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Office of the Registrar of Indigenous Corporations

**Senate Select Committee on regional and remote Indigenous
communities**

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Introduction

The Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) welcomes the opportunity to make a submission to the Senate Select Committee on Regional and Remote Indigenous Communities.

The Registrar's submission addresses the inquiry terms of reference (b) and (d), which inquire into:

- b the impact of state and territory government policies on the wellbeing of regional and remote Indigenous communities;*
- d the employment and enterprise opportunities in regional and remote Indigenous communities.*

The submission focuses particularly on term of reference (b). Firstly, it outlines the capacity development program implemented by the Office of the Registrar of Indigenous Corporations (ORIC), and ORIC's principles for effective corporate governance training in regional and remote Indigenous communities. Secondly, it outlines the ways in which the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) and the delivery of ORIC services, support Indigenous enterprises and increase the capacity of people to engage with employment opportunities.

The role and function of the Registrar

The Registrar is the independent statutory office holder who administers the CATSI Act. The CATSI Act replaced the *Aboriginal Councils and Associations Act 1976* (ACA Act) which was administered by the Registrar of Aboriginal Corporations. ORIC provides support to the Registrar in administering the CATSI Act through a range of services. ORIC regulates approximately 2600 Indigenous corporations, ranging in size, function and location, with 58 per cent of corporations operating in remote parts of Australia.

The key functions of the Registrar are to:

- administer the CATSI Act and maintain the Register of Aboriginal and Torres Strait Islander Corporations
- regulate corporations which are registered under the CATSI Act
- monitor the legislative compliance of corporations and assist corporations to maintain compliance
- appoint special administrators when required
- provide training for directors, members and key staff in good corporate governance
- advise individuals and groups on the registration process
- register new corporations
- assist corporations to transition from the ACA Act to the CATSI Act

- provide advice and information to corporations
- assist with the resolution of disputes within and between corporations

Term of reference (b)

Term of reference (b) inquires into the impact of state and territory government policies on the wellbeing of regional and remote Indigenous communities. The Registrar will outline ORIC's capacity development program, which is delivered in regional and remote Indigenous communities, and will outline principles for the effective delivery of corporate governance training in these contexts. These principles are transferable to the delivery of a range of services in regional and remote Indigenous communities.

ORIC's capacity development program

ORIC's capacity development program incorporates a suite of services which are designed to strengthen the capacity of Indigenous corporations to comply with their obligations under the CATSI Act and to implement and maintain effective corporate governance practices. Each service is designed to be flexible and tailored to the context of the corporation/s in each instance. ORIC has a particularly strong record in effectively tailoring its services to meet the needs of Indigenous corporations and groups in regional and remote communities. ORIC's capacity development program entails:

- (a) Corporate governance training
- (b) Advice, information and support
- (c) Dispute resolution and mediation
- (d) Examinations

(a) Corporate governance training

The ORIC training program entails a range of training services tailored to developing individual and corporation capacity, including specialised regional and remote materials and methods. The training services include:

CORPORATION SPECIFIC TRAINING (NON ACCREDITED)

Training, of one and two days duration, designed for directors and key staff of individual corporations:

- Transition to the new CATSI Act (priority in 2008-09)
- Post administration training
- Registration
- Transfer from state based legislation and the Commonwealth *Corporations Act* to the CATSI Act
- Financial Management (available 2009-2010)
- Conflict awareness and management (available 2009-2010)

MANAGING IN TWO WORLDS TRAINING (NON ACCREDITED AND ACCREDITED)

This training is designed for directors, key staff and members of multiple corporations, to raise awareness of good corporate governance theory and practice, maximise the sharing of information, networking, problem solving and generating ideas affecting Indigenous corporations and communities in a region. Participation in non accredited training is a pre-requisite for entry into accredited training.

