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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND TORRES
STRAIT ISLANDER AFFAIRS

Reference: Capacity building in Indigenous communities

WEDNESDAY, 16 OCTOBER 2002

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Wednesday, 16 October 2002

Members: Mr Wakelin (*Chair*), Mr Danby, Mrs Draper, Mr Haase, Ms Hoare, Mrs Hull, Dr Lawrence, Mr Lloyd, Mr Snowdon and Mr Tollner.

Members in attendance: Mr Danby, Mrs Draper, Mr Haase, Dr Lawrence, Mr Lloyd, Mr Snowdon, Mr Tollner and Mr Wakelin

Terms of reference for the inquiry:

To inquire into and report on:

Strategies to assist Aboriginals and Torres Strait Islanders better manage the delivery of services within their communities. In particular, the committee will consider building the capacities of:

- (a) community members to better support families, community organisations and representative councils so as to deliver the best outcomes for individuals, families and communities;
- (b) Indigenous organisations to better deliver and influence the delivery of services in the most effective, efficient and accountable way; and
- (c) government agencies so that policy direction and management structures will improve individual and community outcomes for Indigenous people.

WITNESSES

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|---|----------|
| ARMSTRONG, Mr Peter, Director, Regulation, Office of the Registrar of Aboriginal Corporations..... | 1 |
| BEACROFT, Ms Laura, Registrar, Office of the Registrar of Aboriginal Corporations | 1 |
| FISK, Mr Garry, Director, Corporate Relations, Office of the Registrar of Aboriginal Corporations..... | 1 |
| MATULICK, Ms Toni, Special Projects Adviser, Office of the Registrar of Aboriginal Corporations..... | 1 |

Committee met at 4.38 p.m.**ARMSTRONG, Mr Peter, Director, Regulation, Office of the Registrar of Aboriginal Corporations****BEACROFT, Ms Laura, Registrar, Office of the Registrar of Aboriginal Corporations****FISK, Mr Garry, Director, Corporate Relations, Office of the Registrar of Aboriginal Corporations****MATULICK, Ms Toni, Special Projects Adviser, Office of the Registrar of Aboriginal Corporations**

CHAIR—I declare open the public hearing for the Aboriginal and Torres Strait Islander Affairs Committee inquiry into capacity building in Indigenous communities and welcome the representatives from the Office of the Registrar of Aboriginal Corporations. I remind you that the proceedings here today are legal proceedings of the parliament and warrant the same respect as proceedings in the House. Any attempt to mislead the committee may be regarded as contempt of the parliament. The committee prefers that all evidence be given in public, but should you wish at any stage to give evidence in private you may ask to do so and the committee will give consideration to your request. Would anyone like to make an opening statement?

Ms Beacroft—Yes, I could do that. The submission we provided was a plain English discussion paper about an ongoing review of the legislation which governs our work. I am not going to go over that discussion paper but I would like to alert you to the fact that the final report is not yet finalised. It is nearly finalised and we will be submitting that shortly. At this stage what we want to do is give you a very brief overview of a number of matters we think you may be interested in and which add to what we have already provided to you and which lead in to the final report that we will provide to you later.

CHAIR—Yes, you are very close to that by the look of it.

Ms Beacroft—Yes. We actually have the final report but we have to go through a process where it gets approved by relevant people.

CHAIR—Corrs Chambers Westgarth.

Ms Beacroft—That is right. For the presentation today we will, first of all, start with Garry, who will give you a very brief overview of the registrar's work in case some of you are not familiar with it. He has a handout which will provide you with more detail, if you want to follow up on that. Then Peter will give you a case study to show you the depth of the work that we do, and then it will come back to me. I will talk about capacity building along the lines of the terms of reference and the issues you have raised there and try to provide material about what we do, which is relevant to the issues you have raised in the documents you have provided to us. Finally, if we have time, I could provide you with an overview of the direction and the shape of the new legislation but I have a handout for that, too, if we run out of time.

CHAIR—That might be a halfway house for the whole thing. We will ask you questions as we go.

Mr Fisk—As Laura said, we have a paper which we will hand up for your information. This gives some details of the history of the Aboriginal Councils and Associations Act, who the Office of the Registrar of Aboriginal Corporations is—I will refer to it as ORAC—and what we do. However, if I can have your indulgence for a couple of minutes, I will give you a quick overview of ORAC. The Aboriginal Councils and Associations Act has been around for about 25 years now. It was enacted for the purpose of providing Indigenous groups and communities with a simple and inexpensive means of incorporation and one which has the flexibility to take account of Indigenous customs, needs and social organisation.

Currently we have around 2,800 corporations who are incorporated under the act. It is estimated that that is about half of all the incorporated Aboriginal and Torres Strait Islander corporations throughout Australia. The corporations under our act are very widely spread. There are 30 per cent in Western Australia, 23 per cent in the Northern Territory and Queensland and 18 per cent in New South Wales. Those four states have 95 per cent of all the corporations. Almost all of these corporations are not for profit and many provide essential services. When I say ‘essential services’, I am talking about medical services and legal services et cetera. Most of those are in rural or very remote areas.

ORAC itself has a range of functions which are similar to those of the Australian Securities and Investments Commission and also state and territory incorporating agencies. However, the act provides us with the ability to undertake some special measures that ASIC and the state and territory agencies either are unable or unwilling to do. My colleague Peter will give you an example in a moment of where we have been able to use those special measures. Laura will also give you a brief overview of the review of the act. Some of the changes suggested in this review are designed to further those special measures that we have, or to at least strengthen the existing ones in legislation.

