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Review of the CATSI Act

Danila Dilba Health Service

Submission

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Background

About Danila Dilba Health Service

Danila Dilba Health Service (DDHS) is an Aboriginal Community Controlled Health Service incorporated under the CATSI Act.

Danila Dilba provides comprehensive primary health care and selected youth services across the Greater Darwin Region of the Northern Territory.

Response to the Draft Report

Overarching Comments

DDHS welcomes the Review and the opportunity for input on the conclusions and further questions in the draft Report.

In general terms, the CATSI Act continues to be justified as a special measure noting that the circumstances that prompted the introduction of the Act continue today. While noting the view of some respondents that the Act is racist, DDHS considers that it does meet the definition of a special measure being a form of positive discrimination designed to provide benefits to Aboriginal people.

As a general comment on the review, DDHS suggests that any changes to the CATSI Act should be designed to ensure responsiveness to Indigenous forms of governance, reduce administrative burdens, continue to ensure Indigenous control of CATSI Act organisations and balance flexibility with only the level of regulation required to ensure accountability and good governance. Any amendments to the act should be guided by a set of principles similar to those listed here and other principle level issues identified through the review process.

This submission does not attempt to address every issue, conclusion and further idea question in the draft report but focusses only on matters where DDHS has a further suggestion or alternative view. For issues not specifically addressed, DDHS either agrees with the proposed way forward or has no specific view on the issue.

Chapter 2: Objects of the CATSI Act

DDHS supports the amendment of the Act to extend the provisions allowing for the accommodation of Cultural values and practices such as the ability to defer an AGM due to Sorry business and the conclusion at paragraph 2.39 and 2.40 noting that the conditions that justify the CATSI Act as a special measure continue to be relevant.

In relation to “Further Ideas” related to this chapter DDHS suggests that the Act could address:

- Improved capacity building and support particularly for smaller or new organisations
- Improved responsiveness to Indigenous forms of governance. For example, direct election of Directors may not always be culturally appropriate and flexibility to structure the Board taking account of matters like traditional owner status, clan groups, locational representation and gender balance should be accommodated. This could be pursued, as asked in the “Further Ideas” section through powers of the registrar.

- Improved protection for corporations against vexatious or frivolous actions such as false claims about the corporation or its Board and executive, membership stacking for the purpose of over-ruling the Board.

Chapter 3: Powers and Functions of the Registrar

DDHS supports the conclusions in this Chapter and particularly welcomes the suggestion of a broader suite of regulatory powers allowing a proportionate intervention as required. We suggest that these powers could include the question of responsiveness to Indigenous forms as government as per our comment on Chapter 2.

In relation to “Further Ideas”, DDHS suggests that:

- In relation to Paragraph 3.21, the types of powers discussed could be strengthened to better support well governed corporations in dealing with vexatious actions.

Chapter 4: Governance

DDHS supports the bulk of the conclusions and proposals in this chapter but makes the following specific comments on aspects of the chapter:

- Paragraph 4.8 explores alternative methods of contact with members and the extent to which corporations should be able to decide on acceptable approaches. DDHS suggests that use of contact details and alternative contacts as discussed in the paragraph should be the minimum standard with additional methods such as social media and community noticeboards as supplementary methods. It would not be acceptable to rely on social media and community noticeboards as the formal point of contact. Members who do not have social media accounts, are not proficient in internet usage or do not visit the location of a community noticeboard would be effectively disenfranchised.
- In relation to Paragraph 4.10, DDHS supports the options for member details to be redacted on request and makes the following points in relation to the detail in the paper
 - Details should be redacted only at the request of the member and both the corporation and ORIC should have the authority to redact noting that asking the corporation will be the simplest approach for the member but there may be situations where the member would prefer to approach ORIC.
 - Any threshold for redaction should be in general terms only. It should be sufficient to state a concern for personal safety without going into detail. Indigenous members may not feel confident to reveal details either to corporation or to ORIC especially in relation to any sensitive issues regarding personal safety.
 - Redacted information should be shown in the public register as “information redacted”
 - ORIC or the Corporation should, on request from a member wishing to organise a meeting issue any required notices to redacted members on behalf of that member
 - These arrangements should be included in the Act.
- Paragraph 4.11 to 4.14 dealing with challenges to the rejection or acceptance of memberships proposes an onerous and potentially expensive and impractical approach through the calling of a members meeting to decide these matters. In practice, this could

result in the calling of multiple members meetings to address such issues over the course of year. The principle of allowing a review of such decisions is valid but this could be addressed through adding powers to the Registrar to assess and decide on such appeals on their merits.