ORIC's training program targets regional and remote Indigenous communities as follows:

REGIONAL PROGRAMS	REMOTE PROGRAMS
(delivered in metropolitan, urban and regional centres, targeting participants with Grade 10 mainstream education)	(delivered in remote settlements or centres servicing them, targeting participants for whom English is a second language; issues
Introduction to Corporation Governance ICG (3 day workshop)	Australian Governance Story AGS (3 day workshop)
Certificate IV in Business (Governance) Cert IV Regional (4 x 1 week blocks; 20 days total)	Building Strong Corporation BSC (2 x 3 day workshops)
Diploma in Business (Governance) Diploma (5 x 1 week blocks; 25 days total)	Certificate IV in Business (Governance) Cert IV Remote (up to 60 days flexible delivery)

The latest Productivity Commission Report on *Overcoming Indigenous Disadvantage: Key Indicators 2007* identified ORIC's training program, and ORIC's training partnership with the Victorian state and Swinburne University, as being 'things that work' in increasing governance capacity and skills in directors and key staff in Indigenous corporations.¹

Central to the effectiveness of ORIC's corporate governance training are the following principles which ORIC has identified, through experience, as critical to the delivery of training in regional and remote Indigenous communities.

¹ Productivity Commission Report on *Overcoming Indigenous Disadvantage: Key Indicators 2007*, p. 646.

ORIC's principles for effective training in regional and remote Indigenous communities

1. Before training, a situational analysis is required to capitalise on local knowledge and expertise and identify capacity development points.
2. Evidenced based information, community profiles, surveys or statistical information or systemic issues with potential to affect delivery of training or training outcomes should be taken into account.
3. The identification and use of local issues in established corporations enables application of learning, and enhances motivation and learning.
4. Partnering with regional and/or state Registered Training Organisations and trainers assists to develop local capacity to undertake this work. Productive partnerships can also assist to expand delivery and outcomes.
5. Quality relationships between the training team and Indigenous participants are fundamental to motivation and learning.
6. Effective trainers have a depth of corporate governance knowledge; understand participative/experiential processes and activities; understand and apply vocational and technical education sector best practice to planning, preparation, delivery, assessment and reporting; have the capacity to bring cultural knowledge and sensitivity to their relationships with participants; have the ability to establish a collaborative learning environment that integrates corporate governance with community governance; and have the willingness to learn from participants as well as teach.
7. Curriculum development and learning support materials need to be localised and focused on local corporate governance issues.
8. Particularly in remote communities, translation of words into participants' first language and the use of interpreters for 'dialogue learning' enhances understanding and application.
9. In remote communities, opportunities to compare and contrast traditional governance arrangements and law, and Western corporate governance principles, enables discussion about cultural match, mismatch, similarities and differences, and enhances motivation and learning.
10. Training for key corporation staff is essential to ensure that they are qualified to develop the corporate governance capacity of directors and members. In remote communities, staff require specialised corporate governance training, outside that delivered to directors and members, as skill sets and the aims of the training are likely to differ significantly.
11. New learning has the potential to create conflict as participants put knowledge into action. Conflict awareness and management, and content around effective communication techniques, should be built into any training program.
12. Particularly in remote communities, encouraging participation by highly respected senior law people in the program, even though they may not formally enrol, has significant benefits for overall program support, motivation, and learning.

13. The involvement of young people in the training is dependent on the support of highly respected senior law people and the use of traditional and/or local learning processes. In ORIC corporate governance training, young people are not targeted until they reach the age of 15, unless they are specified and supported by senior family members.
14. Particularly in remote communities, participants are likely to suffer from ill health, the effects of trauma, or other life stresses and commitments. Training programs should incorporate self care components, particularly nutrition, exercise and relaxation techniques.

(b) Advice, information and support

ORIC provides advice, information and support to Indigenous corporations, before and after registration, in relation to the registration process and corporate governance issues. This service is utilised often by corporations, some of which, particularly in remote Indigenous communities, are likely to have had minimal corporate governance experience. ORIC's 'doorway service' helps Indigenous groups before they are registered as a corporation, to ensure they are appropriately structured and aware of their requirements under corporations law on registration.

(c) Dispute resolution and mediation

ORIC has recently taken on a role of dispute resolution and mediation between members of a corporation and between different corporations. Conflict between family and interest groups is a characteristic of some Indigenous corporations and has contributed to a perception in the broader business sector, that Indigenous corporations are unstable and should therefore not be engaged with on a commercial basis. The decision by the Registrar to provide dispute resolution and mediation services to corporations makes a direct contribution to addressing this issue.

