



20 January 2012

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Philanthropy and Exemptions Unit
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The Treasury
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Via Email: NFPreform@treasury.gov.au

*spirit of
Change*

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Dear Sir / Madam

Thank you for the opportunity to comment on the *Review of Not-For-Profit Governance Arrangements Consultation Paper* (the Consultation Paper).

The National Native Title Council ('NNTC') was incorporated as a public company limited by guarantee under the Corporations Act in 2006. It is registered for GST and was endorsed with DGR status as a Public Benevolent Institution in February 2010.

The NNTC is an alliance of Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSPs) from across Australia. Our role is to provide a national voice and advocacy on matters of significance affecting the native title rights and interests of Aboriginal and Torres Strait Islander peoples.

All NTRBs/NTSPs are Not-For-Profit ('NFP') entities and are either incorporated as Aboriginal Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the 'CATSI Act') or as public companies limited by guarantee under the *Corporations Act 2001*.

Whilst the NNTC has sought comments from its members in formulating this response, we are concerned that the unfortunate timing of the release of the consultation paper has limited our ability to consult our membership as comprehensively as we would have liked.

Aboriginal Corporations, particularly those servicing remote areas tend to slow down from mid December to the end of January. It is a time of year when weather conditions tend to be extreme and when clients engage in ceremonial business, and hence is a time when most personnel take their annual leave.

The following comments are therefore provided by way of general response to the Consultation Paper.

The NNTC would strongly recommend that further consultation is undertaken throughout the development and implementation proper of the Australian Charities and Not-For-Profits Commission ('ACNC') to ensure that the sector is not adversely affected by additional reporting and compliance requirements.

The NNTC supports the Government's commitment to simplifying the existing arrangements in order to minimise the compliance burden on the NFP sector, reduce duplication and to improve accountability and transparency within the sector.

The NNTC also agrees in principle with the proposal to centralise all NFP compliance requirements through the ACNC. However, we would envisage the Office of the Registrar of Indigenous Corporations ('ORIC') be retained to play a primary role in monitoring the compliance of NFP entities incorporated under the CATSI Act, with the ACNC being the overarching body with compliance and regulatory jurisdiction.

In this respect and for the following reasons, the NNTC believes it would not be constructive for the ACNC to entirely subsume the responsibilities of ORIC:

- Not all Aboriginal Corporations/Prescribed Bodies Corporate (PBCs) are NFP entities.
- ORIC deals specifically with Indigenous organisations incorporated under the CATSI Act. The structure and business of these organisations are variously shaped by culture, location, family relationships and native title principles. ORIC has experience of functioning within that paradigm and has specialist knowledge and familiarity with dispute resolution processes.
- ORIC is able to consider necessary exemptions/flexibility under the CATSI Act with a significant level of experience.
- Indigenous corporations can access client assistance, support and information and training programs offered by ORIC.
- The structures of PBCs are unusual in that all of the members are related parties.
- Finally, ORIC maintains continuity and the special statute of incorporations that takes account of the special risks and requirements of Indigenous corporations.

To put the matter simply, ORIC services Indigenous Corporations exclusively, whilst the ACNC will service all NFP organisations generally. Without ORIC, Aboriginal Corporations would not have a specific avenue for receiving a tailored service that responds to the particular needs of Indigenous groups.

In this respect, the NNTC has concerns about the low threshold for deregistration as set out in the Draft Bill. In particular section 10-55(1)(c), which indicates that an entity may be deregistered if it fails to comply with the Act or the regulations, which enables the regulator to revoke registration for minor breaches.

The CATSI Act by comparison, provides a comprehensive process for Aboriginal Corporations whereby support and assistance is provided in an attempt to avoid deregistration, until required as a last resort.

The NNTC therefore recommends that the role of ORIC be retained in relation to regulation and education to CATSI Corporations, with the ACNC having jurisdiction over ORIC for the purposes of compliance and reporting of CATSI entities.

Further, a cooperative relationship should be developed between ORIC and the ACNC whereby the ACNC can provide "a central point of contact to simplify NFP's interactions with governments", as per Paragraph 1.53 of the Exposure Draft Explanatory Materials.

Another key point that the NNTC would like to stress is that the legislation should in no way mandate the details of how individual organisations develop their core governance frameworks.

Rather, the NNTC would recommend that high level principles be established under the legislation and that the ACNC develop model rules or constitutions in full consultation with the NFP sector. This would enable flexibility and ensure that entities are not overly burdened with strict regulatory measures.

I trust that the above comments are useful for your purposes, however if you have any queries or require any further information please do not hesitate to contact me at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Wyatt', written in a cursive style.

Brian Wyatt
Chief Executive Officer