CENTRAL LAND COUNCIL

Submission to the Comprehensive Review of the CATSI Act 2019-20

1 October 2020

Contents

Abbreviations and acronyms used in this submission

ALRA	*Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
CATSI Act	*Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)
CATSI Act Review	Comprehensive Review of the CATSI Act 2019-20
CLA	Community Living Area
CLC	Central Land Council (ABN: 71 679 619 393)
Draft Report	CATSI Act Review, Draft Report dated 31 July 2020
ILUA	Indigenous Land Use Agreement
NIAA	National Indigenous Australians Agency
NTA	*Native Title Act 1993* (Cth)
ORIC	Office of the Registrar of Indigenous Corporations
PBC Regulations	*Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth)
RNTBC	Registered Native Title Body Corporate (also called a prescribed body corporate) that holds native title in trust or as agent for the common law holders once a native title determination has been made under the NTA
Registrar	Registrar of Indigenous Corporations

Introduction

1. The Central Land Council is grateful for the opportunity to comment on the CATSI Act Review.

2. The CLC represents Aboriginal people in Central Australia and supports them to manage their land, make the most of the opportunities it offers and promote their rights. The CLC is a statutory corporation established by the ALRA and also is a native title representative body under the NTA. The CLC is responsible for an area of almost 777, 000 square kilometres.

3. Since its establishment at a meeting of Central Australian Aboriginal communities in 1975, and through its elected representative Council of 90 Aboriginal community delegates, the CLC has represented the aspirations and interests of approximately 17,500 traditional Aboriginal landowners and other Aboriginal people resident in its region, on a wide range of land-based and socio-political issues.

4. In carrying out its functions under the ALRA and the NTA, the CLC provides assistance to over one hundred corporations registered under the CATSI Act. The majority of these corporations are largely dependent on the CLC's assistance for their continuing operation, due to a lack of financial resources. They fall generally into three categories.

5. **Prescribed bodies corporate**: The CLC provides assistance to 35 RNTBCs or intended future RNTBCs that manage and protect native title rights on behalf of native title holders in the CLC's region. Only two RNTBCs in the CLC's region have sufficient resources to employ staff; the remainder are all dependent on CLC assistance provided through PBC basic support funding from NIAA.

6. **Community Living Areas**: These corporations hold small parcels of land for the purposes of Aboriginal communities or outstations. The land is generally inalienable, and most CLA corporations have no income or assets other than the land on which their members live. These corporations are essentially vehicles for holding the land for the relevant Aboriginal community, and conduct no activities other than basic CATSI Act compliance with the assistance of the CLC. Other CLA corporations, again with the assistance of the CLC, engage in leasing to service providers on their land, and direct the rent from leasing towards projects to develop their communities. All of the 68 CLA corporations that the CLC assists have no employees or administrative resources, and are entirely dependent on the CLC to operate. The CLC provides this assistance to CLA corporations for free.

7. **Royalty corporations**: These are corporations established solely for the purposes of managing and distributing land use payments for the benefit of particular groups of Aboriginal landowners or native title holders. The majority of these corporations deal with money arising from the ALRA (which requires corporations of this kind to be established), but some also deal with native title benefits. These corporations generally have no business to carry out during periods when land use payments are suspended or delayed. Most royalty corporations in the CLC's region engage the CLC to provide services on a partial cost-recovery basis. CLC currently assists 31 royalty corporations in this way.

8. The CLC enjoys a constructive relationship with ORIC, and both organisations have a common goal, in seeking to see the many Aboriginal corporations in the CLC's region flourish. The CLC makes an important contribution to this goal through the governance support we provide, and we hope to see a continuing recognition in Government policy and resourcing of the value that the CLC brings to the administration of the CATSI Act.

9. The CLC's submission is focused on the aspects of the CATSI Act Review that are relevant to the experiences of the corporations that we provide assistance to.

