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The Registrar of Indigenous Corporations' responses to additional questions and questions on notice from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into remote community stores

The Registrar of Indigenous Corporations provides the following information to the additional questions and questions on notice put to the Registrar by the committee.

ADDITIONAL QUESTIONS

- 1. FaHCSIA has noted in its submission that: 'Store committees do not always understand how to perform their functions effectively and are not necessarily given access to the information that would enable them to do their job well.' (Submission 68, p.14)**
 - The Committee is aware that in May and June you are running workshops to improve Store Committee governance capacity in the Northern Territory. Can you outline the training program and its objectives?**

The 'Building Strong Stores' (BSS) training program has been developed by the Office of the Registrar of Indigenous Corporations (ORIC) in partnership with the Northern Territory Government and the Community Stores Unit of FaHCSIA. The Institute for Aboriginal Development (IAD), based in Alice Springs, has been contracted to deliver the BSS training program in partnership with ORIC training staff.

The course addresses various aspects of governing a community store, such as business strategies, roles and responsibilities of store directors and managers, financial management, decision making and licensing requirements. The objectives of this program are to help participants understand principles of good corporate governance, the importance of a corporate structure in the governance of a corporation, the roles and responsibilities of corporation directors and association committee members, basic financial concepts relevant to the operation of community stores, and key aspects of running a successful community store.

Participants in the BSS training program are recruited by contacting store committees directly to advise of upcoming BSS training in their region. Participation is voluntary and is open to all store committee members and directors from stores licensed by FaHCSIA. While preference is given to participants from FaHCSIA licensed stores, participation is not limited to licensed stores and other stores may participate if group sizes permit. There

is no fee for participation in the three-day BSS course and ORIC pays the travel, meals and accommodation costs for all participants.

To date, four BSS courses have been delivered in Alice Springs, Tennant Creek, Katherine and Darwin. ORIC will continue to deliver the BSS training in 2009-10 and will expand this program beyond the Northern Territory. All training programs, including the BSS, are advertised on ORIC's website.

- **Are interpreters used to facilitate communication between language speakers and non Indigenous people in training and other contexts?**

The Institute for Aboriginal Development (IAD), based in Alice Springs, has been contracted to deliver the BSS training program in partnership with ORIC training staff. IAD's Aboriginal Translating and Interpreting Service provide translators and interpreters for a range of Central Australian languages. IAD's expertise in this area has greatly enhanced accessibility and engagement in the BSS training.

The BSS training material has been developed to cater for a variety of audiences, including participants with low literacy levels, using plain English, diagrams, visual aids and participatory learning methods. The delivery and exercises within the BSS course accommodate multiple literacy levels. Trainers encourage participants to draw on their own experiences and the diverse knowledge they bring to stimulate group participation and learning.

Outside of training it is the standard practice of ORIC to use translators and interpreters when communicating with community members that do not have English as their first language. For example, in the special administrations of Mimili Maku Store Aboriginal Corporation, Anangu Pitjantjatjara Services Aboriginal Corporation (both on the APY lands in South Australia) and the Yuendumu Womens Centre Aboriginal Corporation (located in the Northern Territory), interpreters were used for all community meetings and translators were used for the translation of newsletters. Examples are attached at Attachment A.

In the special administration of the Bulabula Arts Aboriginal Corporation (Arnhem land) the newsletters were translated and broadcast in Yolgnu over community radio on a looped service.

- **What other assistance do you provide to Indigenous corporations to help them exercise their governance obligations and to better manage their dealings with non-Indigenous store managers?**

ORIC's core business is regulating and delivering support services to promote good corporate governance in Indigenous corporations. ORIC provides assistance and encourages Indigenous corporations to exercise good corporate governance through accredited and non-accredited training, information and advice, including a 1800 telephone service and a range of publications. ORIC's regulatory functions include examinations, special administrations and mediation and dispute resolution services.

The BSS course covers community store governance structures both with and without an externally contracted store manager, and addresses the roles and responsibilities of store

directors and store managers. The BSS course develops participants' knowledge in areas of corporate governance, business planning and financial management, and includes specific content for developing participants' communication and negotiation skills when dealing with non-Indigenous store managers.

The Registrar has limited ability to protect the interests of community store owners in their dealings with store managers. While some community stores may be owned by corporations registered with ORIC, and these stores may contract the services of a store manager, these corporations are not obliged to share the precise nature of this contractual arrangement with ORIC unless the arrangement in some way effects a change in the corporation's rulebook or corporate governance structure, or processes. Furthermore, ORIC can only provide legal advice in relation to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act), and cannot provide corporations with advice on contractual arrangements they may enter into with third parties.

