

**Inquiry into the
Corporations (Aboriginal and Torres Strait Islander) Bill 2005**

***Submission to the
Senate Legal and Constitutional Legislation Committee
on behalf of the
Coalition of Aboriginal Legal Services of NSW (COALS)***

What is COALS?

Before proceeding to outline its views on the Corporations (Aboriginal and Torres Strait Islander) Bill 2005, it seems fitting to provide the Committee with a brief description of COALS, its members and its work.

COALS forms a peak body representing the 6 Aboriginal and Torres Strait Islander Legal Services (ATSILS) in NSW. These Services are:

Kamilaroi Aboriginal Legal Service (head office: Armidale)
Many Rivers Aboriginal Legal Service (head office: Grafton)
Western Aboriginal Legal Service (head office: Dubbo)
Central Southern (Wiradjuri) Aboriginal Legal Service (head office: Wagga Wagga)
South Eastern Aboriginal Legal Service (head office: Nowra)
Sydney Regional Aboriginal Legal Service (head office: Redfern).

COALS has administrative and research capacity. As a result it is able to provide its own administrative servicing as well as being a focal point for the articulation of policy on behalf of NSW ATSILS. It provides policy and legal research support to the regional services, and is in the process of developing an electronic resource centre. COALS is a major point of engagement with government in the legal and justice arena.

Corporations (Aboriginal and Torres Strait Islander) Bill 2005

COALS is broadly supportive of the general aims of the Bill to bring the regulation of Aboriginal community organisations in line with the *Corporations Act 2001* (Cth) whilst maintaining the provision of culturally congruent support and training by the Office of the Registrar of Aboriginal Corporations (ORAC).

Despite this support however, COALS maintains some objections to the new Bill. These pertain principally to the powers of the Registrar of Aboriginal Corporations. COALS notes that s453 of the new Bill is in similar, if not identical terms to s60 of the *Aboriginal Councils and Associations Act 1976* (Cth). In relation to s453, paragraph 3.50 of the Explanatory Memoranda states that the power of the Registrar to appoint a suitably qualified person to

examine a corporation's affairs enables 'healthy organisation checks' as a preventative measure. COALS is of the view that such a conception of the power bestowed upon the Registrar by s453 is misplaced and potentially damaging to the ORAC. It is COALS' opinion that it is inappropriate for the Registrar to conduct reviews of 'healthy organisations' or of organisations generally in the absence of appropriate grounds. Groundless checks are time-consuming and stressful for even the healthiest of organisations. Such checks are also costly to the ORAC and COALS would query whether groundless checks are an effective use of the Australian taxpayer's money.

Further on the question of the appropriateness of the Registrar or his or her appointee conducting such groundless checks, COALS notes that Aboriginal organisations are largely government-funded. Each government department responsible for the provision and management of such funding requires comprehensive performance and financial reports at 3- or 6-monthly intervals. Groundless checks would simply add another layer of compliance to an already onerous reporting scheme. In addition, staff in such government departments are expert in their particular field. For this reason, they are best placed to receive and assess information from Aboriginal community organisations.

It is COALS' understanding that the ORAC does not have expertise in the specific operations of particular Aboriginal organisations such as legal services or medical services. Hence, added reporting and monitoring requirements would simply increase the workload of many Aboriginal organisations without providing any benefit in the way of operational guidance. The required expertise is more often located within funding bodies. As these bodies receive performance information, they are best placed to interact with Aboriginal organisations on matters concerning operation and efficiency and thereby to review the 'effectiveness' of Aboriginal organisations.

Given that most other requirements under the new Bill are simply taken from the *Corporations Act* whilst the broad power of the Registrar is maintained in s453, it is difficult to understand what incentive there would be for *large* Aboriginal organisations to incorporate under the new Bill. Such organisations may ultimately find themselves at a disadvantage as, simply by virtue of their size, any groundless check many prove exceedingly burdensome.

In conclusion, COALS wishes to draw the Committee's attention to an article published in the September 2005 issue of the *NSW Law Society Journal* in which the author highlights the dangers of the general audit power conferred upon the Law Society Council and the Commissioner of Legal Services by s670 of the *Legal Profession Act 2004 (NSW)*.¹ COALS is of the opinion that many of the difficulties raised by the author in relation to s670 are also applicable to s453 of the Corporations (Aboriginal and Torres Strait Islander) Bill, in particular, the fact that in the course of a 'healthy organisation check' which is not limited to financial records, the Registrar's appointee may come across highly sensitive client information. Maintaining the confidentiality of

¹ Geoff Bourke, "Audit powers unsought and undesirable" (2005) 43(8) *Law Society Journal* 53.

such information however, is vital to the administration of justice. In addition, as highlighted in relation to s670, the power conferred upon the Registrar is so broad as to include checks which range from the mundane to checking in areas which could render the ORAC the subject of allegations of interference in solicitor-client relations for political or other purposes.² More generally, the power bestowed by s453 suggests to Aboriginal people involved in the management of corporations that they cannot be trusted. COALS believes that rather than maintaining the power contained in s60 of the *Aboriginal Councils and Associations Act*, the ORAC should focus on providing extensive training and education for Aboriginal people involved in the management of corporations to ensure good governance practices and compliance with the requirements imposed by the remainder of the Bill or of the *Corporations Act*.

² Ibid.