

Regulating for governance

Good store governance in a remote economy

- 6.1 It was recognised during the inquiry that a healthy store is one where the community has the opportunity to participate in decision making about store well-being outcomes.¹ For this to happen there must be appropriate governance structures in place to ensure that input.²
- 6.2 While a small percentage of remote community stores are privately owned and operated, a majority are owned and controlled by the Indigenous community in which the store is located. In these communities the governance body established to manage community funds may have charge of the store or a separate legal entity called a 'store committee' may be formed for that purpose.³ Commonly, a non-Indigenous manager will be appointed privately or a consultancy such as Australian Retail Consultants or Outback Stores will be contracted to manage the store.
- 6.3 Community stores in most remote Aboriginal and Torres Strait Islander communities are run as not-for-profit institutions, but they are also the social and economic engines of the community. The Office of the Registrar of Indigenous Corporations (ORIC) estimates the annual turnover of an entry level store at \$1.3 million, but many trade far in excess of this.

1 Fred Hollows Foundation, *Submission 30*, p. 6.

2 Burdon Torzillo Associates Pty Ltd, 'Ownership, Governance and Management of Stores on Remote Aboriginal Communities', *Exhibit 41*, pp. 1, 5.

3 Anthony Beven, Registrar, Office of the Registrar of Indigenous Corporations (ORIC), *Committee Hansard*, Canberra, 14 May 2009, p. 7; Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Submission 62*, p. 14.

Indigenous store management experts Burdon Torzillo Associates advised that a 'good' store – one that is viable, provides healthy foods at a reasonable cost, and maintains standard hours of service – may achieve a small operating surplus of between five and eight per cent.⁴

- 6.1 For stores servicing larger communities with larger operating budgets a surplus can be sufficient to employ many people, fund seed enterprises or support major infrastructure projects. Even for smaller stores, surpluses are important to the community to fund a range of social, cultural or other needs which could not otherwise be supported.⁵
- 6.2 The tensions between commercial and health objectives provide unique challenges to those involved in running the store.⁶ Good store management thus relies on, both:
 - the governance capacity of the community body to direct store policy and hold store management to account, and
 - the store manager's ability to maintain a viable business and preparedness to work towards objectives set by the governance body.⁷
- 6.3 For Indigenous owned community stores, well developed and appropriate governance structures are therefore essential supports to the necessary consultation, to ensure that both store managers and owners meet their obligations in operation of the store, and that processes are transparent and accountable.⁸

4 Anthony Bevan, Registrar, ORIC, *Committee Hansard*, Canberra, 14 May 2009, p. 9; Burdon Torzillo Associates Pty Ltd, 'Ownership Governance and Management of Stores on Remote Aboriginal Communities', *Exhibit 41*, p. 2.

5 For example, see Bawinanga Aboriginal Corporation (BAC), *Submission 51*, p. 1; Maningrida Progress Association (MPA), Bill Young, General Manager, *Committee Hansard*, Maningrida, 23 July 2009, p. 16; Jarlmadangah Burru Aboriginal Community (Joe Grande), *Submission 3*, p. 1.

6 Northern Territory (NT) Government, *Submission 98*, p. 5; FaHCSIA *Submission 62*, p. 14.

7 See discussion Professor John Altman, Director, Centre for Aboriginal Economic Policy Research (CAEPR), Australian National University (ANU), *Committee Hansard*, Canberra, 12 March 2009, p. 6; and S McDonnell and D F Martin, 'Indigenous Community Stores in the "Frontier Economy": Some Competition and Consumer issues', *Discussion Paper No. 234/202*, CAEPR, ANU, 2002.

8 Burdon Torzillo Associates Pty Ltd, 'Ownership Governance and Management of Stores on Remote Aboriginal Communities', *Exhibit 41*, p. 2.

The role of store committees

- 6.4 While comprehensive data is not available, many Indigenous communities establish a store governance body, known as a 'store committee', to run their community store.⁹
- 6.5 While the store committee members may not have responsibility for daily management of their store, they can have an important influence as decision makers: in choosing management models, determining store food policy, making decisions about any surplus expenditure, and monitoring store financials.
- 6.6 Store committee entities are structured under state or federal legislation in a range of corporate or non-corporate forms.¹⁰ A strong store committee is often comprised of strong leaders, called directors, who are usually traditional owners. In some areas these will mainly be senior men, but in other communities women predominate.¹¹ Lieutenant General John Sanderson AC advised that a respected leader will have not only cultural seniority but a capacity to unite the community, with benefits for the store:
- ...where they have strong leadership, the community stores function well. People have a sustained presence in that process... There is a community commitment to what the store does.¹²
- 6.7 The Committee received evidence from many Aboriginal corporations and store committees proud of their stewardship of 'happy' stores in healthy communities:
- The community takes great pride in the presentation, operation and stocking of its Community Store and comparisons to other neighbouring stores is a topic of daily discussion.¹³

9 Research conducted on ownership and management of stores in the Northern Territory in 2000 showed that 37 out of 56 were Aboriginal owned and roughly half had store committees. Jon Altman and Sally Ward (eds), *Competition and Consumer Issues for Indigenous Australians*. A Report for the Australian Competition and Consumer Commission by the Centre for Aboriginal Economic Policy Research (CAEPR), Australian National University, September 2002, p. 46; and see Anthony Beven, Registrar, ORIC, *Committee Hansard*, Canberra, 14 May 2009, p. 7; FaHCSIA *Submission* 62, p. 14.