Human rights of Indigenous peoples

10. As a special measure for the benefit of Aboriginal people, any review of the CATSI Act should be guided by the statements of human rights contained in the United Nations Declaration on the Rights of Indigenous Peoples, and particularly:

    Article 3
    Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

    Article 4
    Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 19
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The CATSI Act should be improved, not repealed[1]

11. The Central Land Council is supportive of the ongoing operation of the CATSI Act. The CATSI Act is directed to the legitimate need for a form of corporation that takes account of the unique cultural and social situation of Indigenous people in Australia (including their possession of native title rights and interests). The success of so many Aboriginal Corporations, such as Western Desert Nganampa Walytja Palyantjaku Tjutaku Aboriginal Corporation (Purple House, which delivers dialysis services in a culturally-appropriate manner across Central Australia) to name only one, in delivering economic and social benefits to Aboriginal people in Central Australia is testament to the value of an effective legal vehicle for collective Aboriginal action.

12. However, there are areas in which the operation and implementation of the CATSI Act could be significantly improved, not all of which are addressed in the Draft Report.

13. In particular, the CATSI Act should be radically de-criminalised, a new zero-income class of corporation should be recognised, and ORIC should be funded to increase its operational engagement with remote and very remote areas.

14. The CLC supports the National Native Title Council's proposal that there should be a separate division of the CATSI Act dealing specifically with RNTBCs. This would help to simplify compliance with the significant obligations RNTBCs have under the CATSI Act and NTA.

15. The CLC does not support the reforms proposed in the Draft Report in relation to native title benefits, in the main. In our view those reforms will be unworkable, will unnecessarily duplicate reporting, and are likely to be counter-productive in some circumstances.

16. The Registrar and ORIC should be provided additional resources for capacity building activities to be held in remote and very remote locations such as Yuendumu, Alpurrurulam and Lajamanu, where there is significant Aboriginal corporation activity.[2] While capacity building from Alice Springs is appreciated, it would be more effective,

[1] Addressing Draft Report [1.8] and Chapter 2.
[2] See Draft Report [2.45].

and significantly reduce barriers to director participation, if training were delivered in directors' home communities.

17. The CLC is also of the view that ORIC should receive and devote additional resources to supporting the boards of remote and very remote corporations to manage their corporations. Where corporations request such assistance, it should be treated by ORIC as an indication that potential issues may be developing in a corporation, and it should be a high priority for ORIC to respond. In doing so, there should be no prioritisation of corporations receiving Commonwealth funds over other kinds of Indigenous corporations. The CATSI Act is intended to operate as a special measure for the benefit of all Indigenous people who choose to establish corporations; it is not a measure solely for the protection of Commonwealth investments.

18. In particular, ORIC should provide support, if requested, for boards to engage in key management activities, such as CEO recruitment and performance management, and establishing financial management frameworks. In some circumstances ORIC could make a significant contribution by empowering boards to manage CEOs, where there is an educational or other power imbalance causing issues. Early action to either identify breaches of the CATSI Act, or to take action to restrain negligent or otherwise inappropriate behaviour from CEOs, could be crucial to the future success of these corporations.

Proposals supported without any particular comment sought to be made

19. The CLC considers that a number of proposals in the Draft Report are in the interests of all stakeholders to Aboriginal corporations in Central Australia. The CLC supports those proposals, which are listed in the following table, without wishing to say anything specifically about them:

Reference in Draft Report	Proposal summary
3.11	Enforceable undertakings and associated examinations
4.20	Enabling wholly-owned subsidiaries and joint ventures
4.24	Reporting about corporate structure and key management personnel
4.37, 4.41	Arrangements to permit less frequent AGMs for small corporations
5.38	Reporting on related party benefits
6.11	Registrar updating a person's details across multiple corporations
6.16-6.17	Finalisation of examinations
6.21	Definition of negotiable instruments
6.24	Changes to the titles of ORIC and the Registrar
7.34	RNTBC model rule book
9.40	Criteria for voluntary deregistration

20. In relation to aspects of the Draft Report not addressed in this submission, the CLC makes no comment for or against those matters.

