

Report on Administration of Indigenous Business Australia in relation to certain evidence given to the Senate Community Affairs Committee

Background to inquiry

1.1 Indigenous Business Australia (IBA) is a statutory authority established under the *Aboriginal and Torres Strait Islander Act 2005*. Its purposes, set out in section 146 of that Act are:

- (a) to assist and enhance Aboriginal and Torres Strait Islander self-management and economic self-sufficiency; and
- (b) to advance the commercial and economic interests of Aboriginal persons and Torres Strait Islanders by accumulating and using a substantial capital asset for the benefit of the Aboriginal and Torres Strait Islander peoples.

1.2 On 17 February 2012, the Senate Community Affairs Legislation Committee held a 2011-2012 Budget Additional Estimates hearing, during which it took evidence from IBA. A number of questions were taken on notice by IBA, and written answers were subsequently provided. There were many areas of questioning, but two are relevant to this report. During the hearing Senator Scullion asked questions regarding:

- A conference for IBA employees at the Gold Coast in October–November 2011, in particular matters relating to the choice of venue and what activities were paid for by IBA; and
- The process of consideration and approval by IBA of funding for Tjapukai Aboriginal Cultural Park in Cairns.

1.3 During the hearing Senator Scullion asked some questions regarding meetings and conferences, including whether the CEO of IBA, Mr Fry, was aware of any attendees at the IBA conference attending Movie World Theme Park. Mr Fry indicated that he was not aware of that activity but would take Senator Scullion's questions on notice.

1.4 There were also questions regarding the Tjapukai Aboriginal Cultural Park. Several questions were taken on notice, regarding IBA's process for approving investment in Tjapukai and advice sought by IBA during that process.¹

1.5 On 5 April 2012, the Clerk of the Senate received anonymous correspondence stating it was from one or more employees of IBA. The correspondence alleged that Mr Fry had misled the committee by indicating that he had no knowledge that participants in the conference had attended Movie World. It also questioned whether IBA had supplied appropriate information to the committee regarding IBA's approval

1 Community Affairs Legislation Committee, *Committee Hansard*, 17 February 2012, pp. 57–58.

of expenditure for redevelopment and operations of Tjapukai Cultural Centre. The correspondence containing the allegations is at Appendix 1.

1.6 On 18 April 2012, the Clerk forwarded the correspondence to the Chair of the Community Affairs Legislation Committee. In her covering letter the Clerk noted:

The letter alleges that an officer of the IBA, Mr Fry, has knowingly given misleading evidence to the committee in relation to the alleged attendance of IBA staff at Movie World on the Gold Coast at taxpayers' expense.

The committee would be aware that knowingly giving false or misleading evidence to a committee or the Senate may be treated by the Senate as a contempt.

1.7 The committee does not normally entertain allegations made anonymously. However, in view of the nature of these particular allegations and the committee's interest in preserving the integrity of Senate committee processes, it resolved to investigate this matter further. At a private meeting on 24 April 2012, the committee determined to conduct an inquiry under Standing Order 25(2)(a), into the administration of IBA in relation to the allegations included in the correspondence. The committee's inquiry was confined to the question of whether the committee had been misled. It was not intended as an inquiry into the substantive matters, which the committee was satisfied were satisfactorily able to be pursued through the estimates process.

Evidence from IBA

1.8 On 24 April 2012, the committee provided a copy of the anonymous correspondence to IBA and invited the statutory authority to appear before the committee at a public hearing on 11 May to discuss the allegations that had been made.

1.9 On 2 May 2012, IBA's CEO, Mr Chris Fry, wrote to the committee, responding to its correspondence. This letter informed the committee that the substance of the same allegations had already been communicated to government. In response the government had commissioned an independent consultant, Deloitte, Touche Tohmatsu, to conduct an investigation in response to the allegations.² On 2 May, the Minister for Families, Community Services and Indigenous Affairs, the Hon Jenny Macklin, released that consultant's report. A copy is included at Appendix 2.

