CATSI Act Review
National Indigenous Australian's Agency
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2 October 2020

AIGI SUBMISSION: CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006 (CATSI ACT) REVIEW – PHASE 2

Notwithstanding my participation on the Indigenous Affairs Ministerial Stakeholder Reference Committee for the Review of the CATSI Act, the Australian Indigenous Governance Institute (AIGI) welcomes the opportunity to make a written submission in response to the National Indigenous Australian's Agency (NIAA) CATSI Act Review draft report dated 31 July 2020 (Draft Report).

AIGI is an independent, non-government, not-for-profit organisation that operates as a national centre of governance excellence, connecting Indigenous Australians to world-class governance practice, informing effective policy, providing accessible research, disseminating stories that celebrate outstanding success and solutions, and delivering professional development opportunities to meet the self-determined governance needs of Indigenous people.

For the purposes of this submission, AIGI has focussed on the questions raised at [2.44] and [2.45] of the Draft Report. However, AIGI invites the NIAA and ORIC to engage with AIGI and other key stakeholders in a broader conversation on how the Indigenous incorporation and governance space on a national level can be transformed to an empowerment model that recognises the evidence (globally) of Indigenous-led governance building that honours the complexity of our cultural diversity rather than administering a one-size-fits-all compliance model.

As championed in AIGI's slogan: ***Our People. Our Governance. Our Way.***

Yours sincerely,

Michelle Deshong
Chief Executive Officer

SUBMISSION

CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006 REVIEW – PHASE 2

2 October 2020

ACKNOWLEDGEMENT

The Australian Indigenous Governance Institute acknowledges the Traditional Owners of all lands upon which we live and work. We honour and celebrate their Elders past, present and emerging.

CONTENTS

EXECUTIVE SUMMARY

Based on AIGI's knowledge and expertise garnered through research, training and consulting on Indigenous governance across Australia, this submission highlights a number of factors that can inform the improvement of ORIC's current capacity building programs, including the following:

- While there is a need for governance training to increase the capacity of Indigenous organisations to meet their corporate and organisational governance requirements, there is also a demonstrated need to move toward a broader understanding of governance within the Indigenous education and training sector. Training based on a broader understanding of governance should be informed by the internal constituencies and rights of Indigenous community members, and should incorporate information about cultural institutions, accountabilities and skills as a strength for effective governance.

- Governance is a cultural construct where the standards of what is considered 'effective' and 'legitimate' vary according to a diverse array of values and ideologies. As such, there is a need for training programs to be customised to suit the needs of the recipient community through 'strategic conversations' about what kind of governance support is required, and for whom.

- Community groups and organisations are increasingly looking to secure customised education, workshops and training that suit their specific cultural and governance circumstances. In respect to building or strengthening governance capabilities, the challenge experienced by many Indigenous groups has been how to access the kind of governance training and educational support they want.

- In order to be effective, governance training and education has to be place-based, practice-based, culturally informed and carried out over the longer term in a 'developmental manner'; not via one-off workshops in distant locations. At the same time, tailored training options must be able to account for the diversity and complexity of Indigenous peoples and cultures, without the 'ossification' of cultural practices and institutions.

- A focus should be placed on assisting groups to better translate and champion their strong, pre-existing cultural governance structures into their rule books. Investing the time and effort into assisting organisations to ensure that their rule books are fit for purpose and specifically tailored to their cultural values, practices and circumstances is critical to the long-term success and accountability of their governance structures, and will minimise issues later on in an organisation's governance practices.

- ORIC needs to be better equipped to be agile and adaptable to meet the needs of Indigenous organisations and individuals. ORIC should have regard to cultural considerations in developing robust and effective evaluation and feedback mechanisms, to capture the evolving training needs of Indigenous organisations. ORIC should maintain flexibility and dynamism in the design of its programs to meet those changing needs.

Having regard to the above factors and evidence-base, AIGI's submission makes the following recommendations:

Recommendation 1: AIGI recommends that ORIC's training offerings be reviewed and enhanced so as to be adequately culturally-informed and offer additional tailored governance training.

Recommendation 2: AIGI recommends the development of interactive, tailored workshops to assist organisations in drafting Rule Books in innovative ways to accommodate each organisation's unique circumstances and cultural practices.

