



8 December 2009

Mr Stewart Plain
Research Manager
Productivity Commission
Level 2, 15 Moore Street
CANBERRA CITY ACT 2600

Dear Mr Plain,

RESPONSE TO THE PRODUCTIVITY COMMISSION'S CONTRIBUTION OF THE NOT-FOR-PROFIT SECTOR DRAFT RESEARCH REPORT

This submission responds specifically to the Productivity Commission's recommendation to establish 'a one-stop shop for Commonwealth regulation by consolidating various regulatory functions into a new national Registrar for Community and Charitable Purpose Organisations' (the proposed national Registrar). Further, that the Office of the Registrar of Indigenous Corporations (ORIC) should be transferred to the proposed national Registrar.¹

I submit that ORIC should be not transferred because of:

- the unique role and special functions of ORIC
- the greater benefit of retaining ORIC in the Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) portfolio
- the possible reduced corporate governance support services to Aboriginal and Torres Strait Islander corporations (corporations).

The unique role and special functions of ORIC

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) is a special measure for the advancement and protection of Aboriginal and Torres Strait Islander people. The CATSI Act is designed to accommodate the specific cultural practices and local circumstances of Aboriginal and Torres Strait Islander groups, and is tailored to reflect their particular needs.

The focus of the proposed national Registrar will be charities and not for profit organisations. Corporations registered under the CATSI Act are significantly distinct from charities and mainstream not for profits. Corporations can run large commercial enterprises generating significant income from diverse sources and involve subsidiaries and trusts.

The policy environment in which Indigenous corporations operate is unique. For instance, recognised native title bodies are required under native title legislation to be registered under the CATSI Act. As some of these corporations are for profit and others not for

¹ The Productivity Commission, *Contribution of the Not-for-Profit Sector*, draft recommendation 6.4, Productivity Commission, Melbourne, October 2009, p. L.

profit, the proposed national Registrar would be responsible for regulating corporations that are both for profit and not for profit. The regulation of native title bodies is a specialised area of law and regulation. It is very distinct from the regulation of charities and not for profits.

The same argument also applies to royalty bodies receiving payments from land councils from the Aboriginals Benefit Account. These bodies are required under the *Aboriginal Land Rights (Northern Territory) Act 1976* to be incorporated under the CATSI Act and regulated by the Registrar.

Given the CATSI Act is an incorporation statute specifically for Aboriginal and Torres Strait Islander people and groups, this is not consistent with the role of the proposed national Registrar, and ORIC should not be transferred.

The benefit of retaining ORIC in the FaHCSIA portfolio

The Productivity Commission's recommendation would result in the transfer of ORIC from the FaHCSIA to the Treasury portfolio. ORIC is better placed in the FaHCSIA portfolio to fulfil its unique role and functions.

As part of the FaHCSIA portfolio, the Registrar is able to be responsive to the priorities set by the Australian Government in closing the gap, led by the Minister for Families, Housing, Community Services and Indigenous Affairs. I have aligned ORIC's support services with the Australian Government's priorities in closing the gap in Indigenous disadvantage and life outcomes, in particular by directly contributing to the governance and leadership building block.² The Registrar is also a member of the department's Senior Management Group and its Closing the Gap Committee.

As an example of this coordinated approach, ORIC and FaHCSIA developed the 'Building Strong Stores' training program for Indigenous remote community stores in the Northern Territory. The program addresses various aspects of governing a remote community store, such as business strategies, roles and responsibilities of store directors and managers, financial management, decision making and licensing requirements.

The Minister has also recently introduced into Parliament amendments to the *Northern Territory National Emergency Response Act 2007* which will see remote stores in the Northern Territory currently registered under the *Associations Act 2003* transferred to the CATSI Act. The Registrar will be required to work closely with FaHCSIA, which administers the store licensing regime in the Northern Territory. Licensing and governance of stores will be closely linked in policy terms.

The provision of adequate services to Indigenous corporations

As a special measure the Australian Government recognises that a majority of corporations are located in regional and remote Australia, and do not have the same access as mainstream organisations to services such as legal, financial and corporate governance assistance. To respond to the special needs, requirements and risks, the Registrar provides a suite of corporate governance support services, such as those provided by the 'Building Strong Stores' training program described above.

² It should be noted that all statutory decisions are independently made by the Registrar and authorised delegates.

Many corporations delivering services in remote Australia are community controlled and owned, but operate large commercial enterprises. One unique feature shared by many corporations is that they are often the only service provider within a given community and, as such, need to provide a range of essential services to the local community, focusing on the whole community rather than just one type of service.

The recommended transfer of ORIC could result in less resources being targeted to this priority area as the proposed national Registrar would be responsible for regulating between 60 000 and 120 000 not for profit and charity organisations.³ Competing priorities could result in diverting resources from regulating Indigenous corporations to the mainstream not-for-profit and charity sector.

Conclusion

I do not support the transfer of ORIC to the proposed national Registrar, which could result in:

- restricting the ability of the Australian Government to align resources and policy within the FaHCSIA portfolio, which has the key responsibility for Indigenous affairs in important areas such as Indigenous organisational governance and in priority sectors such as remote stores, royalty bodies and native title corporations
- reduced corporate governance services to corporations because of the competing priorities of the proposed national Registrar
- less assistance to corporations that provide essential services to Aboriginal and Torres Strait Islander communities, and unique types of corporations such as native title bodies.

If you have any questions about this submission or require any further information please contact Dr Nathan Boyle on 02 6219 7600 or at nathan.boyle@oric.gov.au.

Yours faithfully,



Anthony Beven
Registrar

³ The Productivity Commission expects organisations generating an income of at least \$150 000 would incorporate under the proposed national Registrar, which is approximately 10 to 20 per cent of the total number of not for profit and charity organisations (p. 6.14).