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13 September 2005

Mr Owen Walsh
Committee Secretary
Senate Legal and Constitutional Legislation Committee
Parliament House
Canberra, ACT, 2600



Dear Mr Walsh,

Inquiry into the Corporations (Aboriginal and Torres Strait Islander) Bill 2005

Thank you for the email of 9 September inviting a submission to this Inquiry. I note that the deadline is 19 September. I have a number of commitments this week, and am unable to undertake a full and close analysis of the Bill in the limited time available. But I shall offer some broader comments for what they are worth.

Not long ago I, with Professors Gary D Meyers and Donna Craig, undertook a study supported by an Australia Research Council Collaborative Research Grant. Our final report was published under the title **INDIGENOUS PEOPLES AND GOVERNANCE STRUCTURES** (Aboriginal Studies Press, AIATSIS, Canberra, 2002). Our 'industry partner' for the project was the National Native Title Tribunal, so we had a particular focus on legislative provisions with respect to native title. But we sought to set this focus within a broader context of Australian law, and the laws of several other countries.

We noted that regulations under the Native Title Act 1993 (Cth) required that Prescribed Bodies Corporate must be registered under the Aboriginal Councils and Associations Act 1976 (Cth) (the ACA Act). Accordingly, in Chapter 12, 'Legislative Provision for Corporations and Councils', we devoted some attention to experience under the ACA Act and on earlier proposals for its amendment. I enclose copies of the key sections from Chapter 12 – pages 319-321; 328-340; and 357-360.

Since the time of the Fingleton Report, and our own later study, we have also had the benefit of the Review of the ACA Act commissioned by the Registrar of Aboriginal Corporations in 2001 and completed at the end of 2002. This Review provided the basis for the Bill, though with some departures.

Generally, the Bill responds appropriately to key criticisms of the existing Act. It also incorporates important provisions of the Corporations Act, 2001 (Cth). Its requirements in regard to reporting and other matters differentiate between small, medium and large corporations, and this is to be welcomed. In other areas, too, it offers a degree of flexibility not hitherto available: examples include the power to admit to membership other corporations, or a minority of non-Indigenous people. Provision is made for replaceable rules.

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As far as native title is concerned, special provisions have been made for 'registered native title bodies corporate' so as to make the Act consistent with the native title legislation.

The ACA Act is long overdue for replacement. The current Bill is based on the careful analysis provided by the 2002 Review, and addresses the major concerns in a flexible and imaginative manner. Coupled with the pro-active support provided to Indigenous peoples through ORAC, and its capacity-building programs, it should be a welcome and valuable improvement to the current regime.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Garth Nettheim". The signature is written in a cursive style with a horizontal line underneath.