



NGARLUMA VISION: "Keeping our culture strong as we work together to empower Ngarluma people towards a sustainable future"

25 September 2014

Mr Anthony Beven
The Registrar of Indigenous Corporations
Office of the Registrar of Indigenous Corporations

By Facsimile: (02) 6133 8080
By Email: info@oric.gov.au

Dear Registrar,

Term of Appointment of Directors: Ngarluma Aboriginal Corporation RNTBC (NAC)

We refer to the current examination of the NAC's books by authorised officers of the Office of the Registrar of Indigenous Corporations (**ORIC**). We have been informed that ORIC's legal counsel is of the view that the NAC is in breach of its rules and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)* with respect to the application of the directors' term of appointment. Some of the NAC's directors have held appointment for 4 years under its rule book.

We disagree with this view of ORIC's legal counsel and submit the following to you for your review:

1. The NAC's rule book was approved by the Registrar on 28 October 2010. That means that all of the Rules are deemed compliant with the CATSI Act and are lawful. They otherwise would not have been approved by the Registrar.
2. Rule 9.5 of the rule book deals with the term of appointment of directors.
3. While Rule 9.5(b) says that a director must not be appointed for more than two years, Rule 9.5(c) allows that a director is eligible for reappointment and Rule 9.5(e) directs that a director must not be appointed for more than two consecutive terms.
4. In allowing "two consecutive terms" and with a term being two years, the NAC's common sense interpretation is that directors may serve for 4 years, being two consecutive terms of two years. Additionally, through the operation of Rule 9.5(c), directors are thereafter eligible for reappointment.
5. Section 246-25(2) of the CATSI Act says that a director must not be appointed for a period exceeding two years, with Section 246-25(3) confirming reappointment eligibility. However, we highlight to you that not only did the Registrar approve Rule 9.5(e) that enables 4-year terms for directors (and then reappointment through Rule 9.5(c) and Section 246-25(3) of the CATSI Act) but also Section 246-25(2) is alterable, with scope for an application being made to exempt the directors from its requirements under Section 310-5 of the CATSI Act. We assume that the Registrar, in

approving the NAC rule book and Rule 9.5(e) in particular, has given that exemption already. If your view is that that is not the case, the NAC respectfully requests that you please withhold making any decision as to whether or not the NAC is in breach of its rule book by enabling the NAC to make an exemption application under Section 310-5(2)(b).

6. In addition to the above, ORIC is seeking to bar the NAC from amending its rule book so that it is in accordance with the requirements of Section 246-25(2) of the CATSI Act. We find it most unusual that ORIC would not want the NAC's rule book to mirror the provisions of the CATSI Act, and we request that you confirm that such an amendment is acceptable.
7. We also note that the NAC's current rule book has been in its current form since 2010, during which time the NAC has had consultations with ORIC examiners, and at no stage has ORIC's current concerns with rule 9.5 been raised with the NAC.
8. We finally note that the NAC's interpretation as set out above has been confirmed by two separate external legal counsel and we have received an indication from ORIC's examiners, although they cannot provide us with advice, that they also agree with the NAC's interpretation.

For your convenience we have appended the relevant Rules from the NAC's rule book and Sections of the CATSI Act.

We appreciate your urgent attention to this matter, as we need to consider the proposed resolutions and advise the Ngarluma Community accordingly on Saturday 27 September 2014.

Yours faithfully,


Paul Stenson
Chief Executive Officer
Ngarluma Aboriginal Corporation RNTBC