Like ASIC and the state and territory agencies, ORAC’s key functions are to provide an avenue of incorporation and regulation for those corporations that wish to incorporate, be it so that they can fulfil a legal requirement or so that they can meet the requirements of funding bodies or lending bodies. However, unlike these other agencies, we also provide advice and assistance which goes above and beyond the simple act of incorporation and well past the date of incorporation. We advise members of their rights; we advise governing committees on their roles and responsibilities; we assist committees with specific issues or problems; we assist in the resolution of complaints; we arbitrate in disputes insofar as they relate to the act or to the rules of the corporation; we provide training in corporate governance.

We provide that assistance, as much as possible, by electronic means of communication but often it requires a visit to the community and face-to-face communication. We do that by attending AGMs and in some cases the registrar might even call special general meetings to make sure that all members are aware of issues. If there are no questions at this stage, I will hand over to Peter who will take you through a case study.

CHAIR—That will lead in nicely. The question I have was a related matter but the case study, I think, will help me.

Mr Armstrong—The act has regulatory powers as it stands at the moment. The registrar only uses her regulatory powers when it is deemed absolutely necessary. These powers are used to fix problems at Aboriginal corporations but we also look at getting some positive outcomes, if

possible, in terms of improving knowledge and understanding about governance matters and rules; how to manage the corporation within the rules and the act.

The case study that I want to talk about today is one where the registrar used the most forceful power available. That power was the appointment of an administrator under section 71 of the act. This particular corporation was incorporated in 1988 and its primary objective was to acquire interests in land for the purpose of carrying on pastoral enterprises. The corporation were grant funded to purchase a pastoral lease in a remote part of Australia in 1989 and they also received money for stock. Basically, they had a cattle station and a pastoral lease. There were further grants provided to the corporation from 1990 to 1997 and these would have assisted with the cost of infrastructure improvements, stock purchase and general operations around the property.

There is a school of thought about this corporation which says that all the community really wanted was title to their homelands when they sought to look for funding to purchase the pastoral lease, but what they ended up with was a pastoral lease that had a clause in it that said the pastoral operations needed to be maintained so the lease could continue. For the first few years our files indicate that the corporation was compliant with the terms of the act. Unfortunately, our files do not show us other occurrences; it is just basically how they were running along and submitting their annual returns to us et cetera.

In 2001 the registrar authorised an examination under section 60 of our act because they received a heavily qualified audit. The things that led to that audit being qualified were a lack of supporting documentation for payments; there was no stocktake; there were problems in the wages records; superannuation and other requirements were not being met. We also had direct contact from their auditor, who reported that there was possible diversion of proceeds from the cattle sales to an unknown bank account. There was also a potential threat from creditors' actions because of the state of the financial affairs at that time.

The examination was completed and the examiner found that the governing committee were not capable of managing the affairs of the corporation, which included the management of the cattle operations. The committee were unwilling to appoint effective management, so the examiner concluded that the manager at the time really was not competent and that the committee were not prepared to change. Many of the corporation's own rules were not being followed. I do not know if it has been mentioned previously, but when a corporation incorporates it has a set of rules under which it operates. The examiner also concluded that the committee had not acted diligently and in the best interests of the members.

After that report was received the next step was for us to analyse it and we concluded there was reason to issue a show cause notice which says 'show cause why an administrator should not be appointed'. The process of issuing a show cause notice is part of the natural justice process, I believe. We did that and the corporation responded. We went through a process of analysis on all of that. Before we went out and appointed an administrator, we felt as though the administrators on our current register of consultants probably did not have the capacity to run a cattle station, so we went to the Indigenous Land Corporation to see if we could secure any support, bearing in mind that we wanted to get a positive outcome for the corporation, get it back on its feet and hand it back to its members. The corporation were fairly good about things and decided to put some money in so that some pastoral experts could be hired to assist the administrator.

An administrator was appointed and he has his own set of rules and works to terms of reference. His role is mainly aimed at restoring operational order and making sure that there is good administrative policy and procedure in place. The ILC provided two consultants. One was a property manager who had some expertise in management of a cattle station; the other was what I would term a strategist who assessed what the station was all about, looked at what the potential was and then came up with a long-term business plan for the corporation.

Along the way the administrator also worked with the members to increase their knowledge about how to manage the affairs of the corporation. He has also restructured membership so that the members of the different communities living on the station—and there are six different communities—are part of the membership of the corporation.

CHAIR—Can you give us an indication of the time lines? Has this been over a period of some years, some months?

Mr Armstrong—This is probably over a period of about 12 months. It is about 10 months since the administrator was appointed.

CHAIR—Were terms of reference set by your office?

Mr Armstrong—Yes. In addition to that, I think the members have reacted positively because they have seen a change, an improvement, in the way the cattle operations are being managed. Also, they now have a better understanding of how the corporation is supposed to work. Our office went out and sat down with the corporation's members for about half a day, went through the rules of the corporation with them, gave them an opportunity to ask questions and explained to them what the rules meant. I think they came away with a better understanding of all of that.

As I said before, the long-term business plan has now been completed. The members have agreed that some external expertise is needed on a long-term basis so that the cattle operation can continue to be effective. We expect that they will separately incorporate another identity which will take on the role of the cattle operations, an identity which will allow some external experts to sit on the board, such as an accountant and pastoral experts et cetera. Hopefully that will occur next month, then all being well we are aiming at handing the corporation back to the members in December 2002.

Our work does not stop when we hand the corporation back. We are prepared to keep working with the corporation, the committee and the members for as long as it takes. We will provide whatever advice and assistance we can to keep it going. To summarise, the outcomes of the use of that power have meant that operational order has been restored around the corporation and the cattle operations. The members now have a better understanding of what the corporation means, what the act means and how the rules work et cetera. The members are also better informed about the operations of the business. Beforehand it was being controlled by a very few and they were not being told very much about what was happening.