(d) Examinations

The CATSI Act permits the Registrar to authorise an examination of the books of an Indigenous corporation. ORIC implements its program of examinations on an annual basis. In the year 2008-2009, 80 examinations will be conducted. The program is split into two parts, rolling and reactive examinations. Rolling examinations are those undertaken as a safeguard measure in regions across Australia, including regional and remote communities, with a particular focus on corporations with large income and assets. The reactive examinations are undertaken in response to a matter of concern about a corporation coming to the attention of the Registrar. The power granted to the Registrar by the Act to authorise examinations, and the associated program which is implemented by ORIC, increase the likelihood that operational or procedural problems within a corporation will be detected in the early stages.

Examinations enhance the transparency of corporations and the outcomes can provide grounds for increased confidence on the part of funding bodies and the broader business sector, that Indigenous corporations are relatively secure entities in which to invest resources.

Term of reference (d)

Term of reference (d) inquires into the employment and enterprise opportunities in regional and remote Indigenous communities. The Registrar will outline how the CATSI Act supports Indigenous enterprises and how ORIC's training program supports the capacity of people to engage with employment opportunities.

The CATSI Act—supporting Indigenous enterprises

The CATSI Act is a flexible piece of legislation which is tailored to meet the diverse requirements of contemporary Indigenous corporations. It was designed to support Aboriginal and Torres Strait Islander people forming corporations for commercial purposes, many of which are in regional and remote Indigenous communities.

The Registrar will outline the characteristics of the CATSI Act which directly support Indigenous enterprises and the capacity of such enterprises to build sustainable relationships with the broader business sector. The CATSI Act does this through:

- (a) supporting enterprise development
- (b) facilitating commercial growth
- (c) maximising certainty for third parties
- (d) enhancing corporate transparency

(a) Supporting enterprise development

The CATSI Act contains a range of measures which allow a high degree of flexibility in corporate design of Indigenous corporations. The CATSI Act includes a framework of replaceable rules which enables groups to simultaneously tailor their corporate structure and meet the requirements of the Act. This aligns with international observations that commercial success and corporate governance are both enhanced when groups can select corporate design arrangements which best suit their needs.² The CATSI Act:

- enables the registration of small enterprises by allowing a corporation to have a minimum of five members and directors, unless an exemption on this matter has been granted to the corporation by the Registrar, in which case the corporation is permitted to have fewer than five members and directors, including single membership and directorship.
- permits the registration of complex corporate structures and peak bodies.
- allows Indigenous corporations to make a choice as to whether to allow non-Indigenous members and directors, so long as a majority of Indigenous members and directors is maintained. The CATSI Act specifies that all the members and directors of a corporation must be Indigenous unless the corporation specifies otherwise in its constitution. This provides flexibility in terms of corporate structure and delegates decision making power regarding corporate structure to Aboriginal and Torres Strait Islander groups. Indigenous

² A Modern Statute for Indigenous Corporations: Reforming the *Aboriginal Councils & Associations Act 1976* (Cwth). Final report of the Review of the *Aboriginal Councils & Associations Act 1976* (Cwth). December 2002. By Corrs Chambers Westgarth with Anthropos Consulting, Mick Dodson, Christos Matziaris, Senatore Brennan Rashid. Page 58. Report commissioned by the Office of the Registrar of Aboriginal Corporations.

corporations are also able to appoint directors, for example to utilise the particular skills and expertise of professionals such as lawyers, accountants and doctors.

- allows for corporate members of Indigenous corporations. This facilitates direct engagement between Indigenous corporations and other corporate entities, assisting Indigenous corporations to benefit from the experience and input of other corporations, and enhancing the transparency of the internal operation of Indigenous corporations for creditors and corporate partners.
- allows Indigenous corporations to set up for profit purposes and provides flexibility in internal governance rules relating to how these profits are dealt with, by determining whether profits can be distributed to members.