- **What is the community response to your programs? Do people actively seek them or is there resistance, or unwillingness to participate in your programs? If there is resistance how do you manage that?**

Since 2003-04, ORIC has been delivering a suite of training in urban, regional and remote areas, using different methods, products and programs to cater to diverse audiences and needs. Participation in training is voluntary. Training courses are offered to directors, members and key staff of Indigenous corporations free of charge, with travel, meals and accommodation provided. Overall, participant satisfaction with ORIC's training exceeds 90 percent.

A three-day, non-accredited Introduction to Corporate Governance (ICG) course, developed by ORIC, is one of our most popular training services. The ICG course is aimed at directors, members and key staff of Indigenous corporations, and is delivered to small groups, generally between 20-30 participants. Feedback from ICG participants on the relevance and usefulness of the training has been consistently very positive.

ORIC also offers a Certificate IV in Business (Governance) and a Diploma of Business (Governance) as further learning pathways. This training is accredited and competency-based, and provides ORIC clients with higher levels of skills in corporate governance.

Also popular is ORIC's corporation-specific training. Corporation-specific training is delivered in response to specific requests from individual corporations and is conducted on-site, addressing the corporation's rulebook design and specific governance issues. It can include topics such as running meetings, directors' roles and responsibilities, record-keeping and reporting requirements. This training has proven to be both an important means of building the governance capacity of corporations, as well as a means for ORIC to build strong relationships with our corporations.

In 2009, the BSS training program was developed to respond to the specific needs of FaHCSIA licensed stores. Four BSS courses have been delivered in Alice Springs, Tennant Creek, Katherine and Darwin. Participant evaluations and observations have shown a positive response to the program and participants have expressed interest in further training.

ORIC promotes its training programs through its website and regular newsletters, and directly contacts corporations to advise when training courses are to be conducted in their region. ORIC's website contains further information about the training programs available.

2. FaHCSIA also reports that store committees may make decisions about prices and surplus expenditure which may benefit them or the store manager, but may not be in the interests of the community as a whole.

- **Under the CATSI legislation, what obligations have store committees members (as corporation directors) to their shareholders and members of the community?**

- **Have they total discretion in the expenditure of store profits (or surpluses)?**

Under the CATSI Act the directors of Indigenous corporations are obliged to discharge their duties with care and diligence, in good faith and in the best interests of the corporation. Directors or other officers of Indigenous corporations may breach the CATSI Act and commit an offence if they use their position dishonestly or recklessly with the intention of directly or indirectly gaining an advantage for themselves or someone else, or causing detriment to the corporation.

Store directors are also required to adhere to the rules of the corporation's rulebook, which sets out additional directors' obligations and responsibilities when making financial decisions for the corporation. A corporation's rulebook may in some cases further specify how store profits or surpluses are to be used and/or distributed, and directors would be obliged to act in accordance with these rules. Under the CATSI Act, a corporation's directors must obtain member approval to give a financial benefit to a related party of the corporation. The CATSI Act clearly specifies procedures to ensure open and transparent disclosure to members when seeking approval for the payment of related party benefits.

All Indigenous corporations must prescribe an internal dispute resolution process in their rulebooks. If a dispute between directors and members over financial management practices (or other governance issues) is not able to be resolved through the internal process, the Registrar has the power to intervene and assist with resolving the dispute and can provide guidance in developing sound financial decision-making and accountability processes.

Indigenous corporations with a consolidated gross operating income of \$100 000 or more are required to provide the Registrar with an annual audited financial report, or financial reports based on reports to government funding agencies (where applicable). The CATSI Act permits the Registrar to authorise an examination of the financial records of an Indigenous corporation. ORIC conducts a rolling program of examinations, with a particular focus on corporations with significant income and assets. The Registrar may also initiate an examination in response to an apparent risk within a corporation.

The Registrar has the power to investigate alleged breaches of the CATSI Act and refer breaches to the Commonwealth Director of Public Prosecutions for prosecution. Should it become apparent in the course of an investigation that an officeholder may be breaking

laws other than the CATSI Act, the Registrar will refer the matter to the relevant authority such as the Australian Federal Police.

- **What leverage do store committees currently have to deal with dishonest managers?**
- **Do they have access to the advice they need to assess the situation and to act against it?**

Through advice, information, support and training programs such as 'Building Strong Stores', ORIC develops the capacities of store directors to monitor and oversee their store and the performance of store managers. However, literacy and comprehension of legal requirements are still major issues facing many directors of remote stores.

ORIC's corporate governance support and capacity building assists corporations to develop clear objectives in their rulebooks, and enhances their understanding of the roles and duties of directors, including their accountability obligations. This in turn increases directors' understanding of the accountability they should expect from store managers, and their ability to set clear expectations on regular and transparent reporting from the store manager to the committee.