The membership of the corporation is broader, and I think that can only be healthy. The members now also have some knowledge about what is needed to keep the cattle operations going. It is not just a case of going out once a year, doing a muster, bringing all the cows in and

selling them. They have to make sure that there is water et cetera around all the time. They understand that better.

We think there are two positives from our perspective which will come out of this. There will be some sustainability there—mechanisms put in place for sustainability—and we are confident the changes we are making are sustainable. The members will retain ownership of this particular pastoral lease which means they retain ownership effectively of homelands.

CHAIR—Were there any prosecutions on the fellow who was suspected of running off with the wrong account?

Mr Armstrong—That is part of the administrator's terms of reference and one of the last things he gets to.

CHAIR—There are no prosecutions at this point?

Mr Armstrong—No, nothing.

CHAIR—Thank you very much, Mr Armstrong. I think we will go straight through and then perhaps bring it together at the end.

Ms Beacroft—I will try to tie together some of the threads that have already emerged but also focus on your terms of reference and channel what we want to say to you to the issues that you raise in your terms of reference. First of all, I would like to point out that we are really building on the notion or the theory of capacity development and building which is in the DIMIA submission. We are very familiar with a lot of what they say there and it is well recognised.

There are two primary points about capacity building or development that we particularly respond to. The first one is capacity: if it is going to be present, it needs to be at all levels. When we do our work, even though our act means that we focus very much at the organisational level, we cast the net fairly wide because individuals make up an organisation and an organisation often needs to be linked regionally and nationally to be a healthy one.

Unlike ASIC, we perhaps cast the net a bit wider when we provide some of our services. For example, we do provide training to individuals, even if they are not at the moment we train them an existing director on an Indigenous corporation, because we think potentially they will end up on a corporation.

The other thing that we are very responsive to is that capacity building requires a multidimensional and integrated approach. We are very aware of that. We are a very small operation. We only have a budget of \$3 million but we believe we have some unique offerings in terms of working with stakeholders and partners, not just because of our statutory power but because we have over the years built up a lot of trust and grapevine knowledge amongst the Indigenous communities and we have a lot of corporations that are working with us. Our aim is to work in a multidimensional way, in partnership. Our act at the moment limits us in some respects and we are hoping for a modernised act next year which will help us work a little more widely and do more work like arbitration and mediation. At the moment we are a little bit hamstrung in doing some of that work because of the limits of our act.

I would like to quickly run through the issues that you raise in your terms of reference. One of the things you mention is leadership and how to build leadership in communities. Our experience is that there are different leaders in different situations and you do not necessarily get 'a leader'. The fast growth in funded organisations, which can be demonstrated from the statistics that relate to the incorporations with our legislation which have risen exponentially over the last 15 years, has produced a trend where some individuals and communities are thrust forward as leaders because they interface with Western rules very well but they are not necessarily what you might call the natural leaders in the community. The more traditional the community the more the schism that is emerging between the two leadership models, if you like.

That is something we have to deal with on a daily basis. The case study might even illustrate that. That is the sort of thing the administrator has to get on top of. The registrar's office is gearing up to deal with those sorts of cross-cultural issues in terms of the way in which we foster leadership amongst individuals. As I said before, we target our services very widely in order to pick up potential individuals who might end up on Indigenous organisations and, at the moment, we are particularly looking at juveniles and women and the volunteers who are out there, many of them grandmums. We would like to get them geared up so that if they want to be on an Indigenous organisation, occupying some of those power positions, there is more opportunity for them.

Another thing that we find is very important for leadership in an Indigenous setting is dispute resolution skills and the approach to analysis of complex cross-cultural ethical situations. These are recurring problems which we are having to deal with and which can split apart an organisation. Our training often deals with the hard edge, if you like, of changing behaviour around things like ethics. That is a very complex area which we could go into, but I will not. But the training we offer is very much geared towards dealing with that with directors in a very engaged way.

Pursuing individual accountability by directors is also something that is part of leadership and our office also has that difficult task, but we do it. We follow through with actions against individual directors, whether they be criminal civil actions or if bankruptcy proceedings are required. In relation to leadership, once again there is a lot of scope to do even more, if we had new legislation.

CHAIR—Would you like to identify a couple of key legislative suggestions?

Ms Beacroft—Around leadership?

CHAIR—Leadership is one, but specifically on the issue you mentioned there about the legislative restriction—which may be leadership, but it may be other things.

Ms Beacroft—The biggest problem with our act at the moment is that there is an implicit model built into it which is very prescriptive. It is throughout the act, which was present in the seventies and which was untested really. It is the social welfare model. It has created the schism between the natural leaders and the people that can interface with Western rules. That is causing so many problems in communities that really have healthy leadership—I can see people nodding their heads. They can have healthy leadership but the leaders are finding it terribly difficult. Native title is throwing this up all over again.

There are solutions to it. The native title area is pushing the solutions through and fortunately we have been able to accommodate them so far, even though our legislation is limited. What is happening is that the Native Title Tribunal determines that a group has native title ownership and then they determine that an organisation will manage that native title ownership in respect of external accountability. It is a little bit like the case study Pete gave you. You are actually ending up with two bodies and at this stage it seems to be a viable direction in which to head, where you have the management body where you bring in these skills that are required to interface with all this external accountability and deal with the commercial realities, but the traditional leadership remains very much in control, dealing with the things that are properly the matters they want to address, which are traditional issues in relation to native title about land control.