De-criminalisation of the CATSI Act[3]

21. The CLC calls for the de-criminalisation of the CATSI Act.

Criminal provisions are overused in the CATSI Act

22. The Draft Report recognises, at [3.4], that the current provisions of the CATSI Act create heavy-handed responses to minor regulatory breaches .However, while the Draft Report spends a great deal of time on the creation of new enforcement and regulatory options for the Registrar under the CATSI Act, it neglects discussion of the underlying issue: the excessive use of criminal provisions throughout the CATSI Act. Any consideration of enforcement powers needs to begin with an understanding of the way criminal offences pervade the CATSI Act.

23. The CATSI Act creates at least 166 criminal offences that can be committed by either corporations or their officers. A large number of those offences relate to trivial matters of administrative compliance, such as not including a corporation's ICN on its common seal (s 42-25) or letterhead (s 85-15), not providing a copy of its rule book to a member within 7 days (s 72-5), neglecting to sign minutes of meetings (s 220-5) or not prominently displaying a corporation's name and ICN at every place open to the public where it carries on business (s 112-15). The penalties for some offences are also bolstered by civil penalty provisions (see s 386-1) which can involve fines of up to $200,000 for the officers involved.

24. To be clear, the CLC supports the use of civil and criminal penalties in the CATSI Act where necessary to protect the good governance of Indigenous corporations. There should be penalties for dishonesty, malfeasance and gross negligence. Directors should be subject to strict duties to act in the best interests of the corporation.

25. However, it is a plain fact of the landscape that many Aboriginal corporations in the CLC's region (particularly RNTBCs and CLA corporations) exist primarily to own and manage inalienable interests in land. These corporations generally have no income and no employees, which places all of the burden of administrative compliance on directors and any organisations that assist the directors. The Technical Review recognised the importance of reducing administrative burdens on small corporations (see Draft Report [1.20]).

26. The directors of these corporations live in remote and very remote locations. The CATSI Act's strict, writing-based administrative compliance regime is very foreign to their own cultural and relational forms of accountability. They often have many other governance responsibilities in their communities. They do not receive any remuneration for their involvement in these corporations. In the CLC's experience, directors of these corporations genuinely embrace their responsibilities to the relevant land and the Aboriginal communities with interests in it, but often struggle to meet ORIC requirements due to costs exceeding the corporation's resources, the challenges of

[3] Addressing Draft Report [1.30], [2.43], Chapter 3.

communicating and meeting across vast distances, and difficulties in comprehension of the CATSI Act's requirements.

27. To impose the constant threat of criminal liability on these directors and the corporations they steward, for every minor administrative issue, is an injustice. Their burden is felt disproportionately by poorer Indigenous corporations and directors, who would struggle to pay fines which might be regarded as small to a well-resourced organisation.

28. This potential criminal liability must be seen against the backdrop of Northern Territory and Australia-wide rates of incarceration and deaths in custody for Indigenous people. In 2016-17 in the Northern Territory, Aboriginal people made up 85% of community correction orders and 84% of the total daily average of people in custody, despite making up just 30% of the population. The 2016-17 estimated rate of imprisonment of Aboriginal adults in the Northern Territory was 2,844 persons per 100,000 Aboriginal compared to an estimated non-Aboriginal rate of imprisonment of 198 per 100,000.[4] A total of 67 Indigenous deaths in custody took place in the Northern Territory between 1991-92 and 2015-16 (80% of the NT total of 40 and 19% of the national total of 393). Across Australia and particularly in Western Australia, 'Aboriginal and Torres Strait Islander people are over-represented as fine recipients and are less likely than non-Indigenous people to pay a fine at the time of issue of the initial notice (attributed to financial capacity, itinerancy and literacy levels). Aboriginal and Torres Strait Islander people are consequently susceptible to escalating fine debt and fine enforcement measures.'[5]

29. It is critically important that the implementation of the CATSI Act does not result in potentially harmful criminal outcomes for Indigenous people, particularly where other regulatory measures would suffice.

