



ASIC

Australian Securities & Investments Commission

[National Office, Sydney](#)

No. 1 Martin Place, Sydney
GPO Box 4866 Sydney NSW 1042
DX 653 Sydney

[Telephone \(02\) 9911 2000](#)

[Facsimile: \(02\) 9911 2316](#)

[Malcolm Rodgers](#)
[Executive Director, Regulation](#)

Our Reference:
Your Reference:

27 September 2005

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Sir

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

I refer to your letter dated 9 September 2005 addressed to Mr Jeffrey Lucy AM, Chairman of ASIC inviting submissions to the above Parliamentary inquiry. Thank you for providing ASIC with the opportunity to make a submission.

In summary ASIC supports the introduction of the *Corporations (Aboriginal and Torres Strait Islander) Bill 2005* (CATSI Bill).

ASIC was a member of the review committee that was established by the Registrar of Aboriginal Corporations as part of the review announced in February 2001 into the *Aboriginal Councils and Associations Act 1976* (ACA Act). ASIC has provided a number of submissions and comments to the Registrar in relation to the initial review and the draft Bill. In addition ASIC maintains a close working relationship with the Registrar's office and has commenced discussions with the Registrar in relation to a formal process for information sharing and assistance if the legislation comes into effect.

I attach a formal submission from ASIC in relation to the Bill.

If you have any questions, please contact me on (02) 9911 2000 or Anthony Beven, Northern Territory Regional Commissioner, on (08) 8943 0925.

Yours sincerely

A handwritten signature in black ink that reads "Malcolm Rodgers". The signature is written in a cursive style with a large, sweeping initial 'M'.

Malcolm Rodgers
Executive Director, Regulation

**ASIC SUBMISSION TO THE
SENATE LEGAL & CONSTITUTIONAL LEGISLATION COMMITTEE**

**INQUIRY INTO THE CORPORATIONS (ABORIGINAL AND TORRES
STRAIT ISLANDER) BILL 2005**

ASIC has been consulted on a number of occasions since the commencement of the 2001 review by the Registrar of Aboriginal Corporations (the 2001 review) of *the Aboriginal Councils and Associations Act 1976* (ACA Act). ASIC supported the recommendation of the 2001 review that reform of the ACA Act was required. ASIC therefore supports the introduction of the *Corporations (Aboriginal and Torres Strait Islander) Bill 2005* (CATSI Bill).

Separate Legislation and Separate Regulator

ASIC supports the need for separate incorporation legislation for Indigenous corporations, which is administered by a specialist regulator such as the Registrar of Aboriginal Corporations.

ASIC notes that the 2001 review concluded that Indigenous corporations and their incorporators and management have special needs that have to be met if those incorporators and corporations are to participate satisfactorily and successfully in corporate and commercial life. This premise involves complex and difficult questions of a social and cultural nature which fall outside ASIC's usual areas of expertise and responsibility.

Since 1976 the Office of the Registrar of Aboriginal Corporations has developed specialist skills and knowledge to regulate and assist Indigenous people to incorporate and manage corporations incorporated under the ACA Act. The Registrar's office, and not ASIC is therefore better placed to continue to undertake that role. ASIC and the Registrar have however agreed to continue to work closely together to share information and provide assistance, particularly where there may be regulatory overlap between the two organisations.

Additionally, the *Corporations Act 2001* is a broad and flexible statute that caters for a wide range of corporations. There are currently almost 1.4 million companies incorporated in Australia under the *Corporations Act 2001*. The special needs of the approximately 2,600 Aboriginal corporations incorporated under the ACA Act could not be adequately catered for in the *Corporations Act 2001*.

As a result ASIC has supported the maintenance of a separate incorporation statute that specifically caters for Indigenous corporations. Additionally, the special needs identified by the Registrar's 2001 review are more appropriately dealt with by a specialist regulator that is established to address and provide funding, training and educational assistance to Indigenous corporations and their incorporators and management. This is more appropriately catered for outside of the legislative incorporation regime prescribed by the *Corporations Act 2001*.



The CATSI Bill updates the existing legislation, the ACA Act, and strengthens the legislative regime for Aboriginal and Torres Strait Islander corporations and more closely aligns it with modern corporate law. ASIC supports this approach.

Incorporation Choices Maintained

It is not mandatory for Indigenous organisations to incorporate under the CATSI Bill and it remains one of a number of incorporation options available to such organisations. For those corporations for whom the CATSI Bill is not appropriate the *Corporations Act 2001* and the State and Territory Associations Incorporation Acts still provide viable alternatives.

ASIC also understands that the proposed Corporations (Aboriginal and Torres Strait Islander) Miscellaneous and Transitionals Bill (CATSIMT) will provide a mechanism for CATSI corporations to transition to the *Corporations Act 2001* when the CATSI legislation is no longer appropriate for their needs. ASIC will continue to consult with the Registrar and looks forward to commenting on the provisions of the CATSIMT Bill, any proposed administrative procedure for transferring CATSI Bill corporations to the *Corporations Act 2001* and more generally on any other provisions of the CATSIMT Bill that may amend, or affect the administration of the *Corporations Act 2001*.

CATSI Bill & Corporate Governance

In ASIC's view, the CATSI Bill is likely to lead to an improvement in the corporate governance and financial accountability of Indigenous corporations and their management. The alignment of the CATSI Bill with the *Corporations Act 2001* in relation to directors' duties, external administration and the examination of the affairs of CATSI Bill corporations will maintain a consistent minimum threshold for director's and management to comply with across both pieces of legislation.

END OF SUBMISSION