The Building Strong Stores training develops participants' knowledge of the various aspects of store management, and includes a strong focus on developing communication and negotiation skills, particularly in dealing with store managers that disrespect the views or ignore the requests of the store committee.

The Registrar's ability to protect the interests of community store owners in their dealings with store managers is limited. While some community stores may be owned by corporations registered with ORIC, and these stores may contract the services of a store manager, corporations are not obliged to share the precise nature of this contractual arrangement with ORIC, nor should they, unless the arrangement in some way affects a change in the corporation's rulebook or corporate governance structure or processes.

Furthermore, ORIC can only provide legal advice in relation to the CATSI Act, and cannot provide corporations with advice on contractual arrangements they may enter into with third parties, or advice in dealing with dishonest store managers. While a store committee may have leverage to terminate the contract of a dishonest or fraudulent store manager, it is possible that in many cases they may not have access to adequate and appropriate business or legal advice in order to fully assess the situation and to act against it.

The Registrar notes that in remote areas, it may sometimes be difficult for stores to attract and retain a skilled store manager, and communities may sometimes agree to or remain in an unsatisfactory arrangement with a store manager in order to ensure their store remains open.

Incorporation under the CATSI Act provides much greater security for a community store should it run into financial or governance difficulties, given the Registrar's powers to intervene – for example, to place a corporation under special administration in circumstances when there are sufficient legal grounds to do so. The special administrator's role is to apply their business expertise and to collaborate with the corporation's members

to solve problems and return the corporation to their full control, while ensuring business operations continue during this process.

- **A number of stores in the APY lands are Mai Wiru Good Food stores, overseen by Nganampa Health. To what extent is the Mai Wiru policy enforceable on stores in the APY Lands?**

The Registrar's function does not extend to overseeing or enforcing the implementation of such a policy as *Mai Wiru*, except insofar as such a policy's aims or strategies may be enshrined in the objectives of an individual corporation's rulebook.

The Registrar does not have a role in the administration of the Mai Wiru policy and it would be more appropriate to direct this question to Nganampa Health.

3. Community stores are the main mechanism through which Income Management is delivered in prescribed communities in the Northern Territory. There are 178 stores receiving Income management funds. 75 community stores have been licensed by FaHCSIA.

- **Has the licensing process been accepted by community corporations or has there been resistance?**
- **Do Aboriginal corporations have the power to reject the imposition of income management in their communities?**

These questions are outside the Registrar's statutory responsibilities and are best addressed to FaHCSIA.

4. Some communities have expressed concerns that Government will take over control of their community store, which is their main source of independent revenue, if they show that they are having problems. Outback Stores has been seen as a vehicle for this.

- **What obligations are there for Outback Stores, and its store managers, to be accountable to owner corporations and store committees?**

Outback Stores is itself a private company – it is not incorporated under the CATSI Act. Therefore the Registrar does not have a regulatory role in relation to Outback Stores.

The Registrar supports a model of community ownership of remote stores to ensure community input into the management of community stores. The Registrar also supports a model of external management and administration, such as the ALPA or Outback Stores model, in conjunction with community ownership. The community provides the framework in which a store operates but external management and administration provides retail and management expertise to a community store, continuity and ongoing support, economies of scale and also reduces the amount of humbug on store managers.

The Registrar supports community ownership of stores through a corporation registered under the CATSI Act. There are many benefits of incorporation under the CATSI Act and the Registrar has the resources to provide support to a community owned store when it

experiences governance or financial difficulties. The CATSI Act provides a strong regulatory framework at a national level, yet it is a suitably flexible piece of legislation that better accommodates the needs, values and practices of Aboriginal and Torres Strait Islander organisations than state and territory frameworks that are not designed for this purpose.

In addition the Registrar and ORIC, which supports the Registrar, have been established to specifically support the empowerment of Aboriginal and Torres Strait Islander people in taking control of their affairs through corporations. ORIC also has greater resources to exclusively direct towards regulating and supporting Indigenous corporations than do the states and territories under their associations legislation.

Through ORIC's program of training and ongoing corporate governance support, directors can also be better equipped to protect the corporation's interests and that of the membership, through understanding their role and the role and accountability of store managers.

As mentioned above, under certain circumstances the Registrar has the power to appoint a special administrator to take temporary control of a corporation that is experiencing governance or financial difficulties. The Registrar encourages corporations and stakeholders to view this power as a means through which Indigenous corporations in difficulty can quickly retain and regain control over their store - rather than fearing a 'government takeover' of their store if they show they are experiencing problems. The relationships ORIC builds with Indigenous corporations encourages them to proactively seek the Registrar's assistance, before any such problems affect the ability of a corporation to provide services, including essential services such as food, to their communities.

5. ORIC has identified a strong link between economic development and self determination in Indigenous communities. It works to ensure that Indigenous corporations are functional and can deliver services in partnership with the non-Indigenous sector.

