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## **Submission to REVIEW OF CATSI Act<sup>1</sup> – Phase 2 Consultation**

### **Focus on Prescribed Body Corporates (PBCs) and Registered Native Title Body Corporates (RNTBCs)**

My professional background covers 20 years' experience as a lawyer, including as a native title practitioner in indigenous, government and private organisations. My current business is presently focused on corporate governance and dispute resolution including for CATSI corporations that are PBCs or RNTBCs<sup>2</sup>. This submission is largely focused on some practical, non-regulatory measures for RNTBCs.

As a non-indigenous contributor, I would be grateful if these submissions are read as an effort to make a useful contribution to the process of review to the CATSI Act.

### **Honey or vinegar – Does more regulation work?**

The tension between regulatory intervention and the need to maintain flexibility for CATSI corporations is not new. Demands for greater regulatory intervention are motivated by quite reasonable expectations of members and common law holders<sup>3</sup> seeking accountability and transparency. More rules and regulations may however defeat the goal of better compliance and accountability. For example, detailed regulatory reporting and associated administrative tasks can instead add to the administrative burden of RNTBCs already struggling with (a) compliance, and (b) access to compliance resourcing.

Any reforms to the existing regulatory regime must also rise to the challenge of accommodating a wide variety of RNTBCs across Australia. Variables including size, location, cultures, languages, resources, and

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<sup>1</sup> *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)

<sup>2</sup> In this submission, the term RNTBC includes PBC.

<sup>3</sup> "members" will be used to describe members of the common law native title holding group, claim group and RNTBC members.

functions may not readily fit within a prescriptive framework and may instead generate further administration to manage those RNTBCs requiring exemptions.

Some RNTBCs operate within a larger framework of pre-existing entities that have not been incorporated under the CATSI Act and attract a different and additional set of reporting and regulatory obligations. Similarly, a native title group transitioning from pre-native title determination to a post-native title determination environment, must manage not only the creation of a new native title holding entity, but may also have to deal with legacy issues such as acquiring or merging entities, and even the community consequences of any changes in the composition of the native title holding group.

Overall, the regulatory landscape for RNTBC's is often complex and difficult.

### **Model native title reporting – practical assistance**

RNTBC reporting must be government facing and membership facing, however these stakeholders do not always share the same priorities or methods of assessing accountability. A system of model native title reporting templates and resources may provide some assistance to RNTBC entities navigating the complexities of post-determination operations.

Model native title reporting would ideally serve a dual function – (a) simplify processes to meet statutory obligations including under the CATSI Act, CATSI Regulations<sup>4</sup> and PBC Regulations<sup>5</sup>; and (b) encourage clear and regular communication to members regarding native title and corporation business.

Model native title reporting could provide a set of key ingredients for each RNTBC to add, subtract, or adjust to the requirements of its members. For example, a model native title annual report could be produced to include mandatory and non-mandatory content. Mandatory content would include requirements under the CATSI Regulations<sup>6</sup>, PBC Regulations<sup>7</sup> and RNTBC Rule Book. Non-mandatory content could include prompts for further topics of interest to the membership such as executive remuneration, any related entities, related party benefits, etc.

Model native title reporting should be supported by useful resources and readily accessible, confidential guidance from ORIC and other corporate governance specialists. Such resources could include,

- a) electronic templates and programs that are user-friendly and present mandatory and non-mandatory reporting information distinctly and in an accessible format. For example, through timelines, entity charts, organizational charts, and other infographics.
- b) access to professional support to produce Annual Reports or other more frequent circulars.
- c) access to professional support to develop member only websites.
- d) access and professional support to produce maps, flow charts, comparative tables, and statistics to provide performance measures and context when reporting to members. For example, executive remuneration benchmarks, non-indigenous/indigenous staff ratios, organisational charts, native title land asset maps, etc.

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<sup>4</sup> *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (Cth)

<sup>5</sup> *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth)

<sup>6</sup> See Part 6, CATSI Regulations

<sup>7</sup> See Part 2, PBC Regulations

- e) director/executive officer bursaries to promote training in corporate governance and communications.
- f) communications grants and internships to resource RNTBC's in publication, mapping, reporting, document management, online media, community engagement, and web development.
- g) a free, confidential "corporate governance" hotline linked to ORIC and/or independent corporate governance professionals. For example, to provide support and assistance to directors and executive officers seeking guidance.
- h) a guide to "hot topics" to assist RNTBC's to identify, anticipate and manage the reporting of typically controversial information.
- i) an RNTBC model rule book<sup>8</sup>.
- j) a guide to the making, recording and reporting of new and historical;
  - a. native title decisions,<sup>9</sup>
  - b. ILUA's,<sup>10</sup>
  - c. directions related to trust monies<sup>11</sup>,
  - d. directions related to native title rights and interests and other functions<sup>12</sup>,
  - e. native title benefits<sup>13</sup>;
  - f. related entities;
  - g. decision making processes; and
  - h. other important documents, decisions and events.
- k) a guide to managing RNTBC dispute resolution processes internally and by reference to any RNTBC model rule book requirements.

Practical resources that encourage and stimulate RNTBCs to continually improve accountability and regulatory compliance can provide much needed compliance support to directors, executives, and members. Guided support can provide a meaningful and economical alternative to a prescriptive regime that otherwise relies on a reactive system of penalties to deter non-compliance.

Thank you for the opportunity to make a submission.

Yours faithfully,



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**Principal**

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<sup>8</sup> See recommendation 3, at page 2 of the Technical Review of the CATSI Act, DLA Piper report.

<sup>9</sup> As defined in s3 of the PBC Regulations.

<sup>10</sup> Including any pre-determination registered Indigenous Land Use Agreements (ILUA).

<sup>11</sup> See s6(1)(c) and 7(1)(d) of the PBC Regulations.

<sup>12</sup> See s6(1)(e) and 7(1)(f) of the PBC Regulations.

<sup>13</sup> "native title benefits" could include benefits arising from "native title decisions" as defined in the PBC Regulations and any other benefits negotiated under a pre-determination, registered Indigenous Land Use Agreement.