The important thing about this direction is that the relationship between the management body, which is a separate incorporated body, and the traditional owners is defined very clearly through agency and trust relationships. They are Western legal concepts but, of course, in the terms of the trust and the agency you can accommodate the needs of the traditional group. Fortunately our act, after some struggle, has been able to accommodate the sorts of things that are emerging in native title but we are reaching the edge of the limitations of the act because of the way it was drafted.

CHAIR—You are being very polite, aren't you? It has really tested you and you are saying it has really created some of the problems.

Ms Beacroft—Yes. It is really testing the limits of our legislation. That is right. One of the issues you also ask about is, 'What is a well-run community?' Once again, obviously from the registrar's perspective, there is a lot that communities would be able to offer on this point. It is well recognised now that incorporated organisations have become part of a well-run community. Communities cannot survive without incorporated bodies because they open the door to funding, land-holding, commercial enterprises, economic independence—all these things. Our office and ASIC—half of the Indigenous organisations are with ASIC—have a very important role to facilitate that incorporation.

The distinctive features which justify having special legislation like ours about Indigenous organisations in those communities is that, whilst the funding body might engage an Indigenous organisation to deliver a medical service and have an expectation that they are going to deliver outcomes which are in that funding grant, the reality of the expectation in the community is that there is a community governance role that that organisation is serving which goes well beyond—and, in fact, in many instances may even end up being inconsistent with—the outcomes that are in the funding grant, if you are talking about perceptions and community expectations.

This raises some special issues about how incorporation and regulation might occur with those Indigenous organisations when, for example, a governing committee is being formed. Many members on the governing committee are voted in by family groups who see the primary role of that person as being to absolutely represent them and to compete very well in the resources struggle for, say, health services. This is not an unethical position for that person to take in their context. This raises so many complicated legal issues, not just for the funding body but for us.

There are many things that are investigated in the report on the new legislation. The point I am trying to make here about a well-run community is that it is important for the wider world and certainly us as the incorporating body not to go into denial about this, because that is what we have been basically doing over the last 15 years. We are not going to make people in traditional communities turn into people who can suddenly represent the entire community interests when there are centuries of family kin responsibilities, and it needs to be facilitated by us in all sorts of ways. A simple example is to have many different model rules available which would allow structural and relationship options which accommodate this, instead of trying to force people into unethical situations.

This is evolving. Native title, once again, has evolved voting rights, for example. Different groups have different levels of voting rights and this is, although a small thing to say, a wonderful advance for many communities. There are many things which can be done to accommodate the different positions that you find on governing committees. That is just an example of a well-run community.

The ASIC philosophy is that bodies are basically created for commercial enterprises and that is a very difficult philosophy to apply to all Indigenous organisations, for the reasons that I have just explained. The implication for us is that the work that we do has to be very contextual. It is very hard for us to have one rule and apply it across the board because of the sorts of issues that crop up—for example, a pastoral lease company which on its face is meant to be a commercial operation but is really trying to get native title which it cannot get because it cannot meet the requirements of the Native Title Act.

Another issue you raise is strengthening communities. We can offer there the feedback we received through the extensive consultations which occurred for reviewing our act. It was universal that the Indigenous people we spoke to in the organisations want an accessible and supported incorporation regime, similar to the one we have now but modernised. They would like our act to be brought into line with Corporations Law because at the moment there are elements of our act that disadvantage our incorporated bodies. One of these would be directors' duties. We have a much lower standard for directors' duties, and there are also many grey areas, which obviously makes directors very vulnerable.

Another very important one for economic growth is that transactions which occur with incorporated bodies under our legislation do not have the same protection as ASIC incorporated bodies in relation to fixing them up if there turns out to be some irregularity in process. That is called transactional uncertainty and that really does damage economic relations with third parties like mining companies. That is already becoming an issue and it could potentially be a very big issue with the PBCs with native title.

Other feedback which emerged was the safety net: our regulatory powers are very much required. We normally go in, using our regulatory powers, on the request of someone in the community, a regional council from ATSIC, a government agency like Health or an auditor. The feedback we received was that we really need to keep using those powers for the safety net to make sure that essential services do not go down.

Another of your terms of reference is, 'How can custom and Western rules satisfactorily meet?' I think I have probably said enough to indicate that native title has many wonderful directions emerging which need to be more fully supported. We are certainly trying to do our

best but in a very short time we are probably going to find that we cannot accommodate some of the things they are asking for. The basic principle of what is emerging through native title is two separate organisations. Offshoots of that, if you like, which need to be further investigated—and we are trying to facilitate this by working with funding agencies—are having other arrangements which allow the management to be looked after in a separate entity, whether it is separately incorporated, whether it is done through a hosting arrangement with an older and more mature organisation, or whether it is done through resource agencies where you have service agreements; something that moves the management and accountability—the sort of thing that many Indigenous people do not want to get involved with—to the right place, where it can be looked after for what it is.

You also ask about regional options. Our experience is that regional options are not widespread. This is partly because Indigenous culture values localism and this is one of the hurdles for regional options. It needs to be very carefully nurtured and, once again, there are implications for us because if the structure and the accountability from the local to the regional are not set up correctly we could end up with very serious disputes that are extremely hard to resolve. We already have some of those on our plate.

Our experience tells us that the best way to get some sound regional structures in place is to make sure that the linkage between the local and the regional is direct—in other words, do not have the funding body providing a fund which has outcomes saying, ‘You will look after organisation X, Y and Z.’ It should somehow be done so that organisation X, Y and Z have direct control over whether that resource agency gets funded. There are plenty of models around in the mainstream for that. The community legal sector has a management secretariat where the A-G’s passes the money through all the organisations that are seeking a service and the money cannot be spent on anything else. They have to actually okay the money going to the resource agency. It is a very healthy structure to ensure good client service.