1.10 Mr Fry's letter stated that:

The investigators found no evidence to support [the] allegations or breaches of the *Commonwealth Authorities and Companies Act 2007* [the CAC Act] by either myself or the Chair of IBA...the Deloitte report comprehensively disproves the allegation that I knowingly gave misleading evidence to the

2 Deloitte Touche Tohmatsu, *Department of Families, Housing, Community Services and Indigenous Affairs: Independent investigation into anonymous allegations – Final Report*, 13 April 2012 (hereafter 'Deloitte Touche Tohmatsu report'), http://www.jennymacklin.fahcsia.gov.au/mediareleases/2012/Documents/iba_report_2012.pdf (accessed 7 June 2012)

Community Affairs Legislative [sic] Committee in relation to the attendance of IBA staff at Movie World on the Gold Coast.

1.11 The committee notes from the consultant's report that the allegations were sent to the government on 13 March 2012,³ about a month before they were sent to the committee, and about a month after the February estimates hearings.

1.12 On 11 May 2012, the committee held a public hearing in Parliament House, to explore further the issues with Mr Fry and other representatives of IBA. The transcript is included at Appendix 3. Mr Fry made an opening statement during which he corrected or clarified two answers given by him during the February 2012 estimates hearing:

I talked about two elements, the first one being that approximately 12 people attended the Gold Coast conference that was being questioned at the time, whereas Deloitte's list 20 people who actually attended. I can confirm my answer, to the best of my knowledge at the time, recalling the layout of a large room to which I was presenting. Also at that time, our legal people were having a side meeting for some of the time of the conference. Secondly, I said that the conference was held over two days, whereas the agenda, subsequently I have been able to determine, states it was over two full conference days, and the third day consisted of a summary and a team-building exercise. I was not present on the third day at all.

Also, with regard to the subsequent question on notice 321: IBA answered this question as presented but, on further reflection on Senator Scullion's question as recorded in Hansard and from my reading of that again in recent days, the question may have been in relation to the costs associated directly with the conference on the Gold Coast. If so, then these answers are captured in the independent Deloitte's report, or I can provide that data separately.⁴

1.13 Mr Fry then made a number of comments about the process that had been undertaken to address the allegations:

I can advise the committee that IBA, for longer than 12 months, has had an independent and confidential whistleblower hotline. Not one person has raised any of the allegations through this independent hotline over this time. Following the first allegation letter, all staff received an email from our chief operating officer, Mr Bator, inviting them to list any concerns either with the independent whistleblower hotline or by speaking directly to the Deloitte's investigating team. Names and contact details for that investigating team were provided to staff. Our chief operating officer also spoke to almost all staff advising them of the same.

Over a three-week investigation by the Deloitte's audit team, neither any of our staff nor other parties spoke to either the whistleblower hotline or the Deloitte's team. This evidence clearly demonstrates that the writer of the anonymous letter does not have the majority of staff support as claimed,

3 Deloitte Touche Tohmatsu report, p. 5.

4 Mr Fry, CEO, IBA, *Proof Committee Hansard*, 11 May 2012, p. 1.

and also lacks the courage of their convictions to discuss their concerns or provide any evidence.

In addition to the key allegations found to have no substance by Deloitte, I can also confirm that, contrary to what is in the allegation letters, there has been no witch-hunt to find the author of these letters. Not one person has been interviewed, and there have been no investigations of staff emails and phone records.⁵

1.14 Later in the hearing Mr Fry also clarified that the answer he had given at the hearing on 17 February regarding the Gold Coast conference activities was based on his knowledge of activities during the time he was present at the event:

Senator SCULLION: That was on day 3 of the agenda...Is that reasonable that we take that opportunity to correct that evidence, Mr Fry?

Mr Fry: With the hindsight of understanding the manner in which you ask your question, if you were referring at the time that there was an agenda item which included teambuilding, I now acknowledge that is on the record. I believe I was answering the question within the frame of reference of the time that I was there.⁶

1.15 During the hearing, IBA's representatives took several questions on notice, providing answers on 31 May 2012. These are included in this report at Appendix 4.