Recommendation 3: AIGI recommends the development and implementation of a framework for Governance health checks.

Recommendation 4: AIGI recommends the development and implementation of effective, regular evaluation mechanisms and feedback opportunities.

SUBMISSION

1.   Introduction

The Australian Indigenous Governance Institute's ("AIGI") submission in response to the Commonwealth Government's National Indigenous Australian's Agency ("NIAA") review of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) ("CATSI Act") draft report dated 31 July 2020 ("Draft Report") is focussed on the questions raised at [2.44] and [2.45] of the Draft Report; namely:

- how to better integrate governance structures with cultural practices to promote capacity building and corporation longevity;

- how to better cater to the traditional and cultural customs of Aboriginal and Torres Strait Islander people; and

- how the Registrar and Office of the Registrar of Indigenous Corporations ("ORIC") can further develop the capacity of corporations.

2.   Background

2.1.   AIGI is able to call upon several sources of robust national research and practice evidence directly relevant to this submission:

   (a)   AIGI builds upon the unique national baseline of research data produced by the Indigenous Community Governance (ICG) Project which investigated Indigenous cultural modes of governance in rural, remote and urban communities and organisations across Australia (http://caepr.cass.anu.edu.au/indigenous-community-governance-project-overview).

   (b)   AIGI is co-convenor with Reconciliation Australia (RA) of the biennial Indigenous Governance Awards (IGA). The IGA acknowledges and celebrates outstanding stories of success and best practice in the field of Indigenous governance throughout Australia. Since 2010, *Stories of Success* have been published, celebrating outstanding examples of Indigenous governance drawn from the pool of finalists from the IGA. IGA Awards analyses have been undertaken over multiple years which identify key research findings, as well as overarching narratives of Indigenous governance, determinants of success and emerging trends.

   (c)   In 2018 AIGI undertook the first Australian audit of training and education programs available for Indigenous people on governance, identifying the almost complete absence of customised recurrent courses that integrate cultural and corporate governance

(https://www.aigi.com.au/wp-content/uploads/2019/08/Preliminary-Report-into-Indigenous-Governance-Education-and-Training-in-Australia.pdf).

(d)   AIGI maintains Australia's only online Indigenous Governance Toolkit of case-study information and resources for Indigenous governance building initiatives (http://toolkit.aigi.com.au/).

(e)   AIGI convenes Masterclasses focusing on different topics and emerging themes. Recent masterclass topics have included Governance Excellence, Indigenous Youth in Governance, and Indigenous Women in Governance https://www.aigi.com.au/masterclass/). AIGI also convenes tailored facilitated training workshops and programs with Indigenous organisations and communities.

(f)   AIGI hosts the international Indigenous network 'Common Roots, Common Futures' which promotes identification and dissemination of Indigenous governance best-practice in Australia, Canada, New Zealand and the USA.

(g)   AIGI has commenced a new two-year research partnership with the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) to undertake a world-class applied research project on *The Indigenous Governance of Development*, which will involve collaboration with Indigenous Research Partners to examine their collective governance.

(h)   AIGI and RA recently launched *The Indigenous Governance Network,* which is an online engagement and connection platform bringing together individuals and organisations from across Australia, who are involved in, or interested in learning more about, Indigenous Governance.

(i)   AIGI also undertakes fee-for-service engagements. For example, in 2019, AIGI provided workshop facilitation and research support services for a Traditional Owner Engagement project aimed at developing a whole-of-Victoria government approach for strengthening engagement with Traditional Owners of areas without formal recognition. The project culminated in a report titled *To Be Heard and For the Words to Have Actions: Traditional Owner Voices Report* (Traditional Owner Self Determination Scheme - Victorian Government Traditional Owner Engagement Project, 2019 https://content.vic.gov.au/sites/default/files/2019-11/Traditional-owner-voices-improving-government-relationships-and-supporting-strong-foundations.pdf).

2.2.   AIGI views and recommendations provided in this submission are largely drawn from these combined resources, workshops and reports.

2.3.   Whilst this submission represents the views of AIGI, we recognise that Indigenous peoples, communities and traditional owner groups are best placed to speak about their experiences, circumstances and ambitions.

