



**Australian Government**  
**Indigenous Business Australia**



Senator Crossin  
Chairperson  
Senate Select Committee on the Administration of Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Senator,

I have pleasure in attaching a submission by Indigenous Business Australia to the Senate Select Committee on the Administration of Indigenous Affairs.

If you require any further comment or elaboration on IBA's submission please do not hesitate to contact either myself, or IBA's General Manager, Mr Ron Morony.

Yours truly,

A handwritten signature in black ink, appearing to read 'Joseph Elu'.

Joseph Elu  
Chairperson  
2 August 2004

**Indigenous Business Australia**

**Submission to the**

**Senate Select Committee**

**on the Administration of Indigenous Affairs**

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## **1. Introduction**

This submission has been prepared by Indigenous Business Australia (IBA) to the Senate Select Committee on the Administration of Indigenous Affairs on its inquiry into the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 and related matters.

As detailed later in this submission, IBA's role is specialised and therefore, IBA's comments will focus on commercial and structural issues as they affect commercial programmes. In particular, IBA will comment on those aspects of the Bill as they affect IBA.

## **2. About IBA**

### **2.1 General**

The Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC) was originally established in 1990 (Part 4 of the then new *Aboriginal and Torres Strait Islander Commission Act 1989*).

Indigenous Business Australia (IBA), was established in April 2001 as successor to the CDC. The change process was approved by the Federal Parliament in passing amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989*. The Act, titled the *Aboriginal and Torres Strait Islander Commission Amendment Act 2000*, received Royal Assent and commenced on 17 April 2001.

One of the rationales for the creation of IBA was that the establishment of a new organisation, with a new name, would provide an opportunity to refocus business client expectations on commercial objectives clearly differentiated from the broad social and economic objectives of the Aboriginal and Torres Strait Islander Commission (ATSIC). This was intended to overcome perceptions that the CDC was part of ATSIC.

### **2.2 IBA's Statutory Role**

IBA has a broad commercial charter. Under section 146 of the enabling legislation, Indigenous Business Australia is required to:

- assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and
- advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples.

Section 147 provides for IBA to have the following functions:

- to engage in commercial activities;

- to promote and encourage Aboriginal and Torres Strait Islander self-management and economic self-sufficiency;
- such other functions as are conferred on it by this Act.

Under section 148, IBA is required to comply with the following:

- In performing its functions, IBA shall act in accordance with sound business principles.
- For the purpose of the performance of IBA's functions, IBA's Board shall have regard to the desirability of:
  1. encouraging and facilitating Aboriginal and Torres Strait Islander participation in commercial projects and enterprises;
  2. securing, as far as practicable, Aboriginal and Torres Strait Islander participation in the ownership and control of companies engaged in activities that are likely to have a significant impact on Aboriginal or Torres Strait Islander interests;
  3. promoting the development of industries and other commercial and economic activities that are likely to have a beneficial impact on Aboriginal or Torres Strait Islander interests; and
  4. making specialist commercial expertise available to Aboriginal persons and Torres Strait Islanders engaged in commercial activities.

IBA has a broad range of powers ie: subject to section 153 and Division 8, IBA has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

The powers of IBA include, but are not limited to, the following:

- to enter into contracts;
- to invest money of IBA;
- to appoint agents and attorneys, and act as an agent for other persons;
- to form, and participate in the formation of, companies;
- to subscribe for and purchase shares in, and debentures and other securities of, companies;
- to enter into partnerships;
- to participate in joint ventures and arrangements for the sharing of profits;
- to accept gifts, grants, bequests and devises made to it;
- to act as trustee of money and other property vested in it on trust;
- to charge for the provision of services by it.

IBA can also act as a trustee and the powers of IBA may be exercised within or outside Australia. Subject to financial limitations, IBA can also provide guarantee facilities.

As IBA is a government authority performing in the open market place, IBA is also subject to the provisions of the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). The legislation provides reporting, accountability and other rules and imposes

standards similar to if IBA was a reporting entity under Corporation law. The Act also deals with other matters relating to Commonwealth authorities, such as banking and investment and the conduct of officers.