10 Australian Securities and Investments Commission (ASIC), *Submission* 106, p. 2.

11 For contrast see *Committee Hansards* Jilkminggan, 21 July 2009; Aurukun, 2 April 2009.

12 *Committee Hansard*, Canberra, 18 June 2009, p. 3.

13 Mulan Aboriginal Corporation, *Submission* 10, p. 1; ref. 'happy stores': Robyn Bowcock, Public Health Nutritionist, Kimberley Population Health Unit, Western Australia (WA) Country Health Service, *Committee Hansard*, Broome, 20 July 2009, p. 50.

- 6.8 A good relationship between store committees, store managers and nutritionists founded good health outcomes in many communities. Papunya Store Company President Sam Anderson stated:

It is up to people to have their choice, but we have still got to understand to look after our health as well...if we have got good store managers, a good committee and people supporting otherwise, we will go a long way on that stuff.¹⁴

- 6.9 Jarlmadangah Burru Aboriginal Community store, located 120 kilometres south east of Derby, demonstrated that a community council can own and run a strong store with prudent management, accounting advice and a measure of government funding :

The store contributes to the cost of fuel for the powerhouse and has provided the community with an essential service [it] has had to look at how it can offer community member's food supplies that will enable them to receive value for money and not lose money in the process. During its' ten years of operation the store has only recorded one small loss. All profits generated have been reinvested into the store for improvements and upgrading computers/POS.¹⁵

- 6.10 Many remote communities comprise numerous clans, some of whom share traditional custodianship or claim it, and reside with others from other areas.¹⁶ Helen Williams, Chairperson of the Maningrida Progress Association (MPA) described how the community mediates store cultural contributions in a multi-clan town:

We have got a reference group that gets together. It is a big group and then we are able to take it back within our board meetings within our own organisation that we represent...¹⁷

- 6.11 Store committees are responsible for appointing store managers, many of whom are non-Indigenous, to their stores. While some managers are very skilled and committed to the community others are not. Poorly developed

14 *Committee Hansard*, Papunya, 27 April 2009, pp. 2, 6.

15 *Submission 3*, p. 1.

16 Professor Jon Altman, Director, CAEPR, *Committee Hansard*, Canberra, 12 March 2009, p. 2; and see Janet Hunt, Diane Smith, Stephanie Garling and Will Sanders, (eds), *Contested Governance; Culture, Power and Institutions in Indigenous Australia, Understanding Indigenous Australian Governance*, CAEPR, Research Monograph no. 29, 2008.

17 *Committee Hansard*, Maningrida, 3 July 2009, p. 15.

governance with poor store management leads to financial instability. In these instances the store may typically experience high prices, poor supply of low quality stock and a high incidence of stock pilfering or other fraudulent behaviour.¹⁸

- 6.12 It was very apparent during store inspections that running a viable remote community store is an extremely challenging and complex task for any remote store manager. Equally, it was clear that some Indigenous communities have poor capacity for effective store governance despite a very strong commitment to it. The variance of quality, governance and manager capacity was the single unifying factor among the diversity of community stores during the inquiry.¹⁹

Obstacles to governance

- 6.13 Community stores face many more challenges than stores run in other situations. Few other Australian communities are locked into a situation where their health and well-being, as well as their local economy, is largely dependent on one store.²⁰
- 6.14 Remote community stores operate in an environment which is not conducive to running a business. Small market size, diseconomies of scale in food supply, high costs for transports and low profits mean that the few private operators in the area are either very good or extremely bad, with low commitment to their host communities' needs (for example, ordering in specific food for diabetics).²¹
- 6.15 The role of the store as the economic centre of a remote community adds additional challenges: the store must comply with financial standards of accountability and democratic governance models that do not fit well with cultural practices of clan ownership and obligation between kin.²²

18 Menzies School of Health, *Submission 12*, p. 5.

19 Vicki Gillick, Coordinator, Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, *Committee Hansard*, Alice Springs, 28 April 2009, p. 132.

20 Joy McLaughlin, Manager Indigenous Program, Fred Hollows Foundation, *Committee Hansard*, Darwin, 22 July 2009, p. 106.

21 Joy McLaughlin, Manager Indigenous Program, Fred Hollows Foundation, *Committee Hansard*, Darwin, 22 July 2009, p. 106; FaHCSIA, *Submission 62*, p. 11.

22 S McDonnell and D F Martin, 'Indigenous Community Stores in the "Frontier Economy": Some Competition and Consumer Issues', *Discussion Paper No. 234/202*, Centre for Aboriginal Economic Policy Research, Australian (CAEPR), Australian National University, 2002, p. 3.

Distortion of market power

- 6.16 The Committee was advised by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) that a 'lack of competition in remote locations leads to a distortion of market power in favour of store operators, while remoteness compounds consumer vulnerability.'²³
- 6.17 Due to cultural factors Indigenous people may not contest the quality of goods or services they receive, and cannot afford regular travel to other stores for better prices or services.²⁴ This supports the incidence of 'price gouging', where high prices, inferior products or poor services are provided without affecting sales.²⁵ Bifurcation of demand between Indigenous and non-Indigenous consumers in remote communities further reduces the bargaining capacity of Indigenous people, while driving up store prices and undermining store viability.²⁶
- 6.18 The Australian Securities and Investments Commission (ASIC) brought to the Committee's attention the role ASIC plays in consumer protection under these circumstances:
- ASIC produces targeted information and resources for different sections of the community, including resources for Indigenous Australians. Our Indigenous consumer strategy has three key elements: consumer education/financial literacy; combating exploitative business activity; and working with mainstream providers to improve practices and practical access.²⁷
- 6.19 Another challenge that remote Indigenous community stores face is the shortage of experienced and qualified individuals available to manage remote community stores. The Northern Territory Government advised:
- ...there was a shortage of qualified individuals available to manage remote community stores and the difficulty of retaining

23 FaHCSIA, *Submission 62*, p. 11.

24 Visits to remote communities demonstrated that the concept of 'shame' meant that people (especially women) may not make public complaints even where there was corroborating evidence on the record. For fuel and travel see Western Australian Department of Health, *Submission 21*, p. 7 and FaHCSIA, *Submission 62*, p. 11.

