



**31 July 2018**

Mr David Thodey AO  
Chair of the panel conducting an independent review of the APS

Mr Thodey

### **Submission to the independent review of the APS**

The Registrar of Indigenous Corporations welcomes the opportunity to contribute to the independent review of the Australian Public Service (APS).

The Registrar is an independent statutory office holder who administers the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The CATSI Act is based on the Corporations Act 2001 and provides flexibility to meet the needs of Aboriginal and Torres Strait Islander people, communities and cultures. It also establishes the Office of the Registrar of Indigenous Corporations (ORIC) to support and regulate corporations by:

- **advising** groups on how to incorporate
- **training** directors, members and key staff in good governance
- **ensuring compliance** with the law
- **intervening** when needed.

At the time of writing:

- **40 staff** work within ORIC—in Canberra as well as nine regional offices in Coffs Harbour, Brisbane, Cairns, Townsville, Darwin, Broome, Alice Springs, and Perth
- **3058 corporations** are registered under the CATSI Act—many in regional and remote parts of the country.

As the following pages indicate, ORIC employees occupy a unique position within the APS and as a result face unique challenges. ORIC staff work for an independent statutory office-holder who fulfils particular statutory functions. Our office regulates and supports a sector that is economically important and culturally important, largely regional and remote, and in many instances lacking access to mainstream services including communication. In addition, the corporations the office regulates and supports involve individuals and communities that have been distinctly disadvantaged, and as a consequence have a greater need for support.

Sincerely,

Mike Fordham  
A/g Registrar of Indigenous Corporations

### ***Driving innovation and productivity in the economy***

Aboriginal and Torres Strait Islander corporations play a critical part in Indigenous community cultural and socioeconomic development and every year, as well as a greater role in the broader Australian economy. The following figures come from ORIC's latest annual report on the top 500 Aboriginal and Torres Strait Islander corporations:

- The combined income of the top 500 corporations is \$1.92 billion.
- Their ten-year average annual growth rate is 8.3 percent.
- Together these corporations employ 12,981 people.
- Over 50 percent of all their board members are women—and in more than 80 percent of corporations, over 30 percent of directors are women.

ORIC supports corporation members, directors and key staff to practice good governance and by doing so, helps Aboriginal and Torres Strait Islander corporations to thrive. In other words, in the big picture ORIC plays an integral role in Indigenous communities' economic development and in 'closing the gap'.

As well as being uniquely positioned to support this growing sector of the economy, the data that ORIC collects and holds about corporations—including their locations, industries, income, employees, memberships and directorships—could potentially fuel innovation and further productivity. For more on this notion, see the section on tackling complex, multi-sectoral challenges.

With the resources, governance, and professionalism of the APS, ORIC undertakes these regulation and support roles effectively and efficiently.

### ***Delivering high quality policy advice, regulatory oversight and services***

The CATSI Act specifies that the Registrar:

- operates independently
- has a staff of APS officers to assist in the administration of the CATSI Act, and
- may only delegate statutory powers to the Deputy Registrar, an SES officer or an APS employee with the appropriate expertise.

The incumbent Registrar has a diligent staff who keep the register of Aboriginal and Torres Strait Islander corporations up to date, provide training, publish guidance, field enquiries, manage disputes, conduct examinations and investigations, and refer wrongdoers for prosecution. There are particular challenges in regulating and serving a sector where people are likely to have:

- remote locations
- limited access to services—including poor or no internet connectivity
- low or no literacy and
- first languages other than English.

Needless to say, the Registrar and his or her staff must perform a balancing act, and make wise, sensitive, risk-informed choices about where to focus their efforts.

The Registrar recognises the value of rationalising services and strives for efficiency but because statutory functions cannot be compromised, he has limited discretion with regard to scaling back services. Applying measures such as the efficiency dividend is a

significant challenge for a small office in the context of a statutory officer working with a disadvantaged and high-needs sector that is recently showing signs of good growth.

### ***Tackling complex, multi-sectoral challenges in collaboration with the community, business and citizens***

Like all APS members, ORIC staff are striving to carry out efficient and effective business-as-usual in the face of multiple concurrent changes to the work. For example:

- A technical review of the CATSI Act was undertaken in 2017. From this review the government is considering a number of legislative changes to allow the Registrar to better serve stakeholders, and reduce the regulatory burden. Any changes will require effective large-scale consultation.
- In the May budget it was announced as part of the government's decentralisation agenda, ten Canberra-based ORIC positions will move to Darwin by 30 June 2019. The move necessitates a comprehensive revision to ORIC's staffing structure and work practices, as well as additional training for existing and new members of staff.

