



# AIATSIS

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## **AIATSIS Submission: *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) Review – Phase 1**

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) welcomes the opportunity to make a submission concerning the scope of the 2020 CATSI Act review.

AIATSIS is one of Australia's publicly funded research agencies and has legislative responsibility to provide leadership in Aboriginal and Torres Strait Islander research and advice to government especially on Aboriginal and Torres Strait Islander culture and heritage. The Native Title Research Unit (NTRU), was established within AIATSIS 26 years ago, following the High Court's historic Mabo decision. The NTRU reflects an enduring partnership between successive Commonwealth Indigenous affairs portfolio agencies and AIATSIS. Since 2006, the NTRU has supported the development of RNTBCs in both law and practice and AIATSIS has been integrally involved in debates over reform to the *Native Title Act 1993* (Cth) (the NTA) and the CATSI Act.<sup>1</sup>

As the number of Registered Native Title Bodies Corporate (RNTBCs) continues to increase within a constrained funding context, the proposed 2020 CATSI Act review presents a timely opportunity to address some of the outstanding issues of corporate design, the ways RNTBCs carry out their rights and interests under the NTA and the need for greater autonomy and self-government in the future as we move towards treaty and settlement processes.

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<sup>1</sup> AIATSIS has made a number of previous submissions on the NTA and CATSI Acts, available on the [AIATSIS website](#). In particular, AIATSIS draws NIAA's attention to their [October 2017 CATSI Act submission](#) which covers a number of areas proposed in the current review process.



In order to address these emergent concerns, AIATSIS recommends including the following in the review:

- The scope and purpose of the CATSI Act
- Appropriateness of the Registrars powers
- Economic development and income generation divisions
- Streamlining governance requirements (including general meetings) and making replaceable rules more accessible
- Provide clarity in understanding the specific compliance needs of PBCs
- Non-discriminatory approach to third party transactions
- Modernising the CATSI Act and bringing it in line with the *Corporations Act 2001* (Cth) in areas to reduce the discriminatory nature of the CATSI Act

AIATSIS does not agree that the review needs to include:

- Further information on accountability particularly in relation remuneration and salaries
- The Registrar having further dispute resolution and reporting powers
- Winding up and insolvency

Additionally, AIATSIS would like to see the review consider the following:

- Revising the corporate model requirement for native title groups to better reflect governmental nature of PBCs including as vehicles for the realisation of the rights of Indigenous peoples under international law.
- Economic development via a separate Division or Chapter of the CATSI Act
- Sector capability building in developing rulebooks

### **Corporate model requirements**

Native title corporations are not voluntarily incorporated but are mandated under the NTA to fulfil the requirements of notification and consultation. Yet, for the NTA to fulfil its purpose set out in the preamble, a corporate structure may not be the best model for native title holders. A corporate structure does not necessarily best fit the cultural and economic requirements and aspirations of native title groups, including the special fiduciary duties that native title corporations have to native title holding groups and the unique work of RNTBCs.

Furthermore, with policy developments around constitutional recognition, the Voice to Parliament, and the close the gap refresh, among others, RNTBCs are increasingly required to fulfil more governmental roles, including engaging in relationships with government, local and regional representation, providing policy platforms as well as ensuring native title rights and interests are enacted in the best interests of the common law holders.

International law comparisons may provide alternative options for legislating governance models for Indigenous peoples who hold rights and interests in land and waters, and which may provide better outcomes to Australian native title groups by providing groups with a more autonomous approach to local decision-making and regional representation.

While this review may not be able to reach consensus for such substantive change, it can ensure that it opens, rather than closes, opportunities for change in the future, by focusing on greater flexibility, choice and autonomy and mitigating the need for small scale yet resource intensive reforms.



## Separate division of the CATSI Act

A separate division of the CATSI Act may provide a way to better cater to the specific needs and circumstances of native title corporations, including the most appropriate governance structures to better support the self-determination of native title groups.

A separate division is not a new concept. The *Aboriginal Councils and Associations Act 1976* (Cth) (ACA Act) sought to provide Aboriginal and Torres Strait Islander Australians with a quick and flexible mode of incorporation by providing two options for incorporation, including a council's division.

We see this review as a critical opportunity to establish an enabling environment to promote the Australian Government's long-term reform agenda to fulfil obligations under international law, build the increasing independence and autonomy of RNTBCS. For any queries, please contact Dr Lisa Strelein ([lisa.strelein@aiatsis.gov.au](mailto:lisa.strelein@aiatsis.gov.au)).

Yours sincerely,



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Executive Director, Research and Education

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