3. Draft Report Questions

> **Draft Report [2.44]:**
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> *One respondent to the NIAA's online survey indicated that more consideration was required on how to better integrate governance structures with cultural practices to promote capacity building and corporation longevity. Another respondent suggested that as part of the review, opportunities for changes to the CATSI Act to better cater to the traditional and cultural customs of Aboriginal and Torres Strait Islander people should be considered. We would be keen to hear your thoughts and suggestions on both of these areas.*

> **Draft Report [2.45]:**
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> *Some responses to the NIAA's online survey showed that there is not necessarily a consistent and accurate understanding of the CATSI Act and its provisions. We would be interested in hearing your views on how the Registrar and ORIC can further develop the capacity of corporations, including ensuring that directors and members have a sound understanding of their roles and rights as well as those of others?*

Current ORIC Training Offerings

3.1. It is apparent that ORIC's training offerings are not meeting the true needs and expectations of Indigenous organisations, and as a result, organisations that have the financial means to do so are seeking alternatives elsewhere, including through AIGI. Organisations that do not have the financial means to explore other alternatives are at a disadvantage.

3.2. Feedback that AIGI has received from community organisations indicates that ORIC's training sessions lack interactive and practical elements; and are not delivered in a way that has connection and relevance to the day-to-day governance challenges, needs and experiences of the participants.

3.3. AIGI considers that ORIC's current training offerings can be improved to provide a positive, meaningful and constructive impact on the advancement of Indigenous governance in Australia.

What is the Solution?

3.4. **The Importance of culture to Indigenous governance**

    (a) At [2.30] of the Draft Report, it is noted that *"…there was a strong theme among responses to the NIAA's online survey that the CATSI Act could be further enhanced to better accommodate Aboriginal and Torres Strait Islander tradition and circumstances indicating that this is a requirement that prevails today."*

    (b) AIGI's analysis of applications to the bi-annual Indigenous Governance Awards reinforces a central point about Indigenous ways of governing that has been raised from the very

beginning of the Awards-namely, that Indigenous cultural practices continue to be seen as the foundation for building strong contemporary governance arrangements.[1]

(c) Many applicants describe the incorporation of cultural values and practices into their governance and operational processes as examples of self-determination in action. These applicants designed their programs and activities to embrace Indigenous cultural values, practice and knowledge. Culturally informed practice was reported to promote self-esteem for Indigenous staff and program participants, and to ensure responsiveness to the needs of communities. Applicants also devised a range of culture-smart protocols to support Indigenous and non-Indigenous staff to work closely with each other and the governing body in a cross-cultural environment, such as cultural awareness training and the development and implementation of culturally secure policies.[2]

> *"Kura Yelo Incorporated has a Guiding Principle – this is the foundation for the way we do everything and it states: "Aboriginal Culture at the heart of all we do". It is reflected in our Values, Strategic Directions, Business Action Plans and Improvement Plants. It is reflected in our processes for meetings and gatherings where we always commence by acknowledging "Kaurna Country" and conduct a minutes silence. We also utilise Kaurna Elders to provide formal "Welcomes". It is reflected through the Aboriginal people we employ and have on our board in terms of what they bring and wish to share regarding their cultural backgrounds. It is how we market and promote ourselves to our community that we serve and the wider community."*
>
> *Kura Yerlo Incorporated*
>
> *IGA Category A Shortlisted Applicant (2016)*

(d) Yet, embedding culture into governance is not as simple as it sounds, and some solutions work better than others. The Awards provide a window into the many creative and innovative ways that culture is being embedded into the governance of Indigenous-led organisations, projects and initiatives. Applicants are continually refining ways to align their cultural priorities, values and deep relationship principles with their governance arrangements.[3]

(e) Not all innovations are successful. The important point from applicants' stories is that people keep working to get the cultural alignment and credibility of their governance 'right'. Applicants' stories also reinforce the fact that culturally informed governance solutions are not final. Organisations are successful because they review, renew and reshape their governance solutions as circumstances change. The very strong implication

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[1] Australian Indigenous Governance Institute 2018, Strong Governance Supporting Success: Stories and Analysis from the 2016 Indigenous Governance Awards, Canberra, p. 3.

[2] Australian Indigenous Governance Institute, 2018, Strong Governance Supporting Success: Stories and Analysis from the 2016 Indigenous Governance Awards, Canberra, p. 54.