### **2.3 IBA's Corporate Vision and Statement of Purpose**

IBA's objectives are contained in its *Corporate Plan 2002-2005* as follows:

*"To see greater economic self-sufficiency and well being for Indigenous Australians through a strong Indigenous business presence in mainstream economic activities."*

The Corporate Plan also contains IBA's statement of purpose:

*"IBA will endeavour to stimulate the economic advancement of Indigenous peoples through investing in sound commercial ventures while encouraging and supporting Indigenous participation in both the management and employment levels."*

### **2.4 IBA's Operating Environment**

IBA invests directly in business opportunities, usually through joint venture arrangements with expert industry partners. At present IBA has a capital base of some \$90 million and with that, it has direct involvement in some 30 investments throughout Australia in an extensive range of industries that include:

- property;
- mining;
- transport;
- manufacturing, retail and services;
- tourism; and
- financial services.

Through these investments IBA brings industry and Indigenous communities together through joint venture ownership and management of a variety of businesses. It is very much a hands-on role that has proven benefits in terms of job creation and capital accumulation - both of which help Indigenous people participate in Australia's economic activity. IBA looks for opportunities to enter into commercial ventures that have the potential to create local and sustainable economic outcomes - to provide jobs and hope for Indigenous people (recognising that not all investments or joint ventures lend themselves to employment outcomes).

IBA has advocated its approach of partnerships and improved relationships with the private sector, as an important part of the range of options available to government in their package of programs to assist Indigenous economic development. This approach was seen as an important key to achieving better economic outcomes for Indigenous Australians. In order to achieve its objectives, IBA has developed strategic alliances with experienced and reputable corporate operators who see the unique and commercial advantages in working with or involving Indigenous Australians in their operations.

It usually enters ventures to provide positive and intensive support to its Indigenous partners. This support provides comfort to non-Indigenous partners and builds skills in the Indigenous partnership to eventually “buy out” IBA’s equity.

IBA has a broad commercial charter and does not receive a regular appropriation from Parliament. Following the establishment of its initial capital base by Parliament, it has received one further subvention. It is required to make strategic investments within its resources in order to grow and meet its statutory responsibilities. It must also meet all of its running costs, including wages, from derived profits..

IBA has an asset base of some \$90m in a complex investment structure, many with separate ASIC reporting requirements. The combined turnover of joint venture businesses in which equity is held exceeds \$300 million per annum. In each of these investments, IBA actively participates at the company, board and management committee levels. IBA investments are traditionally, through separately incorporated companies, although some investments are held directly by IBA. IBA and its investment structures have holdings in a diverse range of business activities throughout Australia. Some of these investments are in potentially high risk sectors such as mining, shipping and road transport. And while many of the traditional funds management groups have retreated to investments in major metropolitan areas, IBA’s client base live in remote, urban and metropolitan areas. Therefore its investments in Regional Australia are also regarded as high risk.

Under section 156, it is the responsibility of the Indigenous Business Australia Board to ensure the proper and efficient performance of the functions of Indigenous Business Australia and to determine the policy of Indigenous Business Australia with respect to any matter. The Board is therefore responsible for ensuring that IBA meets its legislative charter and for providing policy direction.

The Chairman, directors and executive officers have the responsibility of ensuring compliance with a wide range of statutory law and common law. The conduct of these investments must comply with applicable Federal and State/Territory laws on matters relating to:

- company’s conduct;
- industrial relations;
- taxation;
- trade practices;
- equal opportunities;
- anti-discrimination;
- occupational health and safety; and
- environment

IBA needs to act as a “good corporate citizen”, applying sound business principles. Directors and staff can be held personally accountable for their conduct. Penalty provisions for Directors and staff are similar to ASIC provisions including the application of the Criminal Code.

Any breaches may result in litigation against individuals and while IBA has appropriate indemnity insurance in place, indemnity does not provide absolute protection. This potential exposure should not be underestimated and it is expected that the trend in Australia, to hold Board directors personally accountable for the conduct of the business, will not abate.

IBA is therefore not a conventional government agency and operates at arms-length from the Commonwealth. It is not able to rely on the Commonwealth in terms of financial support. For example, IBA can sue and be sued in its own right (section 145 (2)(d)).

Under the current legislation, Ministerial control is specifically limited by the legislation (section 151) and unless specifically provided for under the legislation or specific provisions of the *Commonwealth Authorities and Companies Act*, the Minister is not empowered to direct IBA in relation to any of its activities.

IBA (and its predecessor CDC) have now had some 14 years of practical experience in commercial operations. Unlike other mainstream agencies, IBA does not provide direct funding support to a third party but invests directly in business opportunities creating the environment for Indigenous participation.

What this means, in a practical sense, is that IBA acts as a business partner accepting all of the exposure and liability that goes with that role. It is for this reason that the legislation has been framed in a way which limits Commonwealth control and therefore any perception that the Commonwealth has any flow on responsibilities for IBA's actions. IBA staff are directors of companies and have responsibilities and exposure far beyond what would be expected in a "normal" public service environment.

Our experience has taught us the importance of ensuring that IBA staff have the academic and practical skills necessary to work in a very real commercial environment. These skills are not often found in mainstream APS agencies with the clear majority of IBA staff having been recruited from the private sector.

IBA feels that it must maintain its strong commercial discipline although this can and does lead to criticism from those who are used to a more conventional welfare approach. If we are to maintain and build upon a credible presence in the private sector then we need to maintain our rigidity in terms of the due diligence processes and the ongoing support for businesses once joint ventures are established.

Our practical experience has also taught IBA the benefits of needing to work effectively within a set capital base where growth and running costs are funded from investment outcomes. .

IBA's other advantage is that it has clearly defined roles and responsibilities in a relatively narrow field and does not fall into the trap of being a generalist trying to be "all things to all people".

On the negative side, IBA is unique in the Commonwealth family and is often little understood at the central agency level. This is hardly surprising given that fundamental



differences in objectives can arise when central agencies may be focussed on annual budget based objectives while IBA, with its own long term capital base, may have a different focus. As a result priorities can be different and central agencies often seek to apply global Commonwealth policies to IBA which are irrelevant and often work against our legislative charter.

## **2.5 Operations**

IBA is managed by a Board of Directors comprising:

- a Chairperson;
- a Deputy Chairperson; and
- up to seven other members.

All Directors are appointed by the responsible Minister.

Day to day administration is undertaken by a small contingent of staff comprising:

- a General Manager;
- a Deputy General Manager; and
- 13 other staff located in three operational areas.

These operational areas are:

- Business Development;
- Business Participation; and
- Financial Management and Human Resources.

IBA meets all its administrative costs from its investment earnings.

Further details of IBA's operations are contained in our *Annual Report*.

### **3. Inputs on Terms of Reference**

#### **3.1 Introduction**

The select committee's terms of reference are to inquire into and report, by 31 October 2004, on the following matters:

- (a) the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;
- (b) the proposed administration of Indigenous programs and services by mainstream departments and agencies; and
- (c) related matters.

In addressing these terms of reference, IBA offers comments under the following headings:

- Provisions of the Bill as they Impact on IBA;
- IBA's views of the changes;
- Recommendations.

#### **3.2 Provisions of the Bill as they impact on IBA**

The announcement on 15 April 2004 by the Government of its intention to restructure Indigenous affairs, and the subsequent introduction of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004, provides for a major impact upon IBA.

As part of this process, IBA moved to the Employment and Workplace relations portfolio as there is a close alignment between IBA's functions and related functions of that portfolio. This move took place on 1 July 2004 in as a result of revised Administrative Arrangements Orders.

It is also proposed to transfer two programs to IBA from the Aboriginal and Torres Strait Islander Commission and Aboriginal and Torres Strait Islander Services. These are the business development program (containing both an ATSIC element and a Commonwealth element) and the home ownership program (ATSIC only).

The Bill was introduced into Parliament on 27 May 2004 to give effect to the Government's announcements. The key features of the Bill, as they impact upon IBA, were:

- To give IBA specific powers to make loans or grants on terms and conditions determined by IBA, rather than relying on the broader powers within the current legislation;

- To establish a new housing fund within IBA which defines the purposes for which the funds can be applied;
- To provide the Minister with greater power to give IBA general directions, which is consistent with the powers the Minister had over those programs when part of ATSIC; and
- To establish review mechanisms over decisions made in respect of housing or business loans

The Bill also provided for the scheduling of assets and liabilities to be transferred to IBA from ATSIC and the Commonwealth. These are, in the main, existing housing and business loans.

### **3.3 IBA's Views of the Changes**

The IBA board supports the proposed changes as they impact on IBA.

IBA believes there is a clear logic in bringing together commercial programmes and that IBA is well placed to deliver those programmes. IBA's views are not new.

For some years IBA has advocated the need to adopt a more rigorous approach to commercial programs and has promoted an examination of the synergies which could be obtained from bringing together commercial programs.

IBA was originally created in 1990 as the Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC).

In 1997-1998, the CDC assisted the then Minister, Senator the Hon John Herron, in the preparation of a discussion paper on reform of Indigenous economic development activities. The discussion paper, *Removing the Welfare Shackles*, was released in March 1998.

This paper canvasses a proposal that the Commonwealth Government establish a new statutory authority called Indigenous Business Australia by amending the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act) and changing administrative arrangements.

The discussion paper proposed wide ranging changes to provide a greater focus on economic development objectives as a way of reducing long term welfare dependency. The paper also argued the need to separate social and welfare based activities from economic and commercial activities given the inherent conflict which sits between the two areas of activity. The paper suggested that relevant commercial programmes, such as the Business Development Programme and the Home Ownership Programme be administered by IBA

As a result, the Government proceeded with a number of changes through legislative change in 2000. The main changes were:

- CDC was renamed as Indigenous Business Australia;
- ATSIC was given the power to engage other parties to deliver its programmes if it so chose; and
- IBA was given the specific power to administer ATSIC programmes if it was requested to do so.

The net effect was to create IBA and to provide a framework for IBA to deliver certain ATSIC programmes if requested by ATSIC to do so.

No such requests were ever made by ATSIC, and IBA no longer actively pursued the rationalization of commercial and economic programmes.

During 2003, the IBA Board made a written submission to the Review of ATSIC. It also provided a copy of this submission to the Review of Indigenous Business Programmes. Given some of the reactions to *Removing the Welfare Shackles*, IBA was far more circumspect in this latter submission.

In the submission IBA stated that it believed that there is a strong case for a range of dedicated business support programmes to be available to Indigenous people and that these programmes should be delivered in a competent and professional manner and free from constraint or influence.

In looking forward, IBA suggested, inter alia, that:

- Consistent with broader Commonwealth wide practice to separate the core responsibilities of policy and programme development from hands on delivery responsibility:- reconfirm and ensure that IBA should continue to act commercially and at arms length from the Commonwealth; and
- Give consideration to whether the IBA hands on approach and strict commercial focus might provide a useful model for the application of other Commonwealth Indigenous economic development programs;

In relation to commercial programmes, IBA stated that in its view:

- There is a continuing need for a range of programmes to encourage and assist Indigenous participation in commercial activities and the broader economy;
- Due to the lack of previous practical experience by many Indigenous small business owners, ongoing mentoring and other forms of support are essential;
- Those involved in delivering these programmes must have the necessary skill sets to do so and work in an environment which is commercially focussed;

#### **4. IBA's Successes**

IBA believes that it has been successful in drawing together Indigenous Australians and the private sector into sustainable business relationships which provide for profit (and risk) sharing, employment opportunities, and asset accumulation. This is a valuable role model in which mainstream Australian businesses are progressively introduced to commercial opportunities with Indigenous groups for mutual gain.

These successes provide a solid foundation for moving forward with an expanded role for IBA.

The current success of the commercial approach by IBA can be highlighted by the following key facts:

- The total Commonwealth investment in IBA to date has been \$70.4m - IBA is currently worth over \$90m – while this growth may appear modest, IBA is often investing in the high risk end of the market and has met all business losses and all running costs from its successful investments
- IBA is currently involved in some 30 significant investments of which 14 have existing Indigenous partners and a further 11 have negotiations underway to introduce Indigenous partners.
- Of these 30 investments, 24 are located in rural and remote Australia.
- We expect that shortly our Indigenous business partners will hold equity in IBA joint ventures to a gross amount exceeding \$35m (currently exceeding \$21m gross)
- Despite its modest capital base, in 2003-04, IBA expects that its investments will have created 600 jobs for Australians of which 200 will be Indigenous Australians.
- The expected annual wage bill for Indigenous employees in these investments will be in the order of \$8m to \$10m
- Profit distributions to Indigenous business partners will be in the order of \$3m.
- Over the past five years, IBA has sold its remaining equity in five other successful investments to its Indigenous partners (three of these businesses had continuing non-indigenous partners). These businesses had a combined gross value of some \$15 million and employed nearly 300 Australians.
- There is clear evidence that IBA's business activities and the subsequent involvement of local communities, is having positive health benefits. We have

reports of reductions in alcohol and drug abuse in communities keen to take up employment opportunities.

IBA does not believe such results are achievable in a pure public sector or welfare program dominated environment. It also highlights that greater successes can be achieved in this difficult area by focussed activity – rather than attempting to integrate the activity into a broader range of responsibilities which can cause confusion in objective setting and client expectations.

## **5. IBA's Capacity to cope with the Changes**

IBA believes it is well placed to take on the proposed additional responsibilities. At the Board and senior management level, it is committed to making the changes work.

IBA has participated in a range of forums addressing human resource issues, IT issues, accommodation needs and the level of departmental and administered funds.

### Staffing Resources

As part of the process of mainstreaming programs delivered by ATSSIS, a comprehensive exercise was undertaken within ATSSIS to identify the relevant staffing resources attached to each function. Corporate support was then allocated on a pro rata basis. IBA has been consulted throughout this process and is satisfied that the staff identified to move to IBA upon passage of the legislation, are sufficient to undertake the work associated with the business development program and the home ownership program.

Based on the agreed mapping exercise, upon passage of the legislation, IBA would receive approximately 120 ASL and would have a comprehensive staffing network throughout Australia to deliver both the Home Ownership Programme and the Business Development Programme.

Similarly, an exercise was undertaken to identify the level of salary funds to transfer. Again, IBA was consulted through this process and is satisfied that appropriate financial resources have been identified to meet the cost of the ASL while in the original ATSSIS structure.

In anticipation of a 1 July 2004 start date for the new legislation, the IBA Board and senior IBA management devoted considerable energy to developing processes for a smooth transition of responsibilities. This included the development of conditions of service for approximately 120 ASL who would have transfer to IBA from Aboriginal and Torres Strait Islander Services,

IBA worked closely with the staff of the Department of Employment and Workplace Relations, the Public Service Commission and Attorney General's Department to carefully work through issues associated with the proposed transfer of Public Servants to IBA which is not under the provisions of the Public Service Act. The continued application of superannuation, long service leave, maternity leave and recreation leave

was worked though to ensure that the proposed transfer would meet the “no disadvantage” test.

Prior to 1 July 2004, senior IBA staff attended national workshops of ATSI senior home ownership program officers and senior business development program officers to explain how IBA functions and the current employment conditions within IBA. Considerable time was devoted to questions and answers to address concerns and identify any issues which required further work.

### IT needs

IT needs generally fall into four categories.

The first are the needs of future IBA staff located in ICC's. Under arrangements negotiated, DEWR is to maintain the ICC IT platform on a contract basis. This will relieve IBA of the burden of maintaining systems and hardware in a range of diverse locations. Systems will be established to meet necessary privacy considerations.

Future IBA staff located in Capital cities will be collocated with DEWR state offices, DEWR will again provide and maintain IT systems under contract.

Central Office staff associated with HOP and BDP will remain in Lovett Tower with DEWR providing contracted IT services until the future of the Bill becomes clearer.

Current IBA Woden based operations will continue to be owned by IBA and maintained through a private sector contract. IBA has already commissioned an upgrading of its server in order to meet an anticipated increase in demand.

The delay in the passage of the legislation has required some contingency planning particularly in respect of the dedicated loans software package and its integration of data into a corporate level financial accounting package. Once the future of the Bill is clearer, IBA will need to make decisions about upgrading its current accounting package.

### Accommodation

In respect of accommodation, arrangements are well advanced. Canberra based staff were identified to stay in Lovett Tower with additional accommodation being negotiated to allow existing IBA staff to move to Lovett Tower upon passage of the legislation.

At the regional level, identified staff would remain in the Indigenous Co-ordination Centres while in capital cities, identified staff would collocate with DEWR state offices.

### Programme Administration and Corporate Governance

In anticipation of the passage of the legislation, IBA management had developed, and the IBA Board had already considered, an extensive delegation framework to sit around the new programmes, the policies and guidelines to underpin the administration of the new programmes and the development of an appropriate organisational structure.

Work also commenced on reviewing IBA's fraud control plan and risk management strategies. A new business continuity plan is also being developed.

### Corporate Support

As part of the mapping exercise, IBA was satisfied that sufficient, and fully funded, corporate services support resources had been identified for transfer from ATSIIS.

## **7. Recommendations**

It is recommended that the Committee notes IBA's position in respect of the Bill.

IBA fully supports the changes proposed as they impact upon IBA. IBA believes it has demonstrated that it has the capacity to deliver effective commercial programmes. IBA has also advocated the bringing together of other commercial programmes in a non APS environment.

The two programmes in question, HOP and BDP are clearly commercial programmes.

HOP is a well run programme assisting Indigenous Australians secure significant assets. While it provides fully justified discount loan rates, the processes used to assess applicants, make decisions, enter contracts, obtain securities and manage the loan portfolio is clearly a discipline which is driven by commercial standards. Recovery action, where necessary, is also based on commercial disciplines.

IBA contends that the programme is well placed in an environment like IBA rather than a mainstream department.

The BDP has had a varied history. In the recent 12 months, the programme decision making processes have gone through considerable change resulting in more disciplined loan decisions. While there are a number of historical loans which will continue to cause some concerns, IBA understands that the majority of the older loans are also performing satisfactorily.

There is a clear logic in moving BDP to IBA. IBA would manage the existing loans portfolio but more importantly, would seek to improve the outcomes of future decisions by ensuring that appropriately skilled staff are available to manage the programme. IBA will place greater attention on ensuring applicants have the necessary skills before loans are made and will also seek to upgrade and improve loan aftercare. There is also significant opportunity to seek greater synergies between the range of available programmes within the new look IBA and DEWR.

Under both HOP and BDP, there is a clear duty of care and a fiduciary responsibility to new applicants and existing borrowers. It is essential that the management of current and future loans be undertaken in an appropriate environment and with appropriately skilled staff.



It is also a very clear IBA objective that the proposed changes should improve outcomes for Indigenous Australians.

IBA has consistently held the view that there must be separate arrangements for the management of commercial programmes as opposed to social and welfare grant programmes. The paper developed by IBA, *Removing the Welfare Shackles*, examined the history of the delivery of commercial programmes and IBA has also studied the Canadian, United States and New Zealand experiences. The outcomes of this research further cement IBA's views on the need for separation. Without separation, history shows that the welfare objectives tend to dominate economic objectives.

Indigenous involvement in the mainstream economy through asset accumulation and business development and participation is a cornerstone of any economic development strategy. IBA sees the merger of the three primary programmes aimed at asset accumulation and business development as essential to provide Indigenous Australians with a professional and focussed way of achieving home ownership and participation in the mainstream economy of this nation.

Indigenous Business Australia  
July 2004