- DDHS does not support the shorter timeframes for membership cancellation as suggested in Paragraphs 4.15 to 4.17 and prefers the existing timeframe of two years. The shorter timeframe of 11 months does not adequately reflect the contemporary circumstances of Indigenous people who may be highly mobile, might stay away from their home address for extended periods, may change addresses, do not always have email or social media access and may change phone numbers. In the spirit of community control, membership should not be cancelled too quickly.
- DDHS strongly supports the approach in Paragraph 4.20 and 4.21 to improve the capacity to establish subsidiaries and joint ventures. Any amendments should allow such decisions to be taken by the corporation without requiring approval from the Registrar although the Registrar should have the capacity to seek further information if he/she is of the opinion that the arrangements are not consistent with the Act.
- DDHS supports as a general principle greater transparency regarding corporate structures and their personnel
- The proposals relating to size of corporations and alignment with the Australian Charities and Not-for-profits commission are supported consistent with the principle suggested earlier that alignment should be pursued as far as possible.
- Dependent on the type of entity and its purpose (e.g. an organisation that holds land, is not trading and not in receipt of public money) DDHS supports the several changes discussed in relation to meetings, with longer time frames between AGMs if passed by a special resolution of members, and more practical arrangements for the cancellation of meetings.
- Is generally supportive of the continuation of the special rules introduced for the COVID-19 Pandemic by the Register to allow corporations maximum flexibility to hold meetings using any suitable technology.
- Agrees Audit Committees are useful but suggests should only be required for organisations over a certain size (e.g. \$5 million in revenue.)
- Agrees it would be helpful if Rule Books include all replaceable rules with it clearly identified which have been adopted as they are, and which have been replaced.

Chapter 5: Officers of Corporations

In relation to transparency regarding remuneration of CEO and executive roles, while DDHS supports transparency and accountability to members, it is not appropriate to publish the individual details noting that the Corporations Act does not require this level of reporting. DDHS supports the reporting of total executive salaries and of a salary band or range that may apply to the executive roles.

Similarly, in relation to Director remuneration (noting that DDHS Directors are not paid) DDHS supports an appropriate level of reporting and suggests reporting of the benefits and payments that may be provided to Directors along with a total figure of benefits and payments issued.

In relation to Executive performance DDHS supports the ability of organisations registered with ORIC being able to view the past employment history perhaps by requiring organisations to report this when new executives are hired. This information is not personal information, does not breach any privacy, and would improve an organisation's ability to conduct due diligence on prospective employees.

Related party benefits should be described in corporations' annual reports.

Regarding appointment of directors and other director requirements (paragraph 5.39 to 5.47) DDHS believes that the issue of family members should be the subject of guidance under the Act but allow discretion if the corporation is able to justify the composition of the Board such as in remote or small communities. In relation to independent Directors, DDHS believes that for large organisations (say those with an annual budget of over \$20 million) it would be reasonable to mandate independent Directors. For smaller corporations it should be encouraged but not mandated.

Chapter 6: Modernising the CATSI Act

DDHS is generally supportive of the conclusions and proposals in this chapter.

Chapter 7: Registered Native Title Bodies Corporate

DDHS has no comments on this Chapter.

Chapter 8: Special Account: Unclaimed Money Account and Protection of Assets

DDHS is generally supportive of the approach proposed

Chapter 9: Special Administration, insolvency and winding up of CATSI Corporations

DDHS is generally supportive of the approach proposed and agrees that where a corporation no longer serves the function that it was initially set up for then it should be able to be wound up by a special resolution of members. This should not be an overly onerous exercise. The Register should be given the power to exempt corporations from meeting all the prescribed requirements under CATSI.