[3] Ibid, p. 3. A range of culture-smart solutions are explored in more detail in Section 2.1 of the full report.

is that Indigenous culture cannot (and should not) be artificially quarantined outside of governance arrangements. Indeed, when that occurs, cultural legitimacy is put at risk.[4]

3.5. Governance challenges faced by Indigenous Corporations

(a) Aboriginal and Torres Strait Islander organisations often have to perform broader community governance roles without the proper funding or staffing to do so. At the same time, organisations often service or represent several different 'communities of identity' with varying legal rights and interests, their leaders and managers are constantly trying to balance competing sets of demands, obligations and responsibilities.[5]

(b) Many of the constitutions of Indigenous organisations are also based upon standard template formats, which is often not well suited for their particular local, social or cultural circumstances and priorities. At the same time, organisations are subject to stringent forms of compliance and accountability around the practical tasks of governing.

(c) Cost-shifting practices by governments, combined with the history of under-developed infrastructure in communities have placed heavy workloads and increased community expectations on organisations.[6] This has noticeably increased the governance workload for Indigenous nations, communities and their organisations.[7]

(d) Research suggests that many Indigenous organisations spend too much time and energy on basic administrative tasks, leading to 'a high cost of administration … for little return'.[8] It can be extremely hard for organisations to keep a focus on their core functions and to put the time and work into developing stronger governance when there are significant daily demands from their members and from governments.[9]

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[4]   Ibid.

[5]   Australian Indigenous Governance Institute, 2013, '*1.3.4 Indigenous Organisations often play a big role',* Indigenous Governance Toolkit, viewed 11 September 2020, < https://toolkit.aigi.com.au/toolkit/1-3-governance-in-indigenous-organisations >.

[6]   Ibid.

[7]   'ICGP Report 2006' cited in Wighton, A and Smith, D 2018, C*ommon Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 20-21.

[8]   Ibid citing 'Bauman et al 2015:25; eds Hunt et al 2008; ICGP Report 2006:24'.

[9]   Australian Indigenous Governance Institute, 2013, '*1.3.4 Indigenous Organisations often play a big role',* Indigenous Governance Toolkit, viewed 11 September 2020, < https://toolkit.aigi.com.au/toolkit/1-3-governance-in-indigenous-organisations >.

(e) As such, there is an inevitable demand for targeted training to increase the capacity of Indigenous organisations to meet corporate and organisational governance requirements, in ways that meet both internal and external accountabilities.[10]

3.6.   Capacity building: applying the correct focus

(a) The CATSI Act's role as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders is relevant to contextualising capacity building measures.

(b) The Draft Report outlines the purpose of special measures:

[1.7] The Australian Human Rights Commission explains that special measures aim to foster greater equality by supporting groups of people who face, or have faced, entrenched discrimination so they can have similar access to opportunities as others in the community. Special measures are sometimes described as acts of 'positive discrimination' or 'affirmative action'. They are allowed under federal anti discrimination laws.

[1.8] Once a special measure has achieved its purpose and substantive equality has been established, the measure should cease. A primary function of this review is to assess whether there continues to be a need for the CATSI Act as a special measure.

(c) Having regard to the role of special measures, ORIC's capacity building programs should include far more than just basic corporate compliance elements. Capacity building needs to be viewed in a broad context and as involving a number of elements.

(d) As identified in the AIGI Indigenous Governance Toolkit[11], capacity building programs should work to strengthen the following capacities in a culturally-informed manner:

The capacity to work with others	• This might include community members, elders and leaders, local and regional organisations, NGO's, government.
The capacity to define a vision and consensus	• Capacity to communicate with members about their concerns and priorities. • Gather and analyse data to plan effectively and understand where the greatest needs are. • Mobilise consensus and action around those.

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[10] Wighton, A and Smith, D 2018, *Common Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 20-21.

[11] Australian Indigenous Governance Institute, 2013, '*Tips: Important Capacities for Effective Governance'*, Indigenous Governance Toolkit, viewed 11 September 2020, < https://toolkit.aigi.com.au/toolkit/4-5-building-leadership-capacity-to-govern >.