25 FaHCSIA, *Submission 62*, p. 11

26 Professor Jon Altman and Dr Kirrily Jordan, *Submission 64*, p. 1.

27 ASIC, *Submission 106*, p. 2.

them makes poor store management more likely, with communities having little choice whom they appoint.²⁸

- 6.20 In turn boom and bust cycles associated with good – management – bad management, as store managers come and go, affects service and the sustainability of the store.²⁹

Cultural obligations and stores

- 6.21 Indigenous cultural protocols bring another dimension to the operation of remote community stores. As the financial and social hub of the community, remote stores are at the centre of Indigenous ‘demand sharing’ practices and power relationships.

- 6.22 In Aboriginal communities obligations to provide goods or finances to clan members confirm mutual relationship and assert difference.³⁰ John Greatorex, Coordinator of Yolngu Studies at Darwin University, gave a Yolngu perspective from Mapuru in North East Arnhem Land:

We have our own financial literacy, and that means sharing. It’s ethically responsible for us to offer people money or resources that we have before we’re asked.³¹

- 6.23 Problems with this in the store context were widely discussed in evidence. The Committee heard that pressures could be placed on staff to provide free goods or staff be sacked if they would not provide credit to clan or kin in community run stores. In store committees the potential for clan conflict or lack of democratic process could be exploited by store managers in determining store expenditure.³²
- 6.24 FaHCSIA observed that store committee corporate structures can produce a ‘clear tension between the economic/commercial interests of the store committee and the social obligations to return revenue to the community’, noting potential for committee members to receive financial benefit via

28 NT Government, *Submission 98*, p. 4.

29 Alastair King, General Manager, ALPA, *Committee Hansard*, Darwin, 22 July 2009, p. 59; Katherine Cullerton, Senior Project Officer, NATSINSAP, *Committee Hansard*, Canberra, 25 June 2009, p. 3.

30 S McDonnell and D F Martin ‘Indigenous Community Stores in the “Frontier Economy”: Some Competition and Consumer issues’, 2002, pp. 25-27.

31 Private Capacity, *Committee Hansard*, Darwin, 22 July 2009, p. 33.

32 Sara Hudson, Centre for Independent Studies (CIS), *Submission 84*, p. 3; Emmanuelle Barone, *Submission 14*, p. 2; Western Australian Department of Health, *Submission 21*, p. 13; ALPA, *Submission 61*, p. 16.

high prices in a store or via 'special discounts', and other accountability issues.³³

- 6.25 Indigenous stakeholders acknowledged that practices such as 'humbugging' and nepotism can pose a serious risk to the viability of the store.³⁴ Some considered that partnerships with non-Indigenous people in store governance and management can be helpful to diffuse cultural pressures. Ric Norton works as the non-Indigenous General Manager of Laynhapuy Homelands Association:

... why we are a relatively stable organisation and have been quite successful is that our members recognise these problems and take a bit of a hands-off approach and say, 'We want this to be run properly, which means we need non-Indigenous involvement to make sure that happens.' As individuals, they can be put under enormous amounts of stress if they are ultimately the ones who hold the key or whatever.³⁵

- 6.26 Other Indigenous stakeholders maintained that 'demand sharing' behaviour as currently understood is not traditional but has evolved in response to need. In Alice Springs, Darryl Pearce, Chief Executive Officer of the Lhere Artepe Aboriginal Corporation, commented:

...there is a new model of Aboriginal people who have started this thing – it is only realistically about 20 or 30 years old – about the pressure that we apply to families and other people to get something off them. This whole idea is that 'I'm your family and you have to pay for me; you have to buy this and you have to give me that. Give me your car and give me your clothes.' That is new. That is not traditional in any shape or form. Traditionally, when you went to a person's country you sat down. If a kangaroo were killed people did not just jump up and grab whatever they wanted out of the kangaroo on the fire; it was broken up and distributed amongst each of the family groups, who then distributed it amongst themselves.³⁶

33 FaHCSIA, *Submission 62*, p. 14.

34 Irene Fisher, Chief Executive Officer, Sunrise Health Services, *Committee Hansard*, Jilkminggan, 21 July 2009, p. 8.

35 Ric Norton, General Manager, Laynhapuy Homelands Association Inc., *Committee Hansard*, Darwin, 22 July 2009, pp. 47–48.

36 Darryl Pearce, Chief Executive Officer, Lhere Artepe Corporation, *Committee Hansard*, Alice Springs, 28 April 2009, p. 10.

