***CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) BILL* – SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

SUMMARY OF SUBMISSION

As is evident from the Second Reading Speech for the *Aboriginal Councils & Associations Act* ("AC&AA") and from other contemporaneous material, the intention back in the mid-70's was to enable Aboriginal communities and groups to establish legal entities that would combined the benefits of limited liability and corporate personality with a minimum of administrative requirements and regulatory interference. What was contemplated back then was that communities could create customised local government-type bodies by establishing "Aboriginal Councils" under AC&AA. The vehicle through which other activities and undertakings could be achieved was the "Aboriginal Association".

Since 1987 I have been working constantly as a legal adviser to Aboriginal communities and groups that have sought incorporation as Aboriginal Associations or which have already been incorporated but have required legal assistance in relation to some aspect or other of the administration or governance of their body. I also acted in the late 1980's for some Northern Territory Aboriginal communities whose attempts to seek Aboriginal Council status were thwarted at a Government policy level.

Although the *Corporations (Aboriginal and Torres Strait Islander) Bill* ("C(ATSI)") does not state this explicitly, it is evidently intended that that legislation will completely replace and supplant AC&AA. C(ATSI) provides only for the establishment of Indigenous "corporations" – there is no equivalent entity to the "Aboriginal Council" that remained a statutory option – at least in principle – under AC&AA for communities that did not wish (for various possible reasons) to embrace "mainstream" local government status.

I unfortunately do not have time to prepare a detailed submission, but would be happy to amplify on what I have written if given the opportunity at some future time. Basically the two points I would like to make are:

(1) The absence from C(ATSI) of a statutory option of establishing an Indigenous self-governing body at the local level with features more akin to a local government council than to an incorporated association deprives Aboriginal communities of a choice which should have been retained in legislation;

(2) The onerous administrative and regulatory requirements imposed by C(ATSI) on any Indigenous "corporation" and the opening up of membership eligibility to allow for non-Indigenous members will have the result that there is no appreciable substantive difference between incorporation under C(ATSI) and incorporation under a State or Territory Associations Incorporation law, and therefore no o obvious reason why an Indigenous community or group would

choose incorporation under C(ATSI) (which perhaps is the real policy agenda behind the new Bill).

ABORIGINAL COUNCILS

While the adoption of conventional local government entity status under State or Territory local government legislation has worked to the advantage of some Indigenous communities, in others it has compounded inherent social problems and resulted in steady contract employment for non-Indigenous professionals and unemployment or CDEP employment for locals. Communities that have chosen not to adopt such formal local government status have been condemned to run their affairs as incorporated associations – also not an ideal legal status for the job in question. There is still a need for the Commonwealth to develop a nationally available option for Aboriginal communities to seek legal recognition as quasi-local government bodies but with the capacity to branch off into other areas (e.g. health, education).

ABORIGINAL ASSOCIATIONS

Over the years I have advised many many Aboriginal groups seeking incorporation as associations. The one point of difference between AC&AA and equivalent "mainstream" legislation was the restrictions on voting membership contained in the AC&AA itself. It was possible under "mainstream" legislation to restrict membership to Aboriginal people by drafting the body's constitution in a particular way, but that constitution could always be changed and undone. The attraction to the Aboriginal clients I dealt with was always that the AC&AA **itself** contained the restriction and therefore the protection and security. C(ATSI) in its present form has abandoned that feature of AC&A, which is going to engender grave concerns for the many bodies that incorporated as associations under AC&AA for the reason outlined above.

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