One of the problems we have with our act at the moment is that we cannot incorporate an organisation where the members are organisations. When resource agencies want to have the organisations they are servicing as members, they have to say that their chair will be the member. We would like to be able to incorporate resource agencies, using the structures that evolve in their own setting, rather than having to go through that rather artificial translation into our act.

Another matter you raise is skills and resources. We mentioned earlier that we have a training program. Perhaps ‘training’ is not quite the right word; it should be ‘engagement’. It has been five years in development and has been approved by the Australian National Training Authority. There are many competencies which have been approved and are specific for Indigenous directors and we are going to be rolling out the pilots in early 2003. As I said before, it is not fly in, fly out, ‘Pass and we’ll you give a tick,’ certificate training. It is about engaging Indigenous directors on the hard stuff and getting behavioural change and attitudinal change so that organisations work better. We could tell you a lot more about that if you had the time but we have materials we can hand up at a later date, if you want to see more.

Regarding partnerships and coordination, we are a tiny player. We have to work in partnership and coordination to make any difference. We have many informal and written partnership agreements with many key players. My general impression in working with partnerships and coordination is that it is easy to get overwhelmed, so we have only a few

identified key stakeholders and partners that we work intensely with. We try to run most of our demonstration projects in a very targeted way so that we do not spread ourselves too thin, and so that we get the horizontal and vertical alignment really well done. We will go to a community but we try to get all the agencies laterally and vertically aligned. You do not see us in a lot of places but the places where we do go we try to work intensely.

I mentioned, Mr Chairman, at the beginning that I have a handout on our new act. It might be better if I leave that with you. You can see the general thrust of it from looking at that.

CHAIR—Thank you very much. We need to have some quick questions and brief answers because I think what you have given us is the meat of a lot of the issues around community capacity. I, for one, will need to go away and read the *Hansard* and absorb a lot of that. It is sage advice, I think, and no doubt based on much hard experience.

You have touched on the cultural, the reason that the corporation was set up and the evolving situation—and it is under review. The consultation paper talks about whether the act should be streamlined and reserved just for small single corporations or should the act be reformed but retained as an incorporations statute for all types of Indigenous corporations? Could you give us a view on that?

Ms Beacroft—The report recommends that it be wide-ranging—that it not just be for the small—and that the very large be ‘migrated’ across to ASIC. That is going to be a bit controversial because I do not think ASIC is happy about that. That would have to be worked through a bit further. At this stage it looks like it is going to be like it is now, in the sense that there are not too many limitations on which bodies come to us.

CHAIR—Why do you say, ‘It’s going to be like it is now’? You sound as though it is almost set in—

Ms Beacroft—No. I mean the size of the corporation. We do not have restrictions on the size of the corporations that can come to us at the moment. I meant in that respect that the report is recommending that that stay the same—that we not turn away what you might call middle-sized organisations. When that discussion paper was written, one of the proposals that had been put was that we only deal with the very small, if you like, and the consultations.

CHAIR—Don’t you feel the relationships of ASIC and larger organisations is going to be effective enough because of the corporate knowledge you have? In other words, you have expertise which goes across the range of the size of organisations. Is that right?

Ms Beacroft—That is right. That is what the review is finding. Some very complex, large commercial operations which have very complex corporate structures in my view should be with ASIC because we are a small operation. As I said, we tend to primarily focus on essential services. That is why the report has recommended that very large ones go to ASIC because they are concerned about the complexity and whether a tiny office like us—and I think this is a real issue—can deal with the sort of complexities that might emerge from some of the mega corporations growing out there.

CHAIR—What percentage of the 2,800 corporations would you deal with in a 12-month period or over a measured period?

Ms Beacroft—Deal with them?

CHAIR—In terms of intervention or discussion. No doubt there are various levels of intervention.

Ms Beacroft—Yes.

CHAIR—How many of the corporations would you expect to have contact with?

Ms Beacroft—There is an annual filing process.

CHAIR—Yes, recording.

Ms Beacroft—We would contact all of them, or they would contact us. If they did not send the material to us, we would contact them and say, ‘Could you please send the material in.’

CHAIR—You chase 2,800?

Ms Beacroft—By mail-outs or by phone. Yes, that is right. We try to. With the regulatory powers that is a very small number, fortunately. I think last financial year we had five.

Mr Fisk—We would probably have a good number of organisations who contact us regularly. The contact may well be something that only takes 30 minutes on the phone to sort out. They have that contact. They will call through as we have a toll-free number. It may be just a minor issue the corporation member has. I would say about 20 to 30 per cent of corporations would contact us over a year.

CHAIR—The last part of the question is: what degree of failure is there? I suppose part of that question is: what are the changing numbers and who is coming in and who is going out?

Ms Beacroft—The number of organisations incorporated with us grew exponentially; it is now steady. But all you need is another funding cycle and that will shoot up. That is often what happens if more money becomes available. I do not have stats on the failure rate but we have a lot of what you might call noncompliant organisations.

CHAIR—Would we be able to get those stats reasonably easily?

Ms Beacroft—We could give you those stats, yes. The noncompliance is a constant issue for us.

Mr TOLLNER—I have one brief question. I have asked this question of a couple of organisations who have come here. Does your organisation have a definition for what people are Aboriginal? The reason I ask is that a number of organisations, when I have asked that question, have said, ‘Oh, well, if they’re accepted by certain other organisations, we accept them.’