- 6.27 Reverend Dr Djiniyini Gondarra OAM, Chairman of the Arnhem Land Progress Aboriginal Corporation (ALPA) one of Australia's largest independent employers of Indigenous people, explained that traditional Yolngu law provides strict distinctions applicable to store management:

Most of contemporary society understands or is being told that the Aboriginal people of this country share and give. The word for giving in Arnhem is 'witj'. They see people working in a store who may be taking a very important role as a manager or assistant manager and they wonder how that store is going to survive and make a profit, because their wife, daughter, son, nephew or whoever might come into the store and say, 'I want money.' We are not stupid. We use the word 'malu'. Malu is a special word. It is the revenue, the profit, and that profit is owned, by law. The people who work there know what is inside the business and what is outside the business. In a contemporary society people need to know that; that is very clear.³⁷

- 6.28 During a public hearing in Canberra, Professor Jon Altman advised the Committee that Indigenous management is desirable, but education is needed and the realities of kin pressures must be recognised as part of the business of remote store operation: bad external managers can get caught up in these pressures leading to poor outcomes for the store.³⁸

Committee comment

- 6.29 The Committee notes that there is potential for tension between profit incentives and health outcomes as store committees exercise their respective responsibilities to the store and to the community.
- 6.30 For Indigenous people the measure of success of a community-owned and managed store is often gauged by its capacity to support a range of cultural, community development and recreational projects, as well as provide affordable healthy food. Community members see this as an important contribution to community well-being, a source of pride and a demonstration of cultural autonomy.
- 6.31 The Committee recognises that store committees can find arriving at the right balance difficult, and that frameworks are needed to ensure that the

37 Arnhem Land Progress Aboriginal Corporation (ALPA), *Submission 61*, p. 1; *Committee Hansard*, Darwin, 22 July 2009, p. 72.

38 *Committee Hansard*, Canberra, 12 March 2009, p. 7.

sustainability of the store and health outcomes are the priority, over and above other surplus expenditures.

- 6.32 The Committee is therefore of the view that strong self-governance structures are needed to ensure Indigenous communities are better equipped to make effective decisions about the management of their store, to define their community goals and objectives and determine how they can be achieved.

Regulatory frameworks for store governance

- 6.33 Remote community stores can be established under a range of Commonwealth, state or territory regulatory regimes, leading to complexity and lack of accountability in their operation.
- 6.34 At the Commonwealth level, community stores may incorporate under the *Corporations Act 2001* or the *Corporations and Aboriginal and Torres Strait Islander Act 2006* (CATSI Act). Many also operate as associations under the relevant Associations Act in a particular state or territory.³⁹
- 6.35 A separate category of stores are those controlled by Torres Strait or Northern Territory shires, and those established under state legislation in Queensland by the Islanders Board of Industry and Service (IBIS) under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.⁴⁰
- 6.36 While the majority of stores in remote Indigenous communities are community owned, a small number of stores servicing Indigenous people in remote Australia are not owned by an Indigenous organisation. For example, in the Northern Territory around 15 per cent of stores currently licensed as part of the Northern Territory Emergency Response are not Indigenous owned.⁴¹
- 6.37 Responsibility for the regulation of Indigenous-owned stores is spread across different Commonwealth, state and territory agencies:
- the Office of the Registrar of Indigenous Corporations (ORIC) has responsibility for those registered under the CATSI Act,

39 ASIC, *Submission 106*, p. 4.

40 ORIC, *Committee Hansard*, Canberra, 14 May 2009, p. 16; Queensland Government, *Submission 60*, p. 2; Islanders Board of Industry and Service (IBIS), *Submission 28*, p. 5.

41 FaHCSIA, *Submission 62*, p. 14.

- the Australian Securities and Investments Commission (ASIC) oversees governance matters for stores under the Corporations Act, and
 - state and territory business affairs agencies deal with corporate governance issues for stores, assisted by ASIC.⁴²
- 6.38 Stores may additionally be structured differently under each jurisdiction:
- the CATSI Act provides for either store-specific entities or operation under registered community councils or corporations,⁴³
 - the Corporations Act provides for stores to be registered as proprietary and public companies, and the classes of each,⁴⁴ and
 - state and territory associations acts provide the most variation, with non-corporate forms of associations comprising sole traders, partnerships, trusts and joint ventures.⁴⁵

Jurisdiction and non-compliance issues

- 6.39 ASIC advised the Committee that the potential for stores to be formed in overlapping jurisdictions and with different individuals adds to the complexity for remote store operators. Some community stores, for example:
- ...use more than one form of association and, within that group, a mix of corporate and non-corporate bodies...The shareholders of a proprietary company limited by shares may be an ORIC company or an association. A proprietary company may also act as the trustee of a trust and enter into a management agreement with another entity to run a store.⁴⁶
- 6.40 ASIC concluded that this leads to confusion about ownership of the store, where information can be obtained about the store (that is, which state, territory or Commonwealth agency is responsible), and what a person's rights are in relation to the management of that store.⁴⁷

42 ASIC, *Submission 106*, pp. 2, 5.

43 Anthony Bevan, Registrar, ORIC, *Committee Hansard*, Canberra, 14 May 2009, pp. 2, 4.

44 Classes of proprietary companies are (a) limited by shares and (b) unlimited with share capital. The classes of public companies are (a) limited by shares, (b) limited by guarantee, (c) unlimited with share capital and (d) no liability. *Submission 106*, p. 5.