The capacity to create and enforce rules and strategies	• Capacity to develop policies that fit into local plans and cultural traditions. • Capacity to understand and effectively respond to the political and economic environment.
The capacity to manage	• Understand and help manage cultural, economic, natural and human resources and be accountable for them. • Plan and manage basic local services.
The capacity to assess and implement plans and goals	• Understand strategic planning, risks and opportunities for an organisation, nation or community. Feed this information into planning for the future, so that plans and strategies can be changed to achieve greater success.
The capacity to provide and support strong local leadership	• This gives people in a nation, organisation or community the confidence to develop and deliver results. • Ensuring continuity of leadership and corporate knowledge for more resilient and sustainable governance.

(e) AIGI's *Preliminary Report into Indigenous Governance Education and Training in Australia*[12] identified that a recurrent focus of Indigenous attention in each CANZUS country[13] has been to gain access to governance capacity development in priority areas such as:

- Leadership, representation and succession;

- Roles and responsibilities of elected members, management and staff;

- Cultural governance skills and models;

- Communication and negotiation with members;

- Resource governance;

- Dispute resolution and mediation;

- Organisational structures and procedures;

- Governing information and data systems; and

- New technologies for governing.

(f) A critical consideration in framing the discussion around capacity building, is to avoid approaching issues from a deficit model and framework. Rather, AIGI recommends a strengths-based approach that values pre-existing cultural governance knowledge and

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[12] Wighton, A and Smith, D 2018, C*ommon Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 4-5.

[13] Ibid citing Cornell 2012; Bauman et al 2015; ICG Project 2006; Smith 2005.

structures. It may be in certain situations that there is not necessarily a capacity deficit, but instead an issue of translation. We entreat ORIC to consider: how can strong, pre-existing cultural governance structures be better translated and championed in an organisation's modern governance arrangements?

"It's really all about two laws—Yolngu and Balanda—and the struggle we have had for Yolngu law to be recognised … Two hundred and ten years ago my ancestors were living here on this land. We had our own system of government, law and land tenure … although Yolngu law has stability, stays the same, the Balanda law changes all the time and can wipe away our rights with the stroke of a pen. When the two meet, unless there are special measures made to help each law speak to each other and understand each other, we can get it very very wrong."

(Galarrwuy Yunupingu, Third Vincent Lingiari Memorial Lecture, 20 August 1998, Darwin)

(g)   Consideration must also be given to how ORIC can enhance its own cultural capabilities. Particularly shifting the focus from Aboriginal and Torres Strait Islander peoples needing to fit their cultural structures into western systems, to where the system can be flexible and adapt to meet the needs of Aboriginal and Torres Strait Islander people's cultural ways of doing and being. ORIC needs to be better equipped to be agile and adaptable to meet the needs of Indigenous organisations and individuals; ORIC is at the centre of the cultural divide and must operate as an effective intermediary.

(h)   A more coordinated and collaborative approach by governments and their departments toward funding Indigenous governance capacity development is required to ensure that training covers the wide range of competencies that have been shown to be necessary for effective Indigenous governance.[14]

3.7.   The demand for culturally informed, customised and place-based governance training

(a)   AIGI's *Preliminary Report into Indigenous Governance Education and Training in Australia*[15] identified that community groups and organisations are increasingly looking to secure customised education, workshops and training that suit their specific cultural and governance circumstances. In respect to building or strengthening governance capabilities, the challenge experienced by many Indigenous groups has been how to access the kind of governance training and educational support they want.

(b)   Three broad themes emerged from AIGI's audit of training and education programs available for Indigenous people on governance:

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[14]   Bauman et al 2015:84; ICG Project; Smith 2005 cited in Wighton, A and Smith, D 2018, *Common Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 22.

[15]   Wighton, A and Smith, D 2018, *Common Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 5.