Ms Beacroft—We would use the Commonwealth definition, as it is often called, which is largely based on self-identity. I know in Tasmania this is not a popular approach but it has been the standard approach until now. We have not had too many issues around it. We are actually

following what is happening in Tasmania; that is not to say we might not get a lot very soon. We generally do 'self-identity'. If there is a controversy, ATSIC has a process by which certain documents can be completed to allow other community members to state that the person is recognised as Aboriginal. The problem with that is it raises issues where a person has not been living within the Indigenous community and whether they therefore miss out on the opportunity to take advantage of it. It has not been a problem in relation to our organisations but it is very possibly an emerging problem.

Mr TOLLNER—In addition to that, I think when we incorporate a new corporation, part of the requirement is to have the Aboriginality of the family members confirmed by someone like an ATSIC regional councillor or such—another corporation.

Ms Beacroft—We generally use the form which is available from ATSIC. ATSIC has a process and we are linked into that.

Mr HAASE—I would like to pursue that same line for a moment. I would be very interested to have on record your point of view—a very formal, business structure point of view—of the effect of having perhaps an indeterminate definition of Aboriginal person. One may assume that it would have no effect at all. Why shouldn't anyone register as being an Aboriginal person? What momentous downfall would that cause? Do you have a point of view?

Ms Beacroft—This is stating the obvious but it is obviously a very complex issue. I am not an expert on it, by any means. If we had a definition that had been working for many years—which has in fact been working, and I do believe the Commonwealth definition has until now been working—Tasmania has some very unusual features in the approach it is taking because of some of the colonial documents that are around. If I am hearing you correctly, to some extent what I am saying and I think possibly what you are indicating is that if we have had a definition that has been working—even if it does not work in Tasmania perhaps; if it is working in the other states—do we need to necessarily revisit that? In our experience, it has been working very well in our context. To my knowledge we have not had any disputes about it.

Mr HAASE—I suggest perhaps, from Peter's comments, that this would only be put to the test at the time of registering an executive—that is, those who are closest to the top and, therefore, in control of a registered organisation.

Ms Beacroft—Sometimes it can crop up.

Mr HAASE—What philosophically would be wrong with giving all Australians the opportunity to be involved in Aboriginal organisations, given that they are not unduly preferential? One could say that it might negate a degree of criticism, for instance, about the separatist nature of some of this legislation.

Ms Beacroft—It is a question of scale, isn't it? I think it would be naive to think that there has not been a non-Aboriginal person who has been involved with an Indigenous organisation up until now, but it does not seem to have created much trouble in many of the communities. It is a question of scale. If there are limited resources to assist severely disadvantaged people and they are targeted—based for example on ABS statistics—the resources really could get out of kilter with the numbers if it turned out that there was a huge number of people applying for resources where, in fact, they were not.

Mr HAASE—Once again the bleeding obvious!

Ms Beacroft—Yes, exactly.

CHAIR—I need to leave but Mr Snowden has consented to be Acting Chair so that will allow the committee to continue.

Mr HAASE—Going back to the case study, I am very interested to know what the vision has been. You said there has been a great deal of consideration given to what the vision is, what is going to be achieved and the method of getting there. You spoke earlier on about some of these registered corporations being for profit but many of them are not for profit. Is this group registered as for profit? Is profit part of the vision and, if profit is part of the vision, what is the expectation of that property supporting what number of people?

Mr Armstrong—As I said before, there is a school of thought with that particular corporation, that all the community wanted was to occupy their homelands and know that they had some form of ownership of it. In terms of the vision for this particular administration—I suppose we could term it—to put it simply, it is to fix whatever is wrong at the corporation in terms of the way it has been managed, increase the knowledge of the members of the corporation about governance and about managing the cattle station, put in place a decent secondary management company with the added expertise that I spoke about before to assist with the running of the cattle operations, and hand the thing back to the members in good working order.

The business plan is projecting that there is a fair bit of work to be done in terms of sorting out the current stock and getting quality back into the stock there but the business plan indicates that it should turn a decent profit within the next three to five years.

Mr HAASE—Is that realistic? An average cattle station these days is battling to support a husband, a wife, a couple of kids and two or three employees at best. I see such an unrealistic expectation by groups who wish to acquire the cattle station: 'We'll be right. We'll run a cattle station.' There might be 200 people who have a legitimate claim to such an aspiration and the reality is that a mere handful of them will be supported by such an enterprise. I do not know that anyone out there is reinforcing that fact. I wonder, for instance, how on earth such a group got their vision past the Pastoral Board in the first instance to acquire a pastoral lease, for which the purpose is to produce stock. The whole thing is a conundrum. That is what worries me about it. Anyhow, that is not a question. I do have one more question. You spoke of training, and I am interested to know how many people you give administration or governance training to in a year.

Mr Fisk—Last year in formal training at what we call information and education workshops there were 681 people who participated. You could probably add another 400 or so who would be dealt with through ad hoc training which is conducted by the office. For example, Peter might run training for a governing committee after an administration or, if we were in a region to attend a conference to give a paper or something like that, we would run a couple of training sessions for governing committees in that region.

Mr HAASE—Is there any relationship with an external body funding traineeships, for instance, or is it all self-funded from your \$3 million budget?

Ms Beacroft—Our training is moving in the direction of the competencies which I spoke about, which we are going to pilot in February, where we are looking at working with DEWR and various other agencies to facilitate the attendance of the targeted Indigenous individuals. At this stage we are providing in-house training. That is what we have been doing up until now but the new training which is partly covered in the brief that Garry handed out gives you quite a run-down on what that is going to look like. That will be involving as many allowances as are applicable to the attendees.