45 ASIC, *Submission 106*, p. 4.

46 ASIC, *Submission 106*, p. 5.

47 ASIC, *Submission 106*, p. 5.

- 6.41 The Registrar of Indigenous Corporations Anthony Beven confirmed that ORIC regularly deals with store governance bodies structured in complex subsidiary trusts or ASIC registered entities, citing two contemporary examples:

... the other store we are currently running in Burringurrah in Western Australia is the Burringurrah Community Aboriginal Corporation. It then has a subsidiary, and the subsidiary is registered with ASIC and it runs the store. In Mutitjulu, you have the Mutitjulu Community Aboriginal Corporation, which is registered with my office. It owns all the shares in Gumlake Pty Ltd, which is an ASIC corporation, and it is the trustee of a trust, the Ninti Trust, which runs the store in Mutitjulu. So the complexities of the registration schemes around the country are... difficult to deal with.⁴⁸

- 6.42 ORIC further advised that this complexity limits its capacity to regulate Indigenous stores. Even if the parent body is registered with ORIC, it cannot assist with advice or services as these subsidiary trusts or entities as the Office's powers under the CATSI Act only apply to the registered body.⁴⁹

- 6.43 Overall, advice from government agencies involved in regulation of the stores made it clear that the variety and complexity of arrangements for store registration also makes it difficult to assess both compliance rates under each regime and the number of stores under each jurisdiction.

- 6.44 Research conducted on store governance in 2002 identified problems such as lack of accountability of store managers and disagreements concerning distribution of store profits, bad debts, and high committee costs.⁵⁰ FaHCSIA considered that non-compliance rates are still likely to be high but had no consistent data on this:

While no data is available regarding non-compliance for community stores specifically, FaHCSIA's annual report on Indigenous corporate compliance for 2007-2008 indicated that 41

48 ORIC, *Committee Hansard*, Canberra, 14 May 2009, p. 17.

49 ORIC, *Committee Hansard*, Canberra, 14 May 2009, pp. 5, 17.

50 S McDonnell and D F Martin, 'Indigenous Community Stores in the "Frontier Economy": Some Competition and Consumer issues', *Discussion Paper No. 234/202*, CAEPR, Australian National University, 2002, cited in ASIC, *Submission 106*, pp. 5-6.

per cent of all Indigenous corporations in Australia were not fully compliant with reporting requirements under the CATSI Act.⁵¹

- 6.45 The introduction of income management and a store licensing system in the Northern Territory (discussed in more detail later in the report) has given some confirmation that non-compliance is an issue under current governance structures while also providing estimates of the number of stores in different jurisdictions. These are that 75 stores, 30 per cent, are registered with ORIC, less than ten per cent are regulated by ASIC, and the majority are formed under the *Northern Territory Associations Act 2003* (NT Associations Act).⁵²
- 6.46 More significant limitations for store governance under Association Acts cited were that:
- these Acts are intended for small not-for-profit organisations such as social and sporting clubs and so are unsuited to a not-for-profit functioning uniquely as an essential service and a commercial entity generating million dollar turnovers, and
 - there is a lack of well-developed remedies for non-compliance, in particular, there is no administrative infringement scheme, meaning that prosecution is the only means of enforcement.⁵³
- 6.47 As noted, the various corporate and non corporate associations and trusts are the most common forms of governance structures adopted by Indigenous organisations in the Territory, and are likely to be prevalent in other states. Lynne Curran, Manager of the Office of Indigenous Policy Coordination Group, FaHCSIA, advised this supported widespread regulatory failure and non-compliance:
- Unfortunately, in many cases, the existing state and territory regulations are not enforced. That goes to standards in respect of basic things about associations – there is no follow-up or compliance activity around financial statements or things of that type. More fundamentally, there is often very poor or no enforcement of OH&S or food safety standards. That is just as important for food security as having things on the shelves.⁵⁴

51 The Committee notes that it is not clear here whether this refers to stores registered under CATSI Act or stores generally. See FaHCSIA, *Submission 62*, p. 15.

52 ORIC, *Committee Hansard*, Canberra, 14 May 2009, p. 16, ASIC, *Submission 106*, p. 5.

53 FaHCSIA, *Submission 62*, p. 14.

54 Lynne Curran, Manager, Office of Indigenous Policy Coordination Group, FaHCSIA, *Committee Hansard*, Canberra, 20 August 2009, p. 10.

- 6.48 The Committee also heard that even where corporate governance requirements are technically complied with, store committees and directors may not be informed of the store's business position. The Kaltukatjara Community Corporation (KCC), for example, described apparent conflict of interest and transparency issues evolving out of overlapping governance structures for its store, consultant manager and the accountancy firm:

From an audit perspective the accounting firm and Nin[ti] stores maintain appropriate records and show them to the appropriate authorities; however the management is constructed in several layers and set up in such a way that it is hard to identify where any profits are heading. From an annual turnover of between \$2-\$3 million the community receives \$46,000 and that is not by way of cash but stock from the store. Profit in abeyance is also stock not cash reserves.⁵⁵

- 6.49 The submission also reported that Ninti Stores did not provide adequate notice of meetings or documentation, including financial statements, to store directors. In response in Alice Springs, Operations Manager of Ninti Corporate Services Richard Bugg advised that the management consultancy obeyed corporate governance requirements but did not provide minutes and statements because of a lack of English literacy among directors. Provision of financial statements had also led to 'agitation' for store surplus reserves.⁵⁶
- 6.50 The Committee is of the view that store committees should understand their obligations to direct the store for community benefits, and managers should understand their responsibility to report on the store operations in a way which can be understood by the directors.
- 6.51 A further complexity arises due to factionalism between clans. Difficult personalities in store committee or councils can exacerbate factionalism with potential threats to store stability. The Committee heard from John Tregenza, Mai Wiru Health Unit Manager, Nganampa Health Council, about personality issues in the community council at Amata, in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, which prevented the community from dealing with problems of quality and pricing in the store over a period of five years.⁵⁷

55 Greg Ranse, Kaltukatjara Community Corporation, *Submission 50*, p. 2.

56 *Committee Hansard*, Alice Springs, 28 April 2009, pp. 116-17.