- the seemingly disproportionate provision of organisational and corporate governance training, in comparison to community-based governance training;

- the corresponding lack of culturally informed, customised and place-based governance training; and

- the disruptive impact on Indigenous governance and training of short-term funding arrangements. [16]

(c) Training with an excessive or predominant focus on the 'technocratic' and compliance aspects of governance will always be limited in its ability to promote long-term improvements in Indigenous governance competencies[17]. Reasons for this failure include that compliance-based governance training 'serve government and corporate agendas rather than address[ing] how a community can take control of its affairs and build the future that it wants'.[18] From this 'developmental' perspective, the disproportionate provision of corporate and organisational governance training can be seen to directly reflect the expectations and standards of the wider non-Indigenous governance environment, and in particular, the service-delivery agenda of governments within Indigenous Affairs. The AIGI-AIATSIS report[19] describes governments as tending 'to impose and value a normative view of bureaucratic and corporate governance' while disregarding 'modes of governance which fall outside of prescribed models' 'partly because they are poorly understood'. In addition, the report[20] observes that:

> *…everyone in a small community has to work and live together – that has to be managed in a corporation, but what's critical is the community base around the corporation – and that can often be where governance problems lie.[21]*

(d) In other words, while there is a need for governance training to increase the capacity of Indigenous organisations to meet their corporate and organisational governance requirements, there is also a demonstrated need to move toward a broader understanding of governance within the education and training sector. Indeed, progress in delivering the latter may be undermined by the predominant focus on organisational and corporate governance. And conversely, training in areas of statutory/technical aspects of corporate governance may be much less effective if other aspects of cultural

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16   Ibid, p. 7.

17   Ibid at p. 21 citing ICGP Report 2006:53; Smith & Bauman 2014:18.

18   Anonymous cited in Bauman et al 2015:78, cited in Wighton, A and Smith, D 2018, C*ommon Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 21.

19   Ibid citing AIGI-AIATSIS report (2015:14).

20   Ibid citing Bauman et al 2015:18.

21   Ibid, p. 21.

and community governance are not also addressed in training. Training based on a broader understanding of governance should be informed by the internal constituencies and rights of Indigenous community members, and should incorporate information about cultural institutions, accountabilities and skills as a strength for effective governance; not a problem. This more complete understanding of governance must also acknowledge the subtle interconnections and disconnections that exist between organisational, corporate and community governance, as well as how each mode of governance interacts with and informs the other (sometimes enabling; sometimes disabling effectiveness).[22]

(e)   Moreover, the House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs[23] suggests that training with a focus on corporate and organisational aspects of governance is best undertaken 'in a hands-on manner, through the use of mentors, rather than in a structured, formal learning environment'. The ICG Project strongly concluded that in order to be effective, governance training and education has to be place-based, practice-based, culturally informed and carried out over the longer term in a 'developmental manner'; not via one-off workshops in distant locations.[24]

(f)   Governance is a cultural construct where the standards of what is considered 'effective' and 'legitimate' vary according to a diverse array of values and ideologies.[25] As such, there is a need for training programs to be customised to suit the needs of the recipient community through 'strategic conversations' about what kind of governance support is required, and for whom.[26] Leah Armstrong[27] suggests this kind of conversation should not only occur at the beginning or the end of governance initiatives; but should be ongoing and respond to changing development aspirations: '*we need to make sure there is constant renewal and rethink about governance'*. Tailoring effective training programs will require identifying and building upon existing governance strengths and capacities, as well as learning from past failures, and should be determined by the community.[28] For example: *Saying you will tailor something to a community, well that's suggesting you know what the community wants. Or, do you make your tools flexible – and built into the tool is that at a certain point you need to establish the community's cultural practices and priorities.*[29] At the same time, tailored training options must be able to account for the

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22   Ibid.

23   Ibid citing House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs (2004:142)*.*

24   Wighton, A and Smith, D 2018, C*ommon Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra, pp. 21.

25   Ibid at p. 23 citing AIGI Toolkit 2017a; ICGP Project 2006:40.

26   Ibid citing AIGI Toolkit 2017a; Bauman et al 2015:77; eds Hunt et al 2008.

27   Ibid at p. 23, cited in Smith 2012:17.

28   Ibid citing Smith 2012:16.

29   Ibid citing Anonymous cited in Bauman et al 2015:77.

diversity and complexity of Indigenous peoples and cultures, without the 'ossification' of cultural practices and institutions.[30]

4.   Recommendations

Recommendation 1   AIGI recommends that ORIC's training offerings be reviewed and enhanced so as to be adequately culturally-informed and offer additional tailored governance training

ORIC's training programs should be designed to promote governance competencies around the fullest extent of organisational, corporate and community governance needs.