- **Have you suggestions for taking the process of empowerment forward in the context of community store development and control?**

The majority of Indigenous corporations, if not all, that own community stores are not-for-profit organisations, and community stores are not so much revenue-generating business enterprises as they are providers of an essential service. As noted above the Registrar is a strong supporter of community ownership of stores, as the community store provides an essential service that influences the general health and wellbeing of the community. It is also a key vehicle for exercising a degree of economic empowerment and self-determination. The Registrar identifies a strong link between community ownership of stores and economic development, though in many cases this link may be indirect.

Remote Aboriginal community stores operate in a difficult environment. While store turnover may be high, gross profit margins are often low – and are likely to be lower for stores attempting to implement nutrition policies, due to the costs of freight, shrinkage and other overheads. Community stores are not so much revenue generating business enterprises as they are providers of an essential service. While it may not be feasible to expect a community store to contribute to economic development directly through revenue

generation, the skills and capabilities that are exercised by a community in governing and managing their store builds the community's capacity and confidence for further economic development.

The Registrar has illustrated to the committee the difficulties of dealing with the current complexity of registration systems around the country. Community enterprises may be incorporated under the CATSI Act, or may form as cooperatives, associations, ASIC companies or trusts. The Registrar supports incorporation under the CATSI Act for remote stores for the services and support his office provides to Indigenous corporations, however it is acknowledged that some community enterprises may see equal or greater benefits in establishing their businesses under other registration systems.

QUESTIONS ON NOTICE

1. What percentage of your store organisations would be constituted under the standard contract?

The Northern Territory is provided as an example as data is readily available for remote stores in this jurisdiction. The Registrar believes this data would be representational for remote stores in other states.

There are 29 out of 83 licensed community stores in the Northern Territory owned by corporations registered with ORIC.

Fourteen of these 29 corporations registered with ORIC have standard arrangements in their rulebooks for the election of their directors, whereby election or appointment is open to all members and there are no additional specifications around the composition of the board other than those required by the CATSI Act. The remaining 15 store committees specify certain requirements for traditional owner representation, tribal and language group representation, gender balances and/or representation of outstation residents, and some specify that directors, or a certain number of directors, must be long-term residents of the community.

Amongst the rulebooks of the 29 corporations owning licensed community stores in the Northern Territory, some specify that a director(s) may be appointed by resolution passed at a general meeting, and that the director(s) may then appoint other directors to make up a quorum. Others specify that all directors are to be elected. In either case, the corporation must confirm its directors by resolution at the annual general meeting. Some rulebooks specify that there must be a rotation of directors after a set term, while others specify that directors are eligible for re-election on an annual or biennial basis.

More generally, in specifying certain requirements for representation on committees, Indigenous corporations employ contextually specific approaches to the democratic process, rather than employing the simple principle of 'majority rule'. In the interests of ensuring fairness, some Indigenous corporations prefer to structure their committees in a similar manner to that of the Australian Senate, in that the different sub-groups represented on the committee would have the same number of representatives regardless of each sub-groups' actual size. The CATSI Act is a flexible piece of legislation that allows for such traditional, customary and/or community specific requirements.

The CATSI Act specifies the rights of a corporation's members and the duties of directors to the membership, in terms of ensuring transparency, access to information, participation in meetings, voting rights and so on. The corporation's rulebook specifies the governance and structure of the directors and the means by which directors are elected and/or appointed. A corporation's rulebook must be agreed to by at least 75 per cent of the members via a democratic process.

Under the CATSI Act, members have recourse to act in several ways if they are dissatisfied with their directors' representation of their interests. The Registrar's 1800 information service responds to queries from concerned members about their rights and options, and the Registrar provides a range of community education services and resources to promote directors and members being aware of their rights, responsibilities and options.

Contact from concerned members is also a key means by which the Registrar becomes aware of possible breaches of the CATSI Act that may require regulatory intervention.

2. Could you give us some stats on how many stores are registered with you by state?

Under the CATSI Act reporting requirements for Indigenous corporations changed on 1 July 2007. Through reporting, the Registrar is now for the first time populating data about the nature of business activities of corporations. At this stage the data is incomplete but in the next 12 months the Registrar is expected to have more meaningful data.

The incomplete data obtained to date indicates that there are 48 corporations registered with ORIC that have self identified that one of their main business activities is a 'shop'. While these businesses may involve food and grocery retail, some may be arts and crafts shops or involved in other forms of retail. Furthermore, some of these corporations may have specified 'shops' in their registration as a business activity they intended to establish at some point in future, which may not yet be operational.

By state and territory, corporations that have identified as operating as stores are: New South Wales 3, Northern Territory 29, Queensland 3, South Australia 2 and Western Australia 11.