



VICTORIAN ABORIGINAL  
HERITAGE COUNCIL

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Heritage Council

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Senator Claire Chandler  
Chair  
Senate Finance and Public Administration Legislation Committee  
PO BOX 6100  
Parliament House  
Canberra ACT 2600

Via email: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

Dear Senator Chandler

***Victorian Aboriginal Heritage Council  
Supplementary Submission in regard to the  
Corporations (Aboriginal and Torres Strait Islander) Amendment Bill 2021***

Council would like to thank the Committee for the opportunity to present evidence in support of its submission on Thursday 23 September 2021.

Council's primary submission to the Committee indicated support for the Joint Venture and "two-member" provisions contained in the Amendment Bill. As stated to the Committee in evidence, Council's support for these proposals is founded on the basic principle that, to not be racially discriminatory, a CATSI corporation should enjoy the same operational capacity and powers as a corporation incorporated under *Corporations Act*. Council continues to support this principle.

Senator Thorpe took issue with Council's position in this respect and sought clarification as to how Council saw the proposal would ensure against what the Senator described as "black-cladding". In evidence the Senator stated (Hansard, page 9):

*I need more clarification of what the steps are to ensure black cladding doesn't occur. If you're going to support a piece of the legislation and there is no process, then how can you support it when you don't have a process?*

"Black-cladding" is usually a term used to refer to a situation where an ostensibly Indigenous majority owned corporation is in fact under non-Indigenous control and yet that corporation receives advantage under Indigenous preferential procurement policies (IPPPs).

The first response to this question is that access to IPPPs is not restricted to CATSI corporations. Majority Indigenous owned corporations under the *Corporations Act* are also able to take advantage of these very successful policies. Regulation of the authenticity of the Indigenous ownership of these corporations occurs not through the Australian Securities and Investment

Commission but through mechanisms such as the Supply Nation register or through procurer investigation of the proposed suppliers ownership and management structure. It is not at all apparent to Council why, in the case of CATSI corporations, Senators would believe authenticity of Indigenous ownership should be ensured through legislative regulation when this is not the case for corporations under the *Corporations Act*.

The second point to note is that the Amendment Bill does attempt some regulation of this matter through the “casting vote” provisions of Items 107 -110.

A final point to note is that, on review of the proposed amendments during preparation of this supplementary submission, it is not clear that the Amendment Bill will amend the Principal Act so as to limit the operation of the *Indigeneity Requirement* contained in existing sections 29-5 and 141-10 so as to allow for corporate members as apparently contemplated by the proposed section 77-5(1) (Item 110).

Should the Committee have any further queries in relation to Council’s submissions please do not hesitate to get in touch with the Director of the Office of the Victorian Aboriginal Heritage Council, Dr Matthew Storey,

Yours faithfully

**Michael Harding**

Chairperson

Victorian Aboriginal Heritage Council

29 September 2021