(b) Facilitating commercial growth

The CATSI Act minimises barriers to the commercial growth of Indigenous corporations by:

- being Commonwealth legislation which provides national registration. This facilitates national commercial development and minimises impediments of state-based legislative frameworks.
- allowing Indigenous corporations to amalgamate, opening the door for corporations to exercise this option in order to maximise growth and capture increased market share.
- reducing the administrative burden on some small corporations. This has great significance for Indigenous commercial enterprises, for which the demands of administration can seriously interfere with the capacity to generate profit. Under the Act a corporation is classified as small, medium or large according to its income, assets and number of employees. The reporting requirements of a corporation are determined according to its registered size classification. Small corporations with a consolidated gross operating income of less than \$100,000 are only required to submit a general report.
- reducing reporting requirements for medium (and some small) corporations that receive public funding. Eligible corporations can provide copies of their financial reports compiled for government funding bodies, in lieu of an audited financial report.
- requiring a consolidated annual report from a consolidated entity where smaller corporations form part of this consolidated entity. This promotes transparency in the reporting of the larger entity.
- giving the Registrar a high degree of flexibility to exempt corporations from certain record keeping, reporting and governance requirements which would be excessive or place an unreasonable burden on a corporation.³

(c) Maximising certainty for third parties

Low levels of commercial and legal certainty have been barriers to a broader business sector engaging commercially with Indigenous enterprises. The CATSI Act

³ CATSI Bill (2006) *Explanatory Memorandum*, p. 10, <http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/ems/Linked/16100602.pdf>. Accessed 10 July 2008.

provides commercial and legal certainty to third parties engaged in activities with Indigenous corporations by:

- clarifying the assumptions that third parties are entitled to make when dealing with Indigenous corporations.
- validating certain procedural irregularities, so that a proceeding or resolution is not automatically invalid because of a procedural irregularity.⁴ For example, a resolution passed at a directors meeting to enter into a particular contract is not invalid simply because the directors meeting did not have quorum. The resolution may only be invalidated if the person affected detrimentally by the procedural irregularity takes the matter to Court. The onus is on the person affected to seek from the Court an opinion that the irregularity has caused or may cause substantial injustice (that cannot be fixed by a court order) or an order that the proceeding is invalid.
- extending directors' duties to corporation officers and senior management. A person who may exert a significant influence on the business of an Indigenous corporation, has increased liability, despite the fact that the person is not a corporation director.
- increasing the capacity of third parties, through the external administration provisions, to take a proactive role in protecting their interests.⁵

(d) Enhancing corporate transparency

The CATSI Act contains a number of provisions which seek to enhance the transparency of Indigenous corporations. These provisions increase the accountability of Indigenous corporations and promote transparent practices in the running and decision-making of corporations and best practice in corporate governance.

- The CATSI Act permits a corporation to have observers, a class of person who can attend meetings but does not have voting or speaking rights. This enables Indigenous corporations to open their meetings to authorised external parties, without being obliged to allow these parties to participate in corporate decision making.
- Reporting requirements for medium and large corporations with income above \$100,000 are significant, consisting of a general report, an audited financial report (or non-audited financial report, depending on corporation size) and a directors' report. Medium sized corporations with income below \$5 million and large corporations with any income, are also required to provide an audited annual report. This reporting maximises the transparency of corporations as perceived by the broader business sector, creditors, funding bodies and members.

⁴ CATSI Bill (2006) *Explanatory Memorandum*, p. 10, <http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/ems/Linked/16100602.pdf>. Accessed 10 July 2008.

⁵ CATSI Bill (2006) *Explanatory Memorandum*, p. 9, <http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/ems/Linked/16100602.pdf>. Accessed 10 July 2008.

ORIC corporate governance training—links to employment

A key to developing education and training links to employment is ensuring that training meets the needs of Indigenous peoples, is culturally appropriate in design, development and delivery, and involves Indigenous people in the decision-making process regarding training policy, planning, resources and delivery.⁶ The primary focus of ORIC's training is developing the capacity of Indigenous corporations, however it also extends to developing links to employment. ORIC targets directors, members and key staff of corporations. These participants obtain an accredited qualification, which for many, particularly in remote Indigenous communities, is their first formal qualification. Participants learn new competencies and skills which can be transferred to occupations within the Indigenous community sector or business areas, or beyond.

⁶ ANTA (2005) *Partners in a Learning Culture—The Way Forward*, p. 13, www.dest.gov.au/NR/rdonlyres/E879AF00-53E7-4087-812A-5064A50E0BFB/6398/THEWAYFORWARDfinalJune05.pdf.