1.16 Towards the conclusion of the hearing, there was a discussion about whether one document – the minutes of an IBA meeting reported by the consultant's report to be missing – might be available.⁷ Subsequent to receiving the written answers on 31 May 2012, the committee sought IBA's advice on whether this document had in fact been missing.

1.17 IBA was also asked by the committee to provide advice in relation to what documents had been available in the development of the independent report, following discussion about whether a particular set of IBA Board minutes had been available.

1.18 IBA provided this advice in a letter to the committee on 19 June 2012, included in this report at Appendix 5.

1.19 A timeline summarising events discussed in this report is set out below.

5 Mr Fry, CEO, IBA, *Proof Committee Hansard*, 11 May 2012, p. 2.

6 Mr Fry, CEO, IBA, *Proof Committee Hansard*, 11 May 2012, p. 8.

7 Ms Kirsty Gowans, General Counsel, IBA, *Proof Committee Hansard*, 11 May 2012, p. 10; IBA, Answer to Question on Notice #3, received 31 May 2012.

Date	Event (shaded red – committee process; blue – government process; unshaded – IBA internal process)
17 February 2012	IBA witnesses give evidence during Community Affairs Legislation Committee (the committee) Additional Estimates hearings.
17 February 2012	Mr Fry becomes aware that IBA staff had attended Movie World on 3 November 2011. ⁸
19 February 2012	Mr Fry sends email to senior staff summarising his discussion with Chair Dawn Casey about the estimates hearing, including issues regarding Tjapukai, and the Movie World visit. ⁹
21 February 2012	Mr Fry receives written briefing on the Movie World visit. ¹⁰
13 March 2012	Government receives anonymous allegations made against IBA. ¹¹
20 March 2012	FaHCSIA engage consultant Deloitte Touche Tohmatsu to conduct an investigation of the allegations. ¹²
30 March 2012	IBA provides an answer to an estimates question taken on notice, regarding IBA conferences, workshops and seminars. ¹³
5 April 2012	Clerk of the Senate receives anonymous allegations made against IBA.
11 April 2012	IBA provides answers to estimates questions taken on notice, regarding Tjapukai Aboriginal Cultural Park. ¹⁴
13 April 2012	Deloitte Touche Tohmatsu provides to government their report on the allegations. ¹⁵
18 April 2012	Clerk of the Senate forwards allegations made against IBA to the Chair of the Community Affairs Legislation Committee. ¹⁶
24 April 2012	The committee determines to conduct an inquiry into the allegations, in particular whether the committee had been misled. It writes to Mr Fry, providing a copy of the allegations, inviting a response and advising him of a hearing to be held on 11 May 2012 to consider the matter.

8 Deloitte Touche Tohmatsu report, p. 26.

9 Deloitte Touche Tohmatsu report, Appendix F.

10 Deloitte Touche Tohmatsu report p. 26 and Appendix G.

11 Deloitte Touche Tohmatsu report, p. 5.

12 Deloitte Touche Tohmatsu report, p. 1.

13 2011–12 Budget Additional Estimates, Answer to Question on Notice #321.

14 2011–12 Budget Additional Estimates, Answers to Questions on Notice #322 – #325.

15 Deloitte Touche Tohmatsu report, p. 1.

16 See Appendix 1.

2 May 2012	Minister the Hon. Jenny Macklin publicly releases the Deloitte Touche Tohmatsu report. ¹⁷
2 May 2012	Mr Fry writes to the committee responding to its correspondence of 24 April.
11 May 2012	IBA officials including Mr Fry appear and give evidence before the committee. Mr Fry offers corrections and clarifications of his previous evidence. ¹⁸
31 May 2012	IBA provides answers to questions taken on notice during the 11 May hearing. ¹⁹
19 June 2012	IBA writes to committee providing a response to an outstanding matter of clarification raised during the 11 May hearing. ²⁰

Committee view

1.20 The committee reiterates that the current inquiry did not examine IBA's management of decisions surrounding the Tjapukai Aboriginal Cultural Park investment, nor the decisions regarding the holding of its conference at the Gold Coast. Its terms of reference were confined to whether any of the evidence given by Mr Fry and representatives of IBA may have misled the committee.