Currently, the Register of Aboriginal and Torres Strait Islander corporations has three completely different interfaces—for ORIC staff, corporation representatives and general public. The IT systems supporting the register were developed in 2007 and since then have had only minor updates. Now that the legislative review is underway, the need to refresh or overhaul the database and the interfaces for ORIC staff and corporation representatives will become more urgent. For ORIC this may mean an entirely new system. The challenge for ORIC is to ensure that this system can appropriately interact with existing and future IT systems.

Eleven years after its initial release, there are undoubtedly new technologies with the potential to dramatically improve the means by which ORIC staff maintain data in the Register of Aboriginal and Torres Strait Islander corporations—for example, blockchain may ensure the integrity of data; biometrics may assist to authenticate corporation representatives as they log in to submit reports or requests; and document assembly tools may allow corporations to develop and edit their rule book. To evaluate the viability and propriety of such technologies, ORIC staff need to explore options and consult both technical experts (eg CSIRO's Data61 team) and—crucially—our client base around Australia.

In terms of the public interface to the register, there is also scope for great improvement, particularly to accord with new government policies on open data. As noted in an earlier section of this submission, ORIC holds valuable data on the Indigenous corporate sector. The Registrar is aware that publishing (and maintaining the currency of) data from the register would facilitate research, development and discovery. He is also conscious that such a move would need to be undertaken with respect to Indigenous cultural protocols and moral rights, and that there may be resistance to publicising corporate information in this way. Again, ORIC takes a collegial and consultative approach to this issue. We are liaising with PMC staff who work on open data initiatives, and would consult with corporations before making any significant changes.

In general, successful collaborations (even within agencies but especially those between agencies and with public) depend on tools that are non-proprietary, platform-agnostic and meet a high standard of accessibility and usability. ORIC is particularly sensitive to this need, since our 40 employees work in 11 different locations and use two discrete networks (Department of Prime Minister and Cabinet's protected network and Department of Social Services' unclassified network).

Integration of systems is also an ongoing issue for ORIC staff. It is not uncommon for stakeholders to want to submit large amounts of information to ORIC in various formats. For some stakeholders with limited internet, file sharing technologies are the easiest way for them to provide these, however these systems often are unsuitable due to IT security requirements.

### ***Improving citizens' experience of government and delivering fair outcomes for them***

The Registrar regards it as imperative to provide Aboriginal and Torres Strait Islander citizens with an improved experience of government and fair outcomes. To that end the Registrar:

- advocates for legislative changes to simplify regulatory requirements for small corporations and to better accommodate the circumstances of Aboriginal and Torres Strait Islander communities
- makes agreements with related agencies such as:
  - (i) Australian Charities and Not-for-profits Commission—to exchange information so that non-profit corporations are not obliged to submit two different annual reports
  - (ii) Native Title Tribunal and Torres Strait Regional Authority—to improve outcomes for registered native title bodies corporate (RNTBCs)
  - (iii) Australian Indigenous Leadership Centre—to optimise the delivery of corporate governance training
  - (iv) Australian Taxation Office—to support the Registrar's investigation function with technical support as well as assistance to corporation on matters such as ABNs.
- champions giving regional and remote corporations better access to support services.

ORIC is uniquely positioned to not only regulate but also to serve and support Aboriginal and Torres Strait Islander people involved with corporations registered under the CATSI Act. The Registrar's biggest challenge is to effectively perform the dual functions of regulating and supporting Aboriginal and Torres Strait Islander corporations within the limitations of available human and financial resources.

### ***Acquiring and maintaining the necessary skills and expertise to fulfil responsibilities***

In relation to acquiring and maintaining skills and expertise, the Registrar may only delegate statutory powers to the Deputy Registrar, an SES officer or an APS employee with the appropriate expertise (CATSI Act 668-1(1)). This means that the Registrar may not access labour hire firm staff as readily as other areas of the APS. In other words, the impact of restricting ORIC's average staffing level (ASL) has a more profound impact than in other parts of the APS.

In order to fulfil our responsibilities, ORIC staff need to engage with Aboriginal and Torres Strait Islander clients in culturally-appropriate ways. As ORIC's latest yearbook reports, 48 percent of ORIC staff are Indigenous, and all ORIC staff are involved in regular cultural awareness training.

## **Conclusion**

For small agencies with diminishing resources, meeting standard benchmarks is challenging. Any across-the-board reduction in resourcing has a disproportionate effect on small agencies and jeopardises our capacity to meet our obligations. In ORIC's case those obligations are statutory, and our situation is uniquely complicated because most locations we serve are regional or remote; many of these locations lack internet connectivity or any other means of easily exchanging information; and many of our clients have low literacy and/or English as a second or third language. ORIC staff work hard to give clients the best possible service, and our 'top 500' data shows there is considerable growth in the sector. It makes good economic sense to invest in small agencies such as ORIC so we can continue to build our capacity and capability to provide optimal service to this crucial high-needs sector.