Administrative solutions for administrative problems

30. Administrative issues should be rectified through administrative, not criminal processes. The CLC is greatly concerned that giving the Registrar a power to issue fines will result in many more corporations being fined than are currently prosecuted. The CLC does not support the Registrar being given this power unless it is coupled with the decriminalisation of the CATSI Act.

31. The CATSI Act should state explicitly that the Registrar's primary function is to support and educate corporations rather than to punish them. Further, any power to fine or initiate criminal proceedings should be subject to a legislative limitation that it only be exercised as a last resort and in cases of dishonesty, misconduct or where necessary to protect the interests of the corporation, or its members or creditors. The Registrar should be required take into account whether the fine would involve an undue financial

[4] https://www.aic.gov.au/sites/default/files/2020-05/sb17_indigenous_deaths_in_custody_-_25_years_since_the_rciadic_210219.pdf

[5] Legislative Assembly of New South Wales Committee on Law and Safety, Parliament of New South Wales, Driver Licence Disqualification Reform, Report 3/55 (2013) [3.68].

or administrative burden on the corporation, and to issue clear written guidelines on the circumstances in which any such power will be exercised.

32. Subject to the above, and to better support the CATSI Act and the operation of corporations, the CLC supports the Registrar having regulatory roles and powers suitable to making non-criminal interventions such as:

    - Compliance notices and "management letters" (see Draft Report [6.15]-[6.17]);
    - Requiring a corporation to respond to identified anomalies;
    - Attending general meetings to directly discuss issues;
    - Issuing warnings;
    - Accepting and enforcing enforceable undertakings; and
    - Making an administrative finding that a breach has occurred, with public notice of a finding (with reasons) made available on the Corporation's public documents on the ORIC website.

33. The details of any such powers should be the subject of more detailed consultation and debate than is possible in the context of the Draft Report.

34. ORIC should be better resourced to meet this expanded regulatory role, and should make an investment in internal communication. CLC has, at times, received letters threatening Court action from one arm of ORIC when another arm of ORIC has already granted an exemption in relation to the same issue.

35. The current overuse of criminal offences in the CATSI Act does nothing to protect corporations and their members and creditors. It sets the directors up to fail and has no place in a special measure for the advancement of Indigenous peoples.

New corporation size: "Caretaker corporation"[6]

36. The CLC supports the proposed adjustments to corporation size classifications in Table 4.1 of the Draft Report. However there should also be a fourth corporation size added to the CATSI Act. This corporation size is directed to corporations that, in Western terms, might be thought of as 'dormant', but in an Aboriginal cultural context are better understood as corporations tasked with the important role of maintaining continuity with the past, particularly in relation to land and culture.

37. The caretaker corporation size would only apply to corporations with both zero income and zero employees. It is not intended that any corporation with active service delivery functions would fall within this category, but we note that many RNTBCs would meet this definition.

[6] Addressing Draft Report [4.28]-[4.34], [7.40].

38. After receiving caretaker classification, a corporation would only be obliged to hold an AGM if:

- It has not yet held a general meeting;
- More than half of the directors have passed away or otherwise become ineligible to be directors;
- There has been a material change in the corporation's circumstances; or
- Any member requests that an AGM be held in that year.

39. The caretaker corporation would not be required to prepare or lodge reports in any year where an AGM is not required to be held; instead a majority of directors would need to sign a declaration every three years that none of the above circumstances applied to the corporation in the preceding three years.

40. Implement this proposal would lift a significant burden of unnecessary compliance for almost one hundred corporations in the CLC's region alone. It would allow these corporations to serve their function of stewarding land for the benefit of Aboriginal people while retaining protections if commercial activity should be proposed to take place on that land in the future.

