**GOOD GOVERNANCE IN INDIGENOUS CORPORATIONS**

**Introduction**

Good afternoon. Firstly, I would like to acknowledge the traditional owners of the land on which we meet today and pay my respects to their elders, both past and present.

It’s a great pleasure to be here today and to participate in the 2nd annual Indigenous Business, Enterprise and Corporations Conference.

My presentation topic today about **Good Governance in Indigenous Corporations** ties in very well with the conference theme of GROWTH AND NEW OPPORTUNITIES FOR INDIGENOUS BUSINESS. I believe that good governance in all spheres of business underpins and ensures success in business practices and enhances accountability. It is the cornerstone of sound management techniques, in an ever increasing competitive environment.

The agency I work for is the **Office of the Registrar of Indigenous Corporations** (ORIC). It has over 35 year experience in Indigenous corporate governance issues.

As part of this presentation I will share some of ORIC’s experiences, knowledge, expertise and data in relation to the governance of Indigenous corporation. My presentation will cover:

* **Some common definitions in relation to governance**
* **Why is good governance important to Indigenous corporations?**
* **Key trends in the governance of Indigenous corporations**
* **Key factors that contribute to good governance**
* **Why do corporations fail?**
* **Is corporate governance improving in indigenous corporations?**

Some of you may have an understanding of ORIC and its responsibilities, but for those who don’t, I’ll start with a brief overview of who we are and what we do.

The Registrar of Indigenous Corporations is an independent statutory office holder appointed by the Minister for Families, Community Services and Indigenous Affairs. The role of the Registrar is to administer the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* also known as the CATSI Act.

The Office of the Registrar of Indigenous Corporations supports the Registrar to regulate and deliver services to corporations registered under the CATSI Act.

The Act allows Aboriginal and Torres Strait Islander groups to form corporations. It provides a legislative mechanism to help Aboriginal and Torres Strait Islander people build **strong corporations, strong people and strong communities** – which forms ORIC’s vision statement.

Corporations registered under the CATSI Act must be owned and controlled by Aboriginal and Torres Strait Islander people: the majority of directors and members must be Aboriginal or Torres Strait Islander people. There are over 2400 corporations currently registered under the CATSI Act. They are dotted all over the country; many are clustered around Alice Springs and operate in the Top End.

Our central aim at ORIC is to strengthen and improve corporate governance of Indigenous corporations. It underpins everything we do – it’s what’s most important. We deliver a range of training, assistance, support, and regulatory services aimed at improving corporation governance within Indigenous corporations.

**SOME DEFINITIONS**

Enough background about ORIC, and hopefully that sets the scene for the topic I will be discussing: **Good governance in Indigenous corporations**

I will start with some common definitions for **governance**, **corporate governance**; **Indigenous governance** and **good corporate governance**.

These are some of the key ones ORIC uses as part of its programs and service delivery.

**Governance** refers to decision-making structures and management for collective action. It is about how people organise themselves as a group to manage their own affairs and achieve the things that matter to them.

**Corporate governance** refers to the systems and processes used by an organisation to direct and control its operations, actions, affairs, policies and functions of the organisation. Directors are responsible to ensure that these systems and processes are in place and adhered to. (Australian Institute of Company Directors2004)

**Indigenous corporate governance** is about how an Indigenous organisation is run, including the rules that apply to its day-to-day operations. It takes into account the processes, traditions and cultural matters that underpin the exercise of authority, methods of decision-making and ways people have their say. It emphasises custom, the role of men, women, elders, families and clans; and consensus.

**Good corporate governance** from ORIC’s perspective, is more than compliance—It is about commitment, courage, integrity, relationships and leadership.

It’s about:

* A shared vision
* Ethical leadership
* Representation
* Democratic decision making
* Transparency, accountability and compliance
* Planning the future and managing risks
* The board focussing on steering the corporation and strategic thinking
* Establishing the most effective and legitimate arrangements for achieving the key aims, objectives and goals of the corporation.

**Graphic representation of good governance**

**SO WHY IS GOOD GOVERNANCE IMPORTANT TO INDIGENOUS CORPORATIONS**

We know that many Aboriginal and Torres Strait Islander corporations perform vital functions in their communities—such as healthcare services, and essential municipal services, such as water supplies or rubbish collections.

They are the guardians of cultural heritage and protect sacred sites. They also hold and manage native title land, interests and royalties. Communities look to their corporations for economic and enterprise development. Many corporations operate for profit purposes and operate business enterprises for communities or families.

Good governance is therefore VERY important to Indigenous corporations.

**SOME KEY TRENDS IN THE GOVERNANCE OF INDIGENOUS CORPORATIONS**

ORIC has a reputation as a strong, helpful and proactive regulator. The CATSI Act gives ORIC the ability and responsibility to make sure corporations are set up for success. Sound research into the various sectors and services of CATSI corporations enables ORIC to identify the challenges faced by Aboriginal and Torres Strait Islander corporations. In recent years ORIC has looked at the governance issues and trends of the top 500 Aboriginal and Torres Strait Islander corporations and also at corporations that operate in a number of different sectors, such as the arts sector. All ORIC’s research publication are available on the ORIC website.

**The latest report is the top 500 Aboriginal and Torres Strait Islander corporations 2010–11**

One of the more encouraging findings of the report reveals an emerging trend in the top 20 corporations with self-generated funds overtaking government funding. This is an important and encouraging picture and one that we intend to monitor over time.

A key risk and challenge facing Aboriginal and Torres Strait Islander corporations that is discussed in more detail in the report is the difficulty that organisations experience to effectively restructure their operations in a short period of time and maintain solvency when funding changes. It is clear from the research that a continued move towards mainstreaming and regionalisation of service delivery for remote communities is affecting the long-term viability of many community-based Aboriginal and Torres Strait Islander organisations.

Other key trends in Indigenous governance reported include

* The combined income of the top 500 Aboriginal and Torres Strait Islander corporations for 2010–11 was $1.43 billion. This is an increase of 22.7 per cent from the 2009–10 financial years—exceeding nominal growth in GDP of 8 per cent in 2010–11.
* The combined value of assets held by the top 500 corporations was 1.55 billion.
* The representation of women as directors on corporation boards stood at 54.7 per cent.
* The average age of directors was 51 with very little difference between genders.
* 10 122 people were employed by the top 500 Aboriginal and Torres Strait Islander corporations. This represents an increase of 13.5 per cent from the previous year.

These key findings and trends of the top 500 report are very positive and reflect the positive work the top 500 corporations are doing and the important role Indigenous corporations play within their communities and the positively. It therefore emphasises the importance of good governance in Indigenous corporations.

**Strong corporations**

So what makes corporations strong? A large part of the answer is sound/good corporate governance. There must be transparency, high management standards and accountability.

By meeting high governance standards, corporations are providing certainty. They are effectively saying that they are functioning well and that they can deliver—that is, they are solvent and viable. And for government funding bodies and private funders, this is particularly attractive.

**KEY FACTORS THAT CONTRIBUTE TO GOOD CORPORATE GOVERNANCE**

Let’s look at some of the key factors that, in ORIC’s view, contribute to good governance.

**Is the corporation registered under appropriate legislation in the first instance?**

A critical factor that contributes to good corporate governance is whether an Aboriginal and Torres Strait Islander corporation is registered under the appropriate legislation.

Registration under the CATSI Act helps improve the transparency and accountability of corporations and promotes best practice in corporate governance.

The CATSI Act delivers modern corporate governance standