

NQLC Submission to ACNC Implementation Taskforce February 2012

Introduction

The primary legislation which the NQLC is concerned with is the Commonwealth NTA which defines the statutory functions of an NTRB. The NQLC, in the context of representing native title claims also deals with the *Native Title (Queensland) Act 1993* and other relevant Federal and State Legislation.

NQLC was incorporated on 28 March 1994 under the then *Aboriginal Councils and Associations Act 1976* (ACA Act) and is now registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The NQLC is required to comply with various conditions of the CATSI Act and Corporations Law which cover such matters as the setting up and functioning of the corporate governance of the organisation, holding of the Annual General Meetings (AGM) and the provision of the yearly financial statements.

Our main corporate governance practice starts with the clear statement in our Rule Book which provides for the roles of the Board and the Executive Officer in accordance with the 'separation of powers principle'. The formal adoption of this principle by the NQLC in 2001 set the platform for the continued good governance of the organisation over the ensuing years.

NQLC was endorsed with DGR status as a Public Benevolent Institution in 2004.

Our goal is to assist Aboriginal people in the NQLC region to maximise native title and the benefits that flow from native title outcomes and ensure that their native title rights and interests are recognised, protected, maintained and developed.

NQLC supports the government's efforts to centralise reporting requirements and reduce the regulatory burden on NFPs. The need for high public trust and confidence

NQLC Submission to ACNC Implementation Taskforce

February 2012

in our organisation, transparency, good governance and accountability is essential and the ACNC will assist that.

In supporting this need for both streamlined reporting and improved public accountability for the sector, NQLC has grave reservations about its current planned implementation. The details of how this will impact on reporting for NQLC remain unclear, as most reporting is currently done to ORIC and FACHSIA, the additional annual statement to ACNC will just be further regulation.

Whilst the implementation design outlines the new regulatory reporting framework, it fails to identify what current reporting will be reduced with the addition of the new statements required by ACNC. This is acknowledged in .17 where it confirms that existing charities will be asked to supply additional corporate information in their first annual information statement from 1 July 2013.

Role of Office of the Registrar of Indigenous Corporations

The role of the Registrar of Indigenous Corporations (ORIC) remains unclear from the current consultation documents.

The advantages of ORIC that will be difficult to replicate in the new ACNC include:

- ORIC deals with a specifically targeted group, in relation to culture, customs, remoteness, family ties and native title principles.
- ORIC has specialist knowledge and familiarity with dispute resolution processes.
- ORIC is able to consider necessary exemptions/flexibility to the CATSI Act with a significant level of experience.
- Family structures within Registered Native Title Bodies Corporate like NQLC are unusual in that all members are related parties.

NQLC Submission to ACNC Implementation Taskforce

February 2012

It would not be possible for the ACNC to replicate the level of support and expertise currently provided to Indigenous Corporations.

NQLC echoes the concerns in the submission of the National Native Title Council submission that the proposed low threshold for deregistration is problematic and may be counter-productive. The CATSI Act and the role of ORIC provide a comprehensive process for Aboriginal Corporations providing support and assistance in an attempt to avoid deregistration unless as a last resort. The Draft Bill does not provide that level of flexibility or support and NQLC is concerned that deregistration is regarded as a point of first response.

Deregistration

NQLC has significant concerns about the lack of detail being provided for deregistering non-compliant not-for-profit organisations in an Indigenous Corporations context. It is the strong view of NQLC that Indigenous Corporations should continue to be subject to the processes currently used by ORIC which take into account of culture, socio economic factors, education

Process should be the same as ORIC as it takes account of culture, socio economic circumstance, education and remoteness. It is regarded as a backward step by NQLC to have deregistration as a 'first port of call' for non-compliance and the ORIC approach of support for compliance is far preferable.

Equally, the Draft Bill or ACNC process needs to make it clear what triggers deregistration and what process for challenging this or seeking an exemption will be used. The Implementation Design (.33) outlines that opportunities for self-correction will be used, but a hardline approach to deliberate wrong-doing will be taken. The process for self-correction used by ORIC is resource-intensive and may not be easily reproduced across the whole NFP sector.

NQLC Submission to ACNC Implementation Taskforce February 2012

Legal Issues

The implementation consultation paper continues to not address the most serious concerns of NQLC. It is not a question of 'should some legal forms be treated differently', as the document asks, but 'how will the government address inconsistencies in existing legal forms?'. As a registered Indigenous Corporation, NQLC is governed by the CATSI Act and regulated by ORIC. It has specific responsibilities and functions under the Native Title Act.

It remains unclear how compatible the Draft Bill is with both of those Acts and therefore whether NQLC will be operating under a conflicting legislative and regulatory regime. This has the potential to seriously affect its operations and capacity to assist Aboriginal people in the NQLC region to maximise native title and the benefits that flow from native title outcomes and ensure that their native title rights and interests are recognised, protected, maintained and developed.

Education and Guidance

The consultation report outlines an educative function that is clearly designed for the broader NFP sector. Previous reports have noted that ORIC currently undertakes a significant educational role.

It is the position of NQLC that the ACNC must not reduce this service to the Indigenous Corporations sector and that existing servicing levels must be maintained.

In the section on efficiency, it outlines that ACNC will work with other regulators to prepare the education materials to not duplicate existing resources. NQLC recommends that ACNC work closely with ORIC to ensure cultural considerations

NQLC Submission to ACNC Implementation Taskforce February 2012

are taken into account for all organisations covered by the ACNC Act, not just Indigenous Corporations.

Reporting - 'Report once, use often'

NQLC recognises the need for the government and the public to have information available on registered charities who receive particular tax exemptions. However, it is noted in previous ACNC documents that a significant number of charities receive government funding to perform specific functions. Maintaining the reporting for these agencies is a large administrative burden.

The proposed Reporting Framework and Annual Information Statement will, on face value, do little to reduce the bureaucratic burden and 'report once' as this is not information that is regularly required or is information that will still be required quarterly and in the format required by FAHCSIA or other departments. ACNC should as a matter of priority work with those departments to establish how the Reporting Framework will assist them in meeting their own obligations.

The issue of performance funding agreements appear lacking from current materials. In reality, they are one of the two most important governing documents of an organisation that receives Commonwealth Government funding. It is vital that all government departments have access to support from ACNC staff, policies and procedures to ensure that the concept of reducing duplication becomes a reality. It remains unclear what the status of existing funding agreements will carry over after the 1 July 2012 implementation date will be impacted on by new reporting arrangements to the ACNC.

The Implementation Design notes that ORIC regulated corporations will continue to be subject to different (and additional) reporting requirements and this creates regulatory complexity.

NQLC Submission to ACNC Implementation Taskforce

February 2012

ACNC Portal

NQLC supports the concept of the ACNC portal however, similar to the issues with 'Report Once, Use Often', the Implementation Design fails to outline what government services can be accessed using it and what duplication it will remove. NQLC suggests that as the Portal is expanded over time, that non-financial information is included. For instance, it would be a place where information regarding the progress of Native Title claims could be held to increase public awareness of the work of the sector and the progress being made.

Governance

The ACNC proposes that all entities, including indigenous ones will fall under the new governance arrangements of the draft Bill, administered by the ACNC. Whilst there is insufficient detail to comment on the exact nature of this administration, it should be noted that governance of indigenous entities has involved a long history of development to ensure both compliance and cultural consideration. Should Indigenous Corporations fall under the governance rules and procedures of the ACNC, those lessons learned should be transferred to the new administration.

Time frames and Transition

The consultative process has thus far had timeframes that stymie the development of a system that will meet its objectives. NQLC supports the principles of this significant reform however believes the administrative processes between Commonwealth Departments will take considerably longer than the July 2012 to implement. The scope of this reform should not fail by the need to meet an arbitrary deadline and more work needs to be done to harmonise all interactions NFPs have with the Commonwealth (and State) governments.

Definition of charity and not-for-profit? What is proposed? Criteria for determining charitable and PBI status. Our constitution has met ATO status, do we have to make

NQLC Submission to ACNC Implementation Taskforce February 2012

amendments and what communication and timeframes will be provided for new compliance?

Summary

NQLC does not believe the issues outlined above can be adequately resolved in time for the July 2012 implementation deadline. This will result in additional layers of possibly conflicting bureaucracy and legislation for NQLC and all Indigenous Corporations. Whilst it supports the goals and principles of the ACNC, its implementation can not make it more difficult to comply with the various regimes, nor add additional layers of bureaucracy.

As a result, NQLC contends that Indigenous Corporations be exempt from the new body and the Act until such time as the role of ORIC, the process for deregistration and ensuring cultural sensitivity can be resolved.

NQLC recognises that a single form of registration and regulation is necessary and preferable. It also recognises that exemptions would not be the government's preference, however it should be noted that the sector of Indigenous Corporations is the only not-for-profit sector that already has a comprehensive system of regulation, governance oversight and support. NQLC would support a move to being regulated and supported by the new body once the issues outlined above have been dealt with satisfactorily.