Maximising the Potential for Empowerment: The Sustainability of Indigenous Native Title Corporations

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Introduction

The *Native Title Act 1993* (Cth) (*NTA*) creates a legal regime implemented and administered by a variety of entities, including Indigenous corporations. This particular organisational landscape has developed political complexities and administrative demands that jeopardise the potential for enjoyment of native title by relevant Aboriginal and Torres Strait Islander people. There is a need for innovative responses to these demands. This chapter is a discussion of that organisational landscape, the cost of the administrative burden, and the potential for change. Many of the compliance and administrative burdens faced by Aboriginal people originate from the native title regime and its related regulatory regimes. Following the claims process, these regulatory regimes require that Indigenous corporations be created to be the vehicle for the formal recognition of native title rights and interests, to ensure the enjoyment of native title by the corporation's members and to orchestrate dealings in native title.

To the extent that they can carry out these duties, these native title corporations have a direct and inescapable bearing on the empowerment of Indigenous people. A comparison with the earlier pre-native title organisational arrangements reveals an increasingly complex network of statutory entities – ranging from bodies corporate to trusts to representative bodies – that now combine to pose significant challenges for Indigenous groups. While this development reflects many of the gains made in the wake of successful native title claims, it frequently comes at a high cost. These costs come about because of complex legal requirements, including detailed contractual obligations, onerous reporting deadlines, and a wide range of other compliance requirements. All too often, these obligations overwhelm small and under-resourced units. There are also the internal complexities of the Aboriginal world. Problems can arise, for example, if localism clashes with the need for functional polities that have organisational capacity and economies of scale. After outlining many of the obstacles presented, the chapter concludes with some tentative proposals for reform, including a recommendation to