate. Only the person attending these ‘traditional ceremonies’ do.

My quarrel is with those, that are left behind. Some of these ‘business’ timelines can go way beyond 1 – 3months, two to three times annually and we would need a subject matter expert to meet and identify to target specifics.

Under current CATSI Act there is no obligations to support this, neither is there no ‘human creation’ to support these matters financially under CATSI, Native Title, Racial Discrimation or Heritage, or for that matter Social Security Law.

It is those people who are left behind to fend financial for themselves and do not get any assistance under CATSI Act and Prescribed Body Corporates – Rule Books. Momentarily which only defend and financial support the ‘person/individual’, partner/s who are attending these ‘traditional lore’ ceremonies under CATSI ‘Culture and Heritage’ Trust accounts.

This practice has been going on for quite some time now since I became involved with Aboriginal Affairs back in 1985 when I worked for Department of Aboriginal Affairs, Kalgoorlie and later with Aboriginal & Torres Strait Islander Commission, Department of Education, Department of Housing, Community Development Employment Programs, Department of Human Resources (Centrelink, National Indigenous Call Centre) and I spoke about it at our National Conferences at Palmerston for Indigenous Call Centre back in 2005 with Canberra policy makers.

This is an ongoing problem that needs to be analyzed specifically in relation to financing, reporting and acceptance of our ‘cultural continuum’ that has lasted for thousands of years since time immorial. Since it is becoming more increasingly impacting on our Aboriginal and Torres Strait Islander communities throughout Australia.

So, the Native Title Act 1993 will need to be review specifically to fall parallel and compliment all the others mentioned.

## Case Study

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| This past summer, 2019/2020. I had a discussion with my young niece and her five children living in the Far West Coast, South Australia during ‘Lore Time’ - Men’s Business. As her partner was a new entry to be a recruit ‘Special Boy’. He was fully supported by the “Culture and Heritage’ trust, under Native Title - PBC. As he would be aware for what was expectedly away for one month. However, this was prolonged, and he was away from for nearly two months. As he had to travel onto other areas from SA to NT and WA. He was not covered by Cultural Leave, under Personal /Sick Leave as he had limited leave entitlements. During this period, he went away from his home base in Port Lincoln to travel to the Maralinga Lands, a couple of weeks before Christmas. My niece was not employed at that point of time. She was a Mother of her five children. This was a very distressing and emotional time for her and was fully supported and reliant on others and immediate family members to seek financial support. During the Christmas and New Year holiday period everything is closed for two weeks and after New Year’s jobs are extremely hard to come by. She struggled for this one-month period financially and this happens several times annually. This is just one story in a pool of thousands. This has been continuous story for as long as I can remember with our peoples still practicing ‘traditional lore’ in remote and urban areas of Australia. As metropolitan peoples also are inclusive.In the Social Security Guide, it does not recognize this situation for Crisis Payment?But would be supportive and beneficial if it were inclusive? **1.2.6.30 Crisis payment (CrP) – description clearly cited.**What is [CrP](https://guides.dss.gov.au/guide-social-security-law/acronyms%22%20%5Cl%20%22crp%22%20%5Co%20%22Crisis%20payment)?CrP provides immediate financial assistance to a person who is eligible for a social security pension or benefit, who is in severe financial hardship and who:is forced to leave their home and establish a new home due to an extreme circumstance, such as domestic and family violence or house fire, oris remaining in their home after the removal of a family member due to domestic or family violence, oris released from prison or psychiatric confinement, as a result of being charged with committing an offence, after being imprisoned for 14 days or more, orentered Australia for the first time on a qualifying humanitarian visa on or after 1 January 2008, or because of a national health crisis, is required to be in quarantine or self-isolate, or care for another person who is required to be in quarantine or self-isolate.There is also a, **The Farm Household Support Amendment (Relief Measures) Bill (No. 1) 2020****Farm Household Allowance also cited.**The FHA is an income support payment which assists eligible farmers and their partners who are experiencing financial hardship. It is paid at the same rate as the social security payment Newstart Allowance (or the same rate as Youth Allowance if the recipient is aged under 22 years).[[4]](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1920a/20bd090%22%20%5Cl%20%22_ftn4) The payment is time-limited: farmers can only receive the payment for up to four cumulative years in every ten year period starting from 1 July 2014. From 16 December 2019, farmers and their partners who reach their four year maximum period by 1 July 2020 are eligible for a one-off lump sum ‘relief payment’—the payment is worth $7,500 for a single recipient or $6,500 for a member of a couple ($13,000 for a couple combined). FHA recipients are granted a Health Care Card which enables access to discounted medicines under the Pharmaceutical Benefits Scheme and other concessions. Recipients can also receive a $10,000 activity supplement to pay for approved activities including training or professional advice (and associated travel and accommodation). Recipients required to have a Farm Financial Assessment can receive a separate supplement worth up to $1,500 to assist with the cost of the assessment. A temporary supplement, the FHA Supplement, was payable to FHA recipients during one or both supplement payments periods: 1 September 2018 to 1 December 2018 and 2 December 2018 to 1 June 2019. The supplement amount for each period was $3,000 each for members of a couple and $3,600 for singles. The FHA was introduced in 2014 via the FHS Act and replaced a number of financial supports offered to farmers during times of drought, in particular, the Exceptional Circumstances Relief Payment. The previous Exceptional Circumstances arrangements had been found to be inequitable and ineffective as they could result in farm businesses being less responsive to drought conditions. The FHA was designed to support farmers in financial difficulty regardless of the specific cause or whether they were located within a specific drought declared area.In reflection of all the financial support allowances and relief support in all honesty an amendment to and Act or a BILL should be secured to support our First Nations people of Australia during their times of crisis and hardship. Lore time is comparable, but our people do not receive such support via Social Security avenues.  |