57 *Committee Hansard*, Amata, 29 April 2009, p. 21. The Amata store committee was registered with ORIC subsequent to the Committee's visit in July 2009.

- 6.52 In this respect the Committee notes that registration with ORIC under the CATSI Act would have provided benefit. When a store committee is formed it is required to design a dispute resolution process and set this out its rule book. As the Registrar advised, the fact that the dispute rules are determined by the corporation gives legitimacy to the process and creates a greater sense of ownership and commitment to resolve issues.⁵⁸
- 6.53 ORIC also advised that registration under the CATSI Act provides a useful range of remedies for non-compliance. The Registrar can authorise an examination of the governance affairs and financial records of Indigenous corporations to ensure that store governance processes and agreed constitution rules are followed. An examination of key corporations is conducted annually, in effect providing a free annual audit.⁵⁹
- 6.54 Greg Gumielli, store manager at Papunya store, advised of improvements to store accountability and transparency processes since the store committee registered its constitution with ORIC:
- Now that they have the committee, we are held under our constitution to have a minimum of four meetings a year. I have asked Centre Accounting Services, and they must attend at least two to three of them per year, so there should be a financial report given at each of those meetings. At stock takes we are audited by Deloittes. They come out and do a full audit of our stock take, financials on hand. They go right through Centre Accounting Services and their operational capacity with our financials, and they ensure that everything is correct.⁶⁰
- 6.55 The main aim of the examination process is to identify governance and financial issues within a corporation before they become major issues. If intervention is warranted, ORIC will appoint a special administrator to assist corporation members to solve problems and return the corporation to their full control, while ensuring business operations continue during the process.⁶¹
- 6.56 In some instances, community stores may need the assistance of an administrator, appointed by ORIC, to assist a store that may be heading
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58 *Committee Hansard*, Canberra, 14 May 2009, p. 3.

59 ORIC anticipated examining 86 corporations in 2009 with the majority part of its strategic monitoring program and a small percentage complaint and intelligence driven. Anthony Bevan, Registrar, ORIC, *Committee Hansard*, Canberra, 14 May 2009, p. 5.

60 *Committee Hansard*, Papunya, 27 April 2009, p. 17.

61 Anthony Bevan, Registrar, ORIC, *Committee Hansard*, Canberra, 14 May 2009, pp. 4–5; ORIC *Submission 108*, pp. 5–6.

towards insolvency or already insolvent. In Mimili, located in the APY Lands in South Australia, Meertens Chartered Accountants were brought in as an administrator to assist the store in November 2008. The Registrar advised that Mimili store is now a solvent, financially viable and profitable store under the management of Outback Stores.⁶²

- 6.57 The Registrar advised that the cost of the administration process is high, with a maximum period under administration being to six months. Costs start at \$7 000 per month for administration of an art centre, for example, and peak at \$66 000 for more detailed work. At Mimili, costs on average were between \$10 000 to \$15 000 a month but peaked at \$40 000.⁶³
- 6.58 Given the expense of assisting an insolvent store, there is big price incentive to Government to ensure that store governance and management structures are functional and meet their obligations effectively.

Committee comment

- 6.59 The Committee considers that current arrangements for the regulation of community stores are inconsistent and provide inadequate governance regimes. The complexity and overlapping regulations do not facilitate optimal levels of good governance for community stores.
- 6.60 Current complex arrangements not only confuse store committee members about their rights and obligations under each jurisdiction, but simultaneously open up loopholes for non-compliance while reducing regulator capacity to apply enforcement and deliver advice.

Proposal for a national registration framework

- 6.61 In response to the problems outlined above, ORIC has recommended that all remote stores which are Indigenous owned should be incorporated under the CATSI Act. The Registrar of Indigenous Corporations, Anthony Beven maintained that the CATSI Act offers an existing national framework uniquely framed to both achieve community objectives and meet high standards of compliance:

Registration under the legislation I administer, the CATSI Act, provides a wide range of benefits. It provides a strong regulatory

62 *Committee Hansard*, Canberra, 14 May 2009, pp. 10–12.

63 *Committee Hansard*, Canberra, 14 May 2009 pp. 10–11.

framework at a national level. It operates across Australia – it is not restricted to certain jurisdictions. It also has the flexibility to take account of local customary needs and obligations. We also provide corporate governance support and services and we have specialist staff that only deal with Aboriginal and Torres Strait Islander people. So our role is delivering services in the corporate governance area to Aboriginal and Torres Strait Islander people. That is 100 per cent of what we do.⁶⁴

- 6.62 The Registrar further maintained that as most stores are Aboriginal-owned or controlled, a well-structured store committee, aware of its governance responsibility and obligations, is the key to both the stability of the stores and the realisation of health and well-being objectives for an Indigenous community as a whole.⁶⁵
- 6.63 The Committee notes that Indigenous corporations registered under the CATSI Act must comply with obligations to ensure accountability and promote transparent practices in decision making:
- Indigenous corporations are obliged to discharge their duties with care and diligence, in good faith and in the best interests of the corporation. An offence is committed if a Director uses their position dishonestly or recklessly to directly or indirectly gain an advantage, or cause detriment to the corporation,
 - store directors are required to adhere to the rules of the corporation's rulebook, which sets out additional directors' obligations and responsibilities when making financial decisions for the corporation. If rules to achieve particular objectives are specified, such as how store profits or surpluses are to be used, then directors are obliged to act in accordance with these rules,
 - a corporation's directors must obtain member approval to give a financial benefit to a related party of the corporation. The CATSI Act clearly specifies procedures to ensure open and transparent disclosure to members when seeking approval for the payment of related party benefits,
 - the Registrar may authorise an examination of the financial records of an Indigenous corporation and may also initiate an examination in response to an apparent risk within a corporation,

64 *Committee Hansard*, Canberra, 14 May 2009, p. 2.