ORIC should consider increasing its offering of culturally informed, tailored governance training, which is designed to account for the diversity and complexity of Indigenous cultures and modes of governance. ORIC should examine how training to support governance (re)building initiatives can be designed in a flexible manner, with in-built mechanisms to identify and work with communities' cultural practices and priorities.[31]

'We recognise that the journey to recovery and self-determination will only be successful if we incorporate a great and real appreciation for our cultural traditions and beliefs. We create and structure our working environment and programs around Indigenous knowledge and worldviews.'

Marninwarntikura Fitzroy Women's Resource Centre

IGA Category A Finalist (2016)

ORIC's training programs should assist organisations to ensure their governance structures:

- suit an organisation and/or community's local purposes;

- have the practical capacity to get things done;

- are deemed by their members to have cultural legitimacy; and

- work effectively in the wider world in which they are situated.[32]

Recommendation 2   AIGI recommends the development of interactive, tailored workshops to assist organisations in drafting Rule Books in innovative ways to accommodate each group's unique circumstances and culture

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[30]   Ibid citing Bauman et al 2015:xxi.

[31]   We note that according to ORIC's website, groups and corporations are able to access a range of "Corporation-specific" training, however we are not aware of how accessible these services are to Indigenous bodies.

[32]   Australian Indigenous Governance Institute 2018, Strong Governance Supporting Success: Stories and Analysis from the 2016 Indigenous Governance Awards, Canberra, p. 66.

ORIC should provide access, at the start of the incorporation process, to facilitated workshops that focus on how a group's cultural values can be embedded effectively and innovatively into their governance structures.[33] Ensuring that an organisation's rule book is fit-for-purpose and specifically tailored to their unique circumstances, including their operating environment, and decision-making processes, is critical the long-term success and accountability of their governance structures.

This includes consideration of the practical application of the CATSI Act provisions to an organisation's individual circumstances, such as geographical dispersion of members, financial capacity, types of income streams, and community dynamics. These practical considerations need to be explained during the planning and inception of an organisation so that the organisation is properly equipped to develop their rule book. Otherwise, a corporation may be set up to fail.

Time and resources spent in laying the proper foundations for the success of Indigenous corporations has the potential to save ORIC the expenditure of significant resources at later stages in an organisation's governance practices, including in relation to dispute resolution and special administration functions. Issues of disputes and non-compliance with CATSI Act provisions can be minimised where due regard has been given to making sure a corporation's rule book is fit-for-purpose at inception.

Recommendation 3 AIGI recommends the development and implementation of a framework for Governance health checks

ORIC's engagement with organisations often occurs at the point when things go wrong. Face-to-face engagements between ORIC officers and organisations often occur either during training, dispute-resolution, or examinations.

ORIC could initiate a more positive engagement process with organisations by offering Governance Health Checks. A corporation could request ORIC to undertake a comprehensive review of an organisation's activities, however such a review should not just be focussed on whether the corporation is compliant with the CATSI Act provisions, but also:

- Is the governance of the organisation effective in meeting the needs and aspirations of its members?

- What recommendations can ORIC provide in relation to the running of the organisation to better meet those needs and aspirations? Are there any recommendations for how the corporation's rule book could be amended to further facilitate the organisation's effective governance?

- Are there any specific training needs identified that ORIC (or another entity) could assist with?

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[33]   We note that according to ORIC's website, groups and corporations are able to access "Pre-incorporation doorway service" workshops, and "Rules design and re-design" workshops, however we are not aware of how accessible these services are to Indigenous bodies, particularly before registering their first Rule Book.

Recommendation 4   AIGI recommends the development and implementation of effective, regular evaluation mechanisms and feedback opportunities

Organisations are successful when they review, renew and reshape their governance solutions as circumstances change. Much in the same way, ORIC should have robust and effective evaluation mechanisms to obtain feedback regarding the evolving training needs of Indigenous organisations and should maintain flexibility and dynamism in the design of its programs to meet those needs.

AIGI recommends that ORIC establish regular opportunities for community engagement. ORIC should be proactively learning from every engagement and applying those learnings regularly.