We are conscious that it is not always people who are freely available. There is sometimes an assumption that Indigenous people can just sort of make it to places but we are trying to make sure that, if we need to hold it in a central location, they can get there rather than necessarily going on site because the advice we have, for example, is that we should be holding it in a central location. You get much better outcomes and much better attention. Those sorts of things have been built into the way we are going to deliver that training.

Mr HAASE—Providing centralised training is a very expensive operation, isn't it?

Ms Beacroft—It does not have to be a long way away.

Mr HAASE—All right, so perhaps more of that in your brief. When you register a group is there any requirement under the act to register the names of more than the executive? Does a registration have to register every beneficiary?

Ms Beacroft—It does—the members. That is correct. It is like a shareholder register.

Mr HAASE—Yes, I would have expected that to be the case.

Ms Beacroft—It is a question that we thought long and hard over in the review of the act because it is a very painful process to go through. As you can imagine, people do not have telephones, do not speak English and they have an obligation to keep this membership list up to date. That membership list then becomes incredibly critical if there is an AGM and there is a huge dispute because they are the only people who can vote. There is no way around it, I do not think.

Mr HAASE—Do people know they are members?

Ms Beacroft—They ought to, because they have to sign a form.

Mr HAASE—They have to sign them?

Ms Beacroft—Yes.

Mr HAASE—You would have great difficulty in authenticating individual signatures, I imagine.

Ms Beacroft—That is right.

Mr Armstrong—In most cases corporations have an application for membership so that is signed off, accepted and looked at by the governing committee. Then the membership is either approved or declined. They have a register that they are meant to keep and, when we do regulation work, probably one of the first terms of reference, when we are looking in a section 60 examination, is to check the membership records to see that there are applications for membership kept on file and the register of members is up to date.

Mr HAASE—Are payments from mining companies to registered corporations shown on the books, typically? They are not declared. They are a secret receipt, and constantly I have people who are not receiving their divvy and they want to know—

Mr Armstrong—I would have thought that, in the agreement between the mining companies and the Aboriginal corporation, the payment would be made to the Aboriginal corporation or a trust that is sometimes formed and the funds should be passed through the trust, and they should be accounted for in their financial reports.

Ms Beacroft—Which they then have to put on our public register.

Dr LAWRENCE—Not to mention the mining companies.

Mr HAASE—Yes. It is not public evidence. It is very interesting. But you have answered the question, and I thank you for your forbearance, Acting Chair.

Dr LAWRENCE—I am aware of the fact that we are running out of time. I do not necessarily want a long answer to this but just an indication. If you were designing a system from the ground up to provide a framework for the management of Indigenous communities, would you use the corporations sort of framework that you have now or would you look at another model? There are other models around, obviously, particularly in places like Queensland—a local government model, as opposed to the incorporated community organisation model. There may be others that I have not even imagined. It strikes me as a very cumbersome vehicle that has been devised.

Ms Beacroft—Yes. It is such a hard question to answer. I have to deal with it contextually because we now have the situation we have, which is that so many communities are dependent on corporate governance, whether we like it or not, because they feel they do not have access to other governance models. They are locked into something which they see as very empowering but which in our Western law is actually very limited for the purposes for which they are trying to use them. Noel Pearson has written quite a bit on this and his view is that there are many different directions that community governance is going in and we need to accommodate the many directions. One of them is a revitalised model like in Queensland, but he recognises corporate governance as something that is real now and that it has a lot of possibilities.

Once again, to refer back to native title, you see those emerging there, provided that sector continues to develop in the way it has. Our report is very up-front about some of the things that have unfortunately occurred around corporate governance and which are not healthy, one of them being the factionalism that occurs on the governing committee, which is nothing about community governance at all.

Dr LAWRENCE—It is not unique to Indigenous communities.

Ms Beacroft—No, it is not, but the consequences are so great.

Dr LAWRENCE—Yes, they can be. I will certainly read your report with interest. Could you provide to the committee at some stage, if you have it, a breakdown by some form of description of the various types of corporations that exist under your legislation, and if you have any knowledge of the ASIC breakdowns as well—perhaps we could ask ASIC separately.

Ms Beacroft—They do not have any. They do not record Indigenous organisations so we have found.

Dr LAWRENCE—Also the types of organisations. One of the things that strikes me—and you said it in passing—is that every time there is a new funding cycle you get a resurgence in the number of incorporated bodies. I was doing the figures earlier and obviously the ratio has changed since somebody last looked. For every 100 Indigenous people there is an incorporated body. That is an awful lot of incorporated bodies. As you know, in some communities it is not just a question of one incorporated body that represents community management kinds of issues and a native title rep body; it will be five, six or seven, depending on the funding regimes. That is why I asked about other models, because it strikes me now we have overburdened the least literate and those who are less likely to have access to the sophistications of European law with the most complicated arrangements for managing what should be citizens' services. This is a personal view, but I think we have it upside down. I would be interested in your comments about that proliferation of incorporated bodies.

Ms Beacroft—Our consultation has indicated—and it is my personal view, too—that the growth is very great. It is fine if you have 2,800 healthy corporations operating out there but the reality is most of them are unsustainable. As I said, I think we have close to 50 per cent which are noncompliant. This is a serious problem and it is not because we are slack: it is really difficult to maintain compliance. I only started on 1 August and there are new directions which we are trying to develop. One of the things we need to do is work more closely with funding bodies to try to get some obvious solutions—

Dr LAWRENCE—Like using some of the existing corporate structures.