65 *Committee Hansard*, Canberra, 14 May 2009, pp. 2–3.

- Indigenous corporations with a consolidated gross operating income of \$100 000 or more are required to provide the Registrar with an annual audited financial report, or financial reports based on reports to government funding agencies (where applicable), and
 - the Registrar has the power to investigate alleged breaches of the CATSI Act and refer breaches to the Commonwealth Director of Public Prosecutions for prosecution. If laws other than the CATSI Act are breached, the Registrar will refer the matter to the relevant authority such as the Australian Federal Police.⁶⁶
- 6.64 ORIC also advised of its powers to provide a fully developed service to build capacity for compliance, support community control and store viability, namely:
- tailored incorporation advice, governance training, financial monitoring and mentoring, a dispute resolution system and, in the event of store failure, the power to take the store into administration to restore viability track, and
 - assistance to Indigenous store committee to design their own corporate structures, or 'rule books', which take into account customary needs and obligations as well as make community specific requirements, such as provisions for health policy, instructions for uses of surpluses and rules on book up.⁶⁷
- 6.65 ORIC's proposal was supported in the evidence as providing the right balance between robustness and flexibility.
- 6.66 Store governance and management experts Burdon Torzillo and Associates saw that incorporation under the CATSI Act should be compulsory for all Indigenous corporations, in providing the necessary framework to meet compliance and store committee member's needs. It also recommended that terms for directors should be two years and rotational, and that there should be expert appointed non-member directors on store committees to mentor and attend quarterly meetings.⁶⁸
- 6.67 ASIC identified a range of problems for regulators and stores under current complex incorporation arrangements. The Commission considered that, in addition to consumer protection benefits, incorporation under one

66 ORIC, *Submission 108*, pp. 4–5.

67 ORIC, *Submission 108*, p. 4.

68 Burdon Torzillo Associates Pty Ltd, 'Ownership, Governance and Management of Stores on Remote Aboriginal Communities', *Exhibit 41*, pp. 1, 5.

jurisdiction could reduce business costs, improve training opportunities and provide a more consistent regulatory approach.⁶⁹

- 6.68 As noted above, under current arrangements ORIC can not provide firm advice on the number of stores it currently administers under the CATSI legislation. Changes to registration in July 2007 allowed preliminary assessment indicating that 48 registered corporations currently run a 'shop', being a business of some type.⁷⁰ Otherwise, the Registrar advised, there are 2 700 Indigenous corporations registered under the CATSI Act, with half in remote and regional Australia. Progress is being made under Memoranda of Understanding (MOUs) in place with South Australia, Western Australia and the Northern Territory to promote transferral to ORIC.⁷¹
- 6.69 The Committee notes, given numbers, that a mandatory requirement for transferral of Indigenous store governance bodies under associations legislation to the CATSI Act should be relatively straightforward under most state and territory legislation. It is notable, however, that Queensland does not have an MOU with ORIC and that stores operated under Queensland legislation and those run by shire councils in the Torres Strait would apparently not be covered under any requirements for transferral to the CATSI Act.
- 6.70 Similarly, improved regulation of privately owned and run stores could not be effected under any mandatory requirement applying to Indigenous owned and controlled stores. The Committee notes that reported poor consultation and compliance among private-owned stores supports the need for improvement in this area.⁷²

Committee comment

- 6.71 The Committee sees advantage for store operators in registration under the CATSI Act. The flexibility it offers will more effectively match the needs and responsibilities of store committees in their governance roles: to structure their governance rules and objectives according cultural requirements, and incorporate health objectives according to their own design. This in itself would provide an empowering experience, bringing

69 ASIC, *Submission 106*, p. 6.

70 ORIC, *Submission 108*, p. 10.

71 *Committee Hansard*, 14 May 2009, pp. 2, 6.

72 Fred Hollows Foundation, *Submission 30*, pp. 9–10.

with its ownership and confidence to engage more effectively in the management of the store.

- 6.72 The Committee also notes that store committees have the power to specify health and other objectives in their rule books which must then be complied with. An annual audit of key corporations by ORIC, along with constitutional requirements for regular meetings with accountants, also provides a model of probity which will support store stability in the long term.
- 6.73 The Committee considers that registration under the CATSI Act offers an appropriate balance of autonomous direction and regulatory safeguards which will provide transparency, sound financial management practices and ultimately have positive outcomes for community well-being.

Recommendation 27

The Committee recommends that the Australian Government support proposals that Indigenous owned and controlled community stores register as corporations under the *Corporations and Aboriginal and Torres Strait Islander Act 2006*.

In addition, the Committee recommends the Australian Government actively promote and encourage registration under the Office of the Registrar of Indigenous Corporations.