AIGI's analysis of the Indigenous Governance Awards have highlighted that ongoing and effective community engagement is seen to serve several important purposes

'To prioritise Aboriginal cultural leadership through the organisation, we also have an Aboriginal Staff Advisory Committee [that] directly advises the CEO on all cultural matters … This group has a focus on providing input for the continual improvement of Congress' services and programs with an emphasis on cultural safety. They support and ensure that the executive management is informed and mindful of operational cultural knowledge and "on the ground" issues. The group reports directly to the CEO.'

Central Australian Aboriginal Congress

IGA Category A Shortlisted Applicant (2016)

for incorporated applicants and informal groups. Applicants identified the following benefits stemmed from their community engagement processes:

- an important method to ensure their governance arrangements reflected Indigenous values and gained cultural legitimacy.

- beneficial in building strong relationships with members, clients, program participants, stakeholders and the wider community.

- supporting the organisation's capacity to deliver projects and programs in line with community needs. [34]

AIGI's analysis of the 2016 Indigenous Governance Awards, highlighted that applicants facilitated community engagement through three main processes:

- consultation with community;

- participation of the organisation in community; and

- participation by community members in the organisation.

Applicants conducted ongoing consultation with their program participants and wider communities for a number of reasons, including:

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[34]   Australian Indigenous Governance Institute 2018, *Strong Governance Supporting Success: Stories and Analysis from the 2016 Indigenous Governance Awards,* Canberra, p. 28.

- to identify needs and service requirements;

- to include members of the target group in the design and delivery of a new program to gauge program effectiveness and potential changes;

- to inform strategic and operational planning.[35]

Feedback and evaluation mechanisms should have regard to cultural considerations. For example, consideration should be given to the forms of engagement that are most accessible and effective in obtaining feedback from Australia's broad diversity of Indigenous organisations and communities. These factors should be considered and addressed when developing regular review processes for ORIC's activities.

Case Study: Marr Mooditj Training Aboriginal Corporation

MMT's continual improvement system builds on both success and failure to develop best practice across governance and operational activities.

The organisation collects data from performance outcomes, satisfaction surveys, the complaints and appeals register, critical incidents, and internal and external audits (financial, quality assurance, accreditation and registration). At their bi-annual strategic planning workshops the Board of Directors utilise this information to review how well MMT met community expectations and the requirements of students, workplaces and funding bodies. They then identify opportunities for improvement and set the strategic direction. This provides a guideline for management and staff at their annual planning workshops where they develop operational plans including goals, timelines and KPIs based on the outcome of the strategic planning workshops.

Continual improvement is also integrated into the organisation's planning processes throughout the year. MMT monitor risk and review compliance requirements recurrently, which is documented in a register. This is discussed at fortnightly staff meeting and monthly Board meetings, at which continual improvement is a standing agenda item, and then policies and procedures or operational processes are put in place. In addition, the CEO and Program Coordinator have an open-door policy where they can be accessed at any time (both on and off site). This is maintained as an important part of ensuring that staff are confident to bring any matter to their attention or seek clarification or information when needed. This flat organisational structure and ethos of open communication enables the CEO and senior management to keep informed of and respond to changing operational needs.

(Source: Australian Indigenous Governance Institute, 2020, *Exceptional Governance: Stories of Success from the 2018 Indigenous Governance Awards*, Brisbane <https://www.aigi.com.au/wp-content/uploads/2020/08/AIGI-2018-IGA-Stories-of-Success-WEB.pdf>)

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[35]   Australian Indigenous Governance Institute, 2018, *Strong Governance Supporting Success: Stories and Analysis from the 2016 Indigenous Governance Awards,* Canberra, p. 28.

5. Conclusion

5.1. AIGI's research[36] emphasises that improved governance by Indigenous peoples and organisations is the most effective way to achieve improved outcomes for Indigenous peoples; and that will necessitate designing and providing improved governance training and education.

5.2. This means government and non-government sectors continue to have an important role to play in contributing to the provision of effective governance training support and resources.

5.3. This role should be framed within a recognition that genuine self-determination starts with Indigenous peoples being able to take control, assert their own agenda, and get things done by employing their own assets and capabilities.[37]

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[36] Wighton, A and Smith, D 2018, C*ommon Roots, Common Futures: Indigenous Pathways to Self Determination. Preliminary Report into Indigenous Governance Education and Training in Australia*, Australian Indigenous Governance Institute, Canberra.

[37] Ibid at p. 27.