Ms Beacroft—There are some very simple solutions out there. Most refugees have an auspicing agreement with a more mature organisation to do a lot of the financial accountability. There are plenty of models out there. You do not even have to get really fancy to solve some of the problems we are encountering on a minute by minute basis. I think it is a matter of trying to work more on those sorts of options.

Mr Fisk—The funding bodies have to look at this, too. In a lot of cases the funding bodies who provide funds for these different corporations when people go out and form the corporations need to take a hard line. If we were to say, 'No, that's not a good reason to incorporate,' they would move on somewhere else and find somewhere else to incorporate. The funding bodies really have to deliver.

Dr LAWRENCE—They drive it. Yes, that is right.

ACTING CHAIR (Mr Snowdon)—I would like to make an observation. I am not quite sure that I agree with you, Carmen.

Dr LAWRENCE—We will have to talk about that.

ACTING CHAIR—There are a couple of reasons, one of which is that the councils and associations act was used by Aboriginal organisations in Northern Australia to circumvent local government acts because the government in the Northern Territory in particular tried to impose a system of local government which Aboriginal people did not want. Prior to that there was no system of local government. The only option was to incorporate under the councils and associations act. Do you have any observations about the review of the councils and associations act which was done by Fingleton in 1995-96 and their recommendations in relation to the issue of governance? There are a number of recommendations in that review which related specifically to the issue of forming local governing bodies across regions. I am not sure if you are aware of it or if you have read it.

Ms Beacroft—I have read the Fingleton report. Are you able to indicate to me which recommendations you are particularly thinking about?

ACTING CHAIR—No, I cannot. I do not have them all in my head.

Ms Beacroft—I am sorry, I just cannot think of the exact recommendations myself in the Fingleton report.

ACTING CHAIR—I helped write the terms of reference so I am aware of what the desire was. Part of the exercise was to set up a structure which would give people an alternative approach to governance.

Ms Beacroft—Yes.

ACTING CHAIR—The Fingleton report has never been enacted.

Ms Beacroft—No.

ACTING CHAIR—It is a bit hard to know why that is the case—possibly because it was sponsored by a Labor government and finalised under a Liberal government and they did not like what they read. Who knows? I am sure you do not, but nevertheless. I think it is worth going back and revisiting those issues. I accept what Carmen says in the context of there being a proliferation of incorporated bodies, especially since the Native Title Act. We know in Northern Australia two years ago one incorporated body in particular in the area of Timber Creek, I think it was, lost land because the registrar acted pre-emptively—wrongly, in my view. People actually lost property.

Ms Beacroft—Yes, I do know about that case. It was before my time. That, I guess, is illustrating the dangers of us deregistering. Whereas ASIC might deregister because someone has breached, we are very nervous about doing that for the very reason that, if it is land-holding, they lose their land.

ACTING CHAIR—I am sorry I was not here earlier. I want to make another observation. One of the issues which I think confronts certainly people in Northern Australia in remote communities is that English is their second, third or fourth language. In fact, the number of people who have been to year 12 in the Northern Territory, where they are identified as being to

year 12, is 13 per cent. The bulk of the community are what I would call middle aged—the leadership of the community—and have never been to high school. Most of them are illiterate. When they sign, they sign with an X, yet they are required under the respective laws, some of which you administer, to do certain things, one of which is, I note, to have a register of their members. Some of these places are little camps where there is no storage; there is a whole range of things. There is a complicated set of issues.

That leads me to a question about education. I noted your comments on your training program. Could you provide the committee with a copy of your curriculum and the teaching materials that accompany it? Could you also give us a profile of the people who have undertaken the courses—the geographic location they are from, whether or not they can speak, read and write English, and what their literacy levels are? Then I would be interested in looking at your proposals which you spoke about a moment ago. Who would you get to run these courses? It seems to me there is an obvious link between organisations which currently work in remote parts of Northern Australia: Curtin University, Bachelor College, Notre Dame in the north-west and Cairns TAFE—they are in communities already doing work. I would be interested in whether or not you are proposing to use those organisations to help deliver some of this training.

Mr Fisk—Some of those organisations have actually tendered and, in fact, Cairns TAFE—the Far North Queensland Institute of TAFE—developed the training materials for us.

ACTING CHAIR—If you could give us copies of them—

Ms Beacroft—We can provide you with a big box of things.

ACTING CHAIR—I am very interested in the people who have attended the courses.

Mr Fisk—Are the information and education sessions that have been conducted to date the ones you are interested in?

ACTING CHAIR—I have been to one of those and I must say I thought it was way above the heads of most of the people I would see as your potential clients or actual clients.

Ms Beacroft—We are conscious of that. The training materials we will provide to you are for new training that we are piloting in January. We know there is a problem. We call it information and education but it is basically troubleshooting which we are doing at the moment. But the training that we are going to kick off next year, as I said, is meant to be an engagement process in an appropriate way that actually meets the needs of the clients. We will not be doing a lot of training. The numbers are not going to impress you in a year's time, but what we are looking for are the learning outcomes and the retention.

ACTING CHAIR—I would be very pleased if you could. Thank you for appearing today. I apologise for my late arrival and I want to thank the chair for letting me sit here.

Resolved (on motion by **Dr Lawrence**):

That the committee authorises publication of the evidence given before it at the public hearing this day, including publication of the proof transcript on the electronic parliamentary database.

Resolved (on motion by **Mr Haase**, seconded by **Dr Lawrence**):

That the following documents presented by ORAC be received as evidence to the committee's inquiry into capacity building in Indigenous communities: Office of the Registrar of Aboriginal Corporations, *Talking points for appearance on 16 October 2002*.

Committee adjourned at 5.46 p.m.