RNTBCs and native title monies[7]

Disputes in RNTBCs

41. The Draft Report notes that RNTBCs are the subject of a large number of complaints to ORIC. We caution against assuming that the greater number of complaints necessarily means that there are problems with the governance of RNTBCs or their management of money.

42. Decisions about land and money are high stakes decisions. They are linked to people's identity, family history, and sense of self. They often involve very difficult problems of distributing scarce resources amongst people with a great burden of urgent needs to meet. Corporations required to confront these issues are, of their nature, more likely to cause and enflame disputes than corporations whose business does not inherently touch on people's individual interests (such as, for example, the operation of a community-controlled health service).

43. We doubt the assumption in this Chapter that greater reporting obligations will reduce the level of complaints. While acknowledging that some complaints are well-founded, it is very common in this context that people aggrieved by the substance of a decision will make complaints about the process by which the decision was reached. Complaints which relate to an underlying dispute about land or status cannot be solved by more onerous governance or reporting obligations. Some such disputes can only ever be managed rather than resolved. Changes to regulation should be wary of inadvertently increasing the burdens of managing such disputes on corporations and their members.

[7] Addressing Draft Report Chapter 7 [7.7]-[7.26].

44. For better or worse, the native title system has established RNTBCs as central to the operation of the native title system in determined areas. Importantly, RNTBCs do not only provide a single interface between common law holders and those who want to make use of those holders' country. RNTBCs are also the place where a native title group's traditional laws and customs, in all their complexity, are transformed into legally-recognisable decisions. Each native title group ought to have as much flexibility as possible to develop a governance arrangement that is suitable for their individual cultural, economic and political circumstances. Accordingly, the guiding principles for policy responses to disputes in RNTBCs ought to be:

    - Respecting RNTBCs as a manifestation of self-determination, and therefore emphasising solutions that emanate from within native title groups rather than external regulation or arbitral processes;
    - Recognising the need to adequately resource and support RNTBCs;
    - Maximising flexibility of RNTBC governance options; and
    - Ensuring that dispute management takes account of all aspects of disputes, including those aspects that do not directly touch on Western regulatory issues.

Native title benefits and RNTBCs

45. Another fundamental misconception in this Chapter of the Draft Report is the assumption that there is an ongoing link between an RNTBC and benefits derived from the native title rights and interests that the RNTBC is agent or trustee for. It is not at all uncommon for an RNTBC to arrange for benefits to be held separately from the RNTBC. So long as the affected common law holders give their informed consent to these arrangements, there is nothing inherently wrong with this.

46. Examples of arrangements that involve the RNTBC divorcing itself from management of benefits include:

    - Where benefits are paid to a corporation whose members are only the **affected** common law holders, as opposed to all of the native title holders recognised in a particular native title determination;
    - Where benefits are paid to a native title representative body on trust for the affected common law holders, to be administered on their instructions;
    - Where benefits are paid to a trust for particular purposes, such as supporting the education of the affected common law holders, or paying for funerals;
    - Where benefits are paid to a corporation established to achieve something that is not within the expertise or capacity of the RNTBC (for example, fostering business development among affected native title holders); and
    - Perhaps most obviously, where payments are made to individual native title holders.

    These examples are all fairly self-evidently reasonable choices that RNTBCs might make.

47. Regulators should take great care in attempting to unpick governance and financial arrangements that have already been entered into. The RNTBC may be legally obliged to implement a particular arrangement by a given ILUA or future act agreement. Once implemented, the RNTBC will, in many circumstances, have no legal capacity to unwind

those arrangements. It is also by no means inevitable that the recipients of benefits under these arrangements will be under the control of the RNTBC.

48. The CLC's view is that benefits management arrangements should be subject to the specific reporting and accountability mechanisms that exist for the particular form of ownership. If native title benefits are held by another corporation, that corporation will have reporting obligations. The same applies if it is a registered charity. Charitable trusts are also subject to oversight.

49. In relation to benefits still held by an RNTBC, addressed in Draft Report [7.22], the CLC is open to a proposal to include decisions about native title benefits within the definition of a 'native title decision'; however consideration should be given to the extent to which this is necessary given that the PBC Regulations already state that money held in trust is only to be invested or otherwise applied as directed by the common law holders.[8] Any amendments would need to make clear that the affected common law holders could give high-level instructions, and then not every subsequent decision would also be required to be a native title decision (eg it should not be a native title decision to select an investment portfolio for money that the common law holders have already decided to invest). In the CLC's experience, decisions about the high-level benefits management arrangements are commonly made at the same time as the relevant native title decision in any event.

Native title decision regulations

50. As stated in our submission to the 2017 Technical Review, the CLC does not consider ORIC to be an appropriate regulator in relation to native title decisions made under regulation 8 of the PBC Regulations.

51. There are numerous ways for a RNTBC's compliance with regulation 8 to be called into question. It may be argued that a RNTBC has consulted with native title holders other than those who are affected by the decision. The consent of the native title holders may not have been given in accordance with the traditional laws and customs of the native title holders. There may be a dispute as to whether there is a traditional decision making process as referred to in sub-regulation 8(3). There may be an argument as to whether a decision-making process was agreed to by the common law holders in accordance with regulation 8(4), or where there was such a process, argument as to whether this process had been followed.

52. All of these potential areas of dispute can raise complex factual issues, particularly questions about the identity of the common law holders affected by the decision, and traditional decision making processes. The CLC is not confident that the Registrar would have the capacity, in terms of resources and expertise, to make determinations on these complex issues.

[8] PBC Regulations regs 6(1)(c) and 7(1)(d).

53. Funding for this expanded regulatory role could also be much better spent on resourcing RNTBCs, particularly where there is no existing agency that is clearly well-suited for taking on the role.

54. In the CLC's view, the first response to concerns about compliance with the PBC Regulations should be a greater focus on capacity building of RNTBCs, in partnership with native title representative bodies and service providers. The Draft Report appears to assume, without presenting any evidence, that the need for an administrative regulator exists. That view is not supported by the experience in the CLC's region.

Considerations for contacting members and holding meetings in remote and very remote areas[9]

55. While there is an increasing availability and use of mobile phones in remote and very remote Aboriginal communities, any policy design needs to have some understanding of the complexities of mobile phone use in remote Aboriginal communities. It simply cannot be assumed that a given person is contactable on a given mobile phone number for any consistent period of time.

56. Email and mobile phone coverage is by no means a given across Aboriginal communities in Central Australia. Coverage is patchy at best, and access is almost non-existent in smaller homelands. It is common knowledge that Aboriginal people have a high rate of turnover of mobile phones which are often shared between family members. Anecdotally this can accrue to up to 25 mobile numbers per individual user.[10]

57. Bearing these issues in mind, the CATSI Act should provide options for corporations in recording details necessary for effective communication with members, which will likely vary depending on the particular member. The CLC does not support the proposal in Draft Report [4.7] to require corporations to record alternative contact details. Instead corporations should be permitted to do so and, if recorded, to use them to contact members. Similarly, corporations should only be required to provide contact details to ORIC if it has them recorded (see Draft Report [6.10]).

58. The CLC supports the CATSI Act being amended to provide greater flexibility in notifying members of meetings (see Draft Report [4.8]). Given the issues with postal services in remote communities, the CLC's long experience has been that community noticeboards are a highly effective way of notifying the residents of a particular community. The CLC is also seeing a growing response to social media notifications of meetings. Any widened rules about notification should be contained in a corporation's rule book, not dealt with solely through resolutions at general meetings.

59. The CLC supports the National Native Title Council's submission (in relation to Draft Report [4.9]-[4.10]) that the personal information of members should be kept confidential to the corporation except in limited and exceptional circumstances. Within the corporation's internal arrangements, in the CLC's view requests for redaction of

[9] Addressing Draft Report [4.5]-[4.17], [6.10]-[6.11].

[10] Pers comm, Nick Danks, Telstra Regional Manger Central Australia, January 2019.

members' details should be submitted to, and decided by, the corporation's contact person or secretary, as they will have an understanding of the local circumstances of the request. Redaction requests should be able to be made by the individual concerned, but also the police.

60. Where the Registrar seeks to exercise coercive powers under the CATSI Act (Draft Report [6.5]), in the CLC's view it is appropriate that notices should be served in person or by post, unless the person acknowledges receipt of the notice by electronic means.

Membership applications

61. Any proposed amendments requiring decisions in relation to membership applications (Draft Report [4.11]-[4.14]) should be the subject of further consultation regarding the details of the proposal. Some matters that ought to be taken into account in any proposal are that many corporations do not have sufficient business or resources to warrant quarterly directors' meetings, so if there is a requirement to consider membership applications it should be linked to deciding the application within a certain number of meetings, not within a given timeframe.

62. There should also be acknowledgement that it is not always an easy thing, particularly for RNTBCs, to determine whether a person is eligible to be a member. This is especially so if the membership application contains minimal information. Directors might agree that person X and her family are native title holders, but may not be able to readily identify or verify a membership application from person X's niece's granddaughter who lives in a different State.

63. Also, it is not uncommon for membership applications to be received in large spikes, when interest in a particular corporation rises. Note that the CLC is not here referring to deliberate membership stacking, simply that many people do not bother to become members of a corporation until there is some compelling reason to do so.

64. For these reasons, while the CLC supports membership decisions being made in a timely manner and in good faith, any imposition of timeframes for the consideration of membership applications should take into account:

- the possibility that further information might need to be sought from the applicant (or others) before a decision can be made; and

- the possibility that it may simply not be feasible for directors to meet for lengthy periods of time to deal solely with a large influx of membership applications. The corporation's core business should not be neglected to meet unnecessarily inflexible timeframes.

65. The proposal (Draft Report [4.12]-[4.14]) to use the calling of general meetings as effectively an appeal process in relation to membership decisions would involve a significant cost impost on corporations and members, and is open to abuse. Many meetings in the CLC regions require impoverished members to travel many hundreds of kilometres, usually at their own expense. The CLC does not support the proposal.

Flexibility in cancelling or postponing meetings due to cultural needs

66. CLC supports the proposed introduction of flexible arrangements for cancelling or postponing meetings and reporting due to genuine cultural needs (Draft Report [4.39]-[4.40], [4.45]-[4.46]).

67. However, the proposed maximum 3 month extension period, and requirement that the request not be made three years in a row, are arbitrary. Aboriginal communities cannot control when their members pass away, and the timing of some ceremonial practices is prescribed by Aboriginal law. Where there are genuine cultural imperatives causing a delay in corporate compliance, the CATSI Act should accommodate. The amendments could require that the Registrar be satisfied that any request is made for genuine reasons.

68. The CATSI Act and model rule books should also be much more flexible in allowing meetings to be postponed or extended for short periods of time to accommodate the genuine logistical exigencies of meetings in remote settings. Where participants have to travel extremely long distances to meet, it is not practical to reschedule meetings for the following week, requiring everyone to return home and then travel again. Sometimes key participants arrive late despite their best efforts, due to road conditions or car troubles. Heat or rain can limit the available hours in a day for meetings – it is the norm for meetings in central Australia to be held outdoors. It is also very common for meeting participants to wish to consider significant decisions overnight. It is entirely reasonable from the perspective of members and directors on the ground to adapt to these circumstances as they arise, and the CATSI Act should not raise unnecessary barriers to doing so.

Virtual meetings

69. Virtual meetings can be useful, but it is important to appreciate that they have serious limitations as well.

70. Effective videoconferencing relies on having high-speed internet, quality audio-visual equipment located in a suitable meeting space, and a meeting participant (or external assistant) with the skills to operate the technology. In many remote locations, one or more of these prerequisites are simply not available.

71. Even at the best of times, conference calls involving multiple groups of people in different locations can be challenging. These difficulties are multiplied in remote settings, where the meeting participants may be unfamiliar with the technology involved, and be uncomfortable being asked to have a dialogue with people who are not present. Poor audio quality can magnify language barriers. Often cultural obligations and norms about how people physically locate themselves in meetings can mean that not everyone in a videoconferencing space is able to hear and/or be heard.

72. The CLC supports the rules allowing technology platforms described in Draft Report [4.42], but says that they do not detract from the need to also provide for greater flexibility in postponing and cancelling meetings when required by genuine cultural needs or logistical difficulties, as discussed in the preceding section of this submission.

For example, during sorry business it would be just as inappropriate to hold a virtual meeting as a face-to-face one.

Internal governance arrangements

73. CLC's view is that it would be helpful if rule books were required to include all relevant replaceable rules, as described in Draft Report [4.53]. However, serious consideration would need to be given to transitional arrangements, as this could potentially require the amendment of most Indigenous corporations' rule books nationwide. The CLC's preliminary view is that this requirement should only take effect for existing corporations at the point they next seek to amend their rule book.

74. The CLC supports the publication of de-identified salary bands for senior officers, cross-referenced against corporation revenue bands, and considers that this would be a useful governance tool for larger corporations.[11] Appropriate arrangements for the confidential collection of the underlying data require further consultation. The CLC does not otherwise support the proposals around mandatory public reporting of remuneration. These are matters that can be dealt with by the members and directors of individual corporations.

75. CLC does not support proposals that make one-size-fits-all assumptions about the best governance arrangements for Indigenous corporations. This should be a matter for the members of each corporation, not something that is imposed on a national basis. The fundamental purpose of the CATSI Act is to allow Indigenous people to enter into voluntary incorporated associations, and to create mutually agreed rules about how those associations will be governed.

76. For example, Draft Report [4.44] proposes requiring large corporations to establish an audit committee. This is an unnecessarily specific obligation that would involve a cost impost on some large corporations in the CLC's region without making any contribution to the corporations' governance.

77. Similarly, the submission made to NIAA in Draft Report [5.44] suggesting that all large corporations should be required to have independent directors is deeply paternalistic. It apparently assumes that Indigenous people lack the capacity to steward large organisations. The number of successful large Indigenous corporations makes a nonsense of that assumption.

78. The CLC is deeply opposed to suggestions that restrictions on board membership should be made by reference to family groups (Draft Report [5.41]). Family and kinship is a fundamental ordering principle for Aboriginal people in Central Australia. It is inextricably bound up in people's relationship with land, with whom they associate with, and where they live. It is an ever-present consideration in Aboriginal governance, and Indigenous corporations need to have the ability to address all the complexities of family relationships in their governance arrangements without arbitrary constraints. Members

[11] See Draft Report [5.13].

should be free to establish whatever rules in relation to family groups that are appropriate for their corporation.

79. The CLC supports the introduction of a safe harbour provision[12] for directors who take actions in relation to land or other assets of a corporation, if those actions are taken pursuant to a direction made by the owners of those assets under Aboriginal tradition. A direction would need to be made through the informed consent of the relevant group, and by a process consistent with relevant Aboriginal tradition.

Unclaimed Money Account

80. CLC's view is 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 Northern Territory-registered corporations should be transferred to the Aboriginals Benefit Account established under Part VI of the ALRA, rather than to the Commonwealth Consolidated Revenue Fund. This is a simple reform to ensure that any such funds are used for the benefit of Aboriginal people living in the Northern Territory.

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Central Land Council

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[12] See Draft Report [5.45].