Comparably, I am connected and current standing member of three (3) Native Title Representative bodies and it is a nightmare even be involved.

* Central Desert Land Council for Yilka Tjalintji peoples connected ‘Western Desert Bloc’ via Cosmo Newberry.
* South West Land & Sea Council for South West Boojarah and Wagyl Kiap and six (6) ILUA’s we are still awaiting finalisation of the High Court decision to be handed down for the Mingli McGlade Case.
* Native Title Services, Goldfields to which I have ‘no faith and vote of confidence in’

So, inevitably our Corporate Committee and Working Group have taken upon ourselves to commission Independent Lawyers, Sophie Kilpatrick at Cross Country Lawyers and Independent Anthropologist, Robin Stevens to register our Native Title claim application for Central Eastern *‘Karrada’* (meaning East). We had our first ‘Authorisation Meeting’ last month in Kalgoorlie. To get to this stage after ‘deregistration’ in 2013. It has been a long and arduous journey for my peoples in the Goldfields and for that matter many other ‘native title holders’ Australia wide.

* After the notification in 2007 as speculated the Howard Government passed the Native Title Amendment (Technical Amendments) Act 2007 to improve the demands placed upon by the performance of NT application systems. This point was aimed to make the NT process more effective and efficient, to speed up determinations where upon NT ‘exists’ to the 580 claims that was registered, but not yet determined.
* The NT Act 1993 was further amended by Rudd Government by the NT Amendment Act 2009. Which allowed the Federal Court of Australia to determine whom may mediate a claim, the court itself or the NT Tribunal or otherwise.

In consideration this journey for my Goldfields – Wongatha peoples has taken well over 27 years since these amendments and changes have come about with only two (2) claim being determined over a six (6) year period and over $80+ million dollars of tax payers money being wasted and still we have a long way to go.

With the reintroduction of the new Registered Body Corporate, Goldfields. We are still at the mercy of these Registered Body Corporates under the Native Title Act 1993 and has left a ‘bad mistrust and taste’ in everyone’s mouth concerned, with a pile up of new claims going through to the Federal Courts at a rapid pace that no one can control and majority of our peoples going outside to Independent Legal Teams.

In John Howards 10 Point Plan were changes was made to the NT Act 1993, to identify support it speculated the following.

1. *The National Native Title Tribunal holds absolute authority over claims for native title.*
2. *State governments are empowered to extinguish Native Title over crown lands for matters of "national interest".*
3. *Lands providing public amenities are exempt from Native Title claims.*
4. *Mining and pastoral leases are allowed to co-exist with Native Title.*
5. *The National Native Title Tribunal can create access to traditional lands rather than granting full Native Title.*
6. *A registration test is imposed on all claimants.*
7. *The right to claim Native Title in or around urban areas is removed.*
8. *Government is permitted to manage land, water, and air issues in any site.*
9. *Very strict time limits will be placed on all claims.*
10. [*Indigenous Land Use Agreements*](https://en.wikipedia.org/wiki/Indigenous_Land_Use_Agreement)*will be created to promote co-existence.*

Overlooking these three points. I would like to draw your attention to,

* *Point 6: A registration test is imposed on all claimants.*

The timelines today way to heavy on our NT Applications and Determinations and the system application developed by Howard Government back in 2007 (NT Technical Amendments) Act 2007 has posed a threat in the efficiency and effectiveness of our NT Applications and Determinations in the Federal Court and far outdated. Where some of our Determinations are taking 27 to 28 years to be approved. (Even before COVID19 came into play!). We are fully aware of the Australia Legal Systems and the mandatory requirements undertaken to these application processes. However, in this date and time of ‘technical application systems’ and Commonwealth Courts even these process are far too long and we are losing ‘apical ancestors’ and Elders at far greater loss with every passing year to assert our Native Title rights.