1.21 It notes that the government commissioned an independent examination of the substance of the allegations. That report did not find any evidence to suggest breaches of the CAC Act by either Mr Fry or the Chair of IBA, Dr Casey.²¹

1.22 The independent report shows that Mr Fry was provided with a full copy of the conference agenda prior to his travel from Canberra to the Gold Coast. The agenda listed 'team activity' for the third day of the event (during which Mr Fry was not present). Neither the agenda nor Mr Fry's travel pack indicated what the activity was or where it would be conducted.²² The committee accepts Mr Fry's statement that at the time of giving evidence of 17 February 2012 he was unaware of this agenda item.

1.23 The consultant's report found that, subsequent to the committee meeting of 17 February 2012, Mr Fry requested a full briefing on the Gold Coast conference including the team building activity at Movie World. Mr Fry received that brief on 21 February 2012.²³

17 See Appendix 2.

18 See Appendix 3.

19 See Appendix 4.

20 See Appendix 5.

21 Deloitte Touche Tohmatsu report, pp. 7, 9.

22 Deloitte Touche Tohmatsu report, p. 26; Appendices T and U.

23 Deloitte Touche Tohmatsu report, p. 26; Appendix G.

1.24 The committee did not receive any corrections to IBA's evidence of 17 February 2012. During the hearing on 11 May 2012, Mr Fry stated:

I have not updated the committee prior to this date because I was awaiting the release of the Deloitte's independent report which occurred on Wednesday of last week.

1.25 However, the committee notes that Mr Fry by 21 February had been provided with information that could have been used to correct his answers.

1.26 The committee accepts that there have been instances in the past where incorrect, incomplete or misleading information has been provided by witnesses to Senate committees. The convention in these circumstances is for that evidence to be corrected at the earliest opportunity after the error has been detected. Senate Privilege Resolution 6 (12) provides that:

A witness before the Senate or a committee shall not:

- (a) without reasonable excuse, refuse to make an oath or affirmation or give some similar undertaking to tell the truth when required to do so;
- (b) without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so; or
- (c) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.

1.27 Failure to correct evidence at the earliest opportunity can leave a witness vulnerable to an allegation of contempt of the Senate under this resolution, and to being dealt with accordingly.

1.28 The committee has written to Indigenous Business Australia, informing it of the obligations of witnesses to Senate committees when providing evidence, highlighting the provisions of Senate Privilege Resolution 6, and indicating that it is the witness's duty to correct any errors or misleading evidence at the earliest opportunity after any such errors are detected or brought to the attention of the witness.

1.29 The committee notes Mr Fry's evidence suggesting that IBA has revised internal processes as a result of its experiences in the two areas that led to the allegations. Mr Fry said:

I have encouraged our executive to use these allegations and this moment in time with IBA to reflect on how we can further improve our operations. To this end, we now have a formal policy with regard to all team-building and conference activities that requires the chief operating officers to provide oversight to ensure that there is consistency and appropriateness in all program areas. We have also identified the need to better communicate the board's decisions and strategic decisions to all staff. The IBA board has now engaged Deloitte to undertake a further review of our governance

framework as part of an ongoing governance review. Like the first Deloitte report, this subsequent report will be publicly viewed.²⁴

1.30 The committee concludes that IBA has learned lessons from recent experience and implemented reforms accordingly.

1.31 The committee concludes, on the evidence available, that Mr Fry had not intended to mislead the committee and that there is no basis, therefore, for the committee to raise this as a matter of privilege.

Senator Claire Moore

Chair

24 Mr Fry, CEO, IBA, *Proof Committee Hansard*, 11 May 2012, p. 3.