



# Native Title Services Victoria Ltd

ABN 27 105 885 149  
642 Queensberry Street (PO Box 431) North Melbourne VIC 3051  
ph (03) 9321 5300 fax (03) 9326 4075 www.nts.com.au

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Manager  
Philanthropy and Exemptions Unit  
Indirect Philanthropy and Resource Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [charities@treasury.gov.au](mailto:charities@treasury.gov.au)

## **Charities (Consequential Amendments and Transitional Provisions) Bill 2013**

Native Title Services Victoria Ltd (NTSV) is the recognised Native Title Services Provider for the State of Victoria. NTSV is a member of the National Native Title Council and supports the submission made by the Council.

NTSV is broadly supportive of the proposed changes provided for in the proposed legislation, and particularly the recognition of the unique situation in relation to Indigenous groups and in particular settlement requirements so as not to fail the public benefit test.

However, it is submitted that the unique circumstances facing Indigenous corporations could be better accommodated through a number of clarifications and further amendments, set out below.

1. Native Title benefits should include specific reference to the *Traditional Owner Settlement Act 2010* (Vic). This has been incorporated into changes proposed in the *Tax Laws Amendment (2012 Measures No.6) Bill 2013* (Cth). It should be specifically incorporated into the Charities legislation.
2. The proposed approach in section 8 (based on the Income Tax Assessment Act 1997) that the entity receives native title benefits and distributes them is unduly restrictive. Currently, it is possible for Traditional Owner corporations to earn income from a number of sources, for example undertaking cultural heritage work (such as advice and site monitoring) which is not specifically tied to a native title settlement, but is tied to the recognition of that kin group and its connection to a particular geographic area. There is potential for such an entity to not fit within the nominated forms of entities under the proposed Charities legislation, although such organisations are operating with the same purposes and desired outcomes, as those which have agreements, recognition and purposes provided through settlements under Native Title or Traditional Owner Settlement legislation.
3. The nature of the not-for-profit and charitable sector often means that such organisations need to raise revenue. Very often, project and government funding is provided for specific

outputs, but increasingly does not include contributions for organisational overhead. This requires charitable organisations to raise revenue through alternative means, including investment and the delivery of services. While the effort may be ancillary, it often consumes a significant proportion of the organisation's time and financial focus.

It is therefore important that there is sufficient ability in charity legislation to ensure that an organisation's charitable status is not compromised in these circumstances, by giving the overall purpose of the organisation the due weight and consideration.

4. A related point is that Indigenous organisations often seek to assist the members of the whole group through multiple mechanisms that meet a holistic and multifaceted set of needs to address a complex mix of socio-economic and often intergenerational situations. In fact, Victoria's native title and Traditional Owner Settlement Act settlement agreements are specifically designed to encompass a wide set of outcomes that enable the organisation to engage and participate in many different ways with government and the wider community.

The mixed business is very important for such organisations, and in Victoria it is expected that the Traditional Owner corporations that manage the settlement outcomes will undertake a range of different roles and functions and will also become sustainable through income generating activity to further their primary purposes activity. Indeed, the settlements are intended to be provided to charitable organisations, and the State has provided funding within a trust structure that provides funds for charitable functions.

It is therefore proposed that the charity legislation specifically clarifies that this broader activity that is provided for within the settlements is in fact part of the purposes of the entity, and therefore is within the scope of the definition for charity.

5. The requirement for the full public benefit test to apply (other than "turning off the related individuals") is not consistent with the overall intent. The corporations are established for the whole of that community of traditional owners, and in order to operate as such will have directors, trustees, managers and employees from that group. It may therefore not meet the public benefit test in terms of sections 6(3), 6(4), 6(5), even if the section 6(1) is disregarded (and even this is not explicitly clear from the definitions).
6. By retaining these tests in relation to Traditional Owner corporations that are seeking to manage the interests and welfare of individuals – whether focusing on their individual health or education or their collective interests and wellbeing from having access to country and communal activity and resources – is contrary to the underlying policy intent.
7. Finally, there is concurrently a considerable stream of work underway towards the development of an Indigenous Community Development Corporation with a particular tax status, which, stems from work on the *Tax Laws Amendment (2012 Measures No. 6) Bill 2013*. This work is being led by the Treasury and includes representatives of the National Native Title Council and Minerals Council of Australia. Any definitions in the Charities Bill should allow for the incorporation of the outcomes of that process.

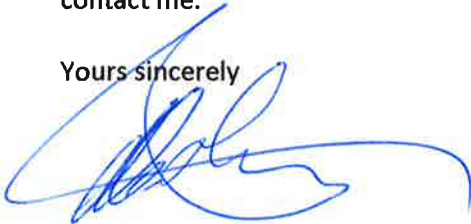
**Recommendations**

The following recommendations are submitted:

1. To simplify and to provide greater clarity and certainty in reference to the indigenous bodies by including a specific exclusion within section 9, which disregards the public benefit test and does not require complex cross referencing to other legislation.
2. To clarify that the sources of income can be from a mix of undertaking services and commercial activity as well as native title (and other) agreements without compromising the charitable status of the organisation.
3. To clarify that the Traditional Owners Settlement Act 2010 (Vic) is included in any definition of native title for the purposes of this legislation.

Should you wish to discuss any of the matters raised in this submission, please do not hesitate to contact me.

Yours sincerely



**Matthew Storey**  
CEO