- 6.74 The Committee also considers that, in the process of designing corporate rule books, ORIC should offer a nutrition policy template to assist store committees. This template and requirements should be consistent with the recommendations made earlier in this report regarding healthy store policies.
- 6.75 The Committee notes that store constitutions allow for 'observers' to attend store committee meetings. The Committee is of the view that this provides capacity for store committee members to require, at designated meetings, that store manager/s and nutritionists should attend if the community wishes it.
- 6.76 In making these recommendations the Committee is aware that stores in Queensland, as government run and IBIS stores, do not currently have formal mechanisms to promote community input into the management of

their stores. The Committee urges the Queensland Government to remedy this and to do so in consultation with ORIC where appropriate.

- 6.77 The Committee also considers that, with any proposal to promote the national licensing of stores, consideration should be given to requiring privately run stores to be incorporated under the *Corporations Act 2001*, to improve probity of private store operation under regulation of ASIC.

Governance training and support

- 6.78 While there are store committees which have very well developed governance skills, there are many who are poorly prepared to meet the challenges and responsibilities of store directorship.
- 6.79 As noted above, the role of a store committee is to act as a conduit to the appointed store managers about community expectations and to participate in decision-making and monitoring of the financials of the store. The requirements can be set out in store corporation rule books and in the contractual agreements made with any store manager or consultancy a store committee may appoint.⁷³
- 6.80 Surveys indicate that compliance with these obligations for most store committees is nominal. In turn failure to meet reporting obligations and inability to oversee and assess store managers/consultancy compliance with contracts opens the way to fraud and threatens the viability of the store.⁷⁴
- 6.81 Stakeholders strongly supported the need for both financial literacy and governance training so that store committee members better understand their rights and obligations, and are more confident to act on them.⁷⁵
- 6.82 The Committee notes that ASIC, ORIC and the Australian Taxation Office presently operate joint initiatives with Commonwealth, State and Territory agencies responding to the national need for Indigenous governance training and support.⁷⁶

73 ORIC, *Submission 108*, p. 3; Desert Knowledge Cooperative Research Centre, *Submission 53*, p. 5.

74 FaHCSIA, *Submission 62*, p. 15; Central Land Council (CLC), *Submission 57*, p. 7.

75 Kadar Pearson and Partners Pty Ltd, *Submission 29*, p. 5; CLC, *Submission 57*, p. 5.

76 ASIC, *Submission 106*, p. 6.

- 6.83 ORIC leads on this in work with the Northern Territory Government, the Community Stores Unit of FaHCSIA and the Institute for Aboriginal Development on delivery of the 'Building Strong Stores' (BSS) training program in regional centres across the Territory. ORIC also offers accredited training up to certificate level IV and a diploma in business governance which it delivers regionally. All courses are offered free on a voluntary basis, with preference given to participants from FaHCSIA licensed stores for the BSS. ORIC pays the travel, meals and accommodation costs for all participants.⁷⁷
- 6.84 ASIC has also collaborated with ORIC on the BSS program and has produced publications for Aboriginal directors of corporations and to improve the financial literacy of Indigenous consumers. The Commission identified a national need for culturally and corporate effective programs and recommended that an independent assessment of existing programs should be conducted.⁷⁸
- 6.85 FaHCSIA advised that the department has Indigenous engagement officers working through the Remote Services Delivery National Partnership to 'grow the capability of community members to participate in their store'.⁷⁹
- 6.86 ORIC is at present the only body that consistently allocates funds for training of Indigenous corporations among bodies responsible for stores.⁸⁰

Committee conclusions

- 6.87 The Committee believes that the *Corporations and Aboriginal and Torres Strait Islander Act 2006* (CATSI Act) provides an appropriate combination of rigour and flexibility for Indigenous store governance. Regulation under one corporate regulator would result in benefits for Government and its agencies, which would have an improved capacity to collect statistical information about the sector, identify the challenges and aspirations of Indigenous store owners, and develop initiatives to improve governance and hence community health outcomes.

77 NT Government, *Submission 98*, p. 5; ORIC, *Submission 108*, pp. 2–3.

78 ASIC, *Submission 106*, p. 6; Duncan Poulson, NT Regional Commissioner, ASIC, *Committee Hansard*, Darwin 22 July 2009, pp. 53, 58.

79 Lynne Curran, Manager, Office of Indigenous Policy Coordination Group, FaHCSIA, *Committee Hansard*, Canberra, 20 August 2009, p. 5.

80 ASIC, *Submission 106*, p. 6.

- 6.88 The Committee concludes that the registration of Indigenous owned stores under the CATSI Act would provide a foundation for certainty and security for both communities and store operators with improved accountability in store governance and management.
- 6.89 If a greater number of stores become registered corporations under the CATSI Act, then the training and oversight role of ORIC will also increase. Given the importance of training and support to ensure sound governance systems and well functioning store committees, the Committee is concerned that any expansion of ORIC's role is accompanied by an appropriate increase in funding to ensure it is able to continue to deliver its valuable services to a greater number of Indigenous corporations.
- 6.90 The importance of governance, financial management and literacy training being conducted in the language local to Indigenous communities was also emphasised throughout the inquiry, although it is acknowledged that there are difficulties in sourcing skilled interpreters.⁸¹
- 6.91 The Committee emphasises that training should always be culturally appropriate. Given the importance of communities understanding governance requirements and responsibilities and acquiring a degree of financial literacy, greater use should be made of skilled interpreters for training and consultations.

Recommendation 28

The Committee recommends that the Office of the Registrar of Indigenous Corporations receive additional funding to provide governance and financial management training to community stores that register under the *Corporations and Aboriginal and Torres Strait Islander Act 2006*.

81 NT Government, *Submission 98*, p. 5.