* *Point 7: The right to claim Native Title in or around urban areas is removed.*

In all comparitability this is discriminatory within itself and goes against the Racial Discrimination Act 1997. Where our Native Title holders and traditional owners have ‘human creation’ and connections to land, sea, and waters. It is a ‘spiritual connection’ that embodies our existence, our song lines and our culture and heritage. Even though we live in an urban environment does not mean we have lost our ‘spiritual connection to our elders, dance, song-lines and traditions / customs’ and the things that ‘tie and bind’ and make existence today possible.

*Point 9: Very strict time limit will be placed on all claims.*

Please refer to point 6 response. Where upon Native Title Determination was handed down to our Wongatha, Central Eastern peoples by Goldfields Land and Sea Council only to be reversed and ‘Deregistered’ in 2011 – 2013. It has taken up to this day, almost seven (7) years to re-apply again. A whole generation of our Elders have ‘passed’ away in this timeframe *(As Life Expectancy of Aboriginal peoples are far shorter than Non-Aboriginal peoples in Australia)* and I have lost during this timeline in my family alone five (5) of my Elders due to terminal illness – Cancer and Chronic Illness.

This brings me back to my first point of not being recognized under any Act in Commonwealth stated in the Racial Discrimation Act 1975 where upon states exclusion:

**Under item 9**

**Racial discrimination to be unlawful**

*(1)  It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.*

*(1A) Where:*

*(a)  a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and*

*(b)  the other person does not or cannot comply with the term, condition, or requirement; and*

***(c)  the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life;***

***the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person’s race, colour, descent or national or ethnic origin.***

*(2)  A reference in this section to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes any right of a kind referred to in Article 5 of the Convention.*

*(3)  This section does not apply in respect of the employment, or an application for the employment, of a person on a ship or aircraft (not being an Australian ship or aircraft) if that person was engaged, or applied, for that employment outside Australia.*

*(4)  The succeeding provisions of this Part do not limit the generality of this section*.

**Under Item 10**

**Rights to equality before the law**

             ***(1)  If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first‑mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin****.*

*(2)  A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.*

*(3)  Where a law contains a provision that:*

*(a)  authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or*

*(b)  prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander.*

*not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person. And,*

**Under Item 17**

 **Unlawful to incite doing of unlawful acts**

                   *It is unlawful for a person:*

*(a)  to incite the doing of an act that is unlawful by reason of a provision of this Part; or*

*(b)  to assist or promote whether by financial assistance or otherwise the doing of such an act.*

**Therefore, we come to the table as a collective and discuss how we can approach the compliance around financial support to perform our traditional practises**

**Under** **20**

**Functions of Commission**

*The following functions are hereby conferred on the Commission:*

*(b)  to promote an understanding and acceptance of, and compliance with, this Act;*

*(c)  to develop, conduct and foster research and educational programs and other programs for the purpose of:*

***(i)  combating racial discrimination and prejudices that lead to racial discrimination.***

***(ii)  promoting understanding, tolerance, and friendship among racial and ethnic groups; and***

*(iii)  propagating the purposes and principles of the Convention;*

*(d)  to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of infringements of Part II or Part IIA;*

*(e)  where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve racial discrimination issues.*

*(f)  to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner.*

*Note:          For the provisions about inquiries into complaints of discrimination and conciliation of those complaints: see Part IIB of the Australian Human Rights Commission Act 1986.*

**Conclusion**

In relation to the current CATSI Act in compliance with the Racial Discrimination Act. It is an unlawful act that does not notably identify or recognise the ‘human creation / human rights’ under the International Human Rights and the Rights of Indigenous Australians (Aboriginal and Torres Strait Islander) preambles of our Aboriginal Customary Lore. To fully support amendments to legislative laws to Department of Human Services, Native Title Act and CATSI Act the recognition and identity of a “Relief Payment”, just like many other/s in times of financial hardship payment and relief support to be implemented over the forthcoming years. It is far outweighed, well overdue, and well deserved in our ever-fast technology changing world. Like many other implementations and recommendations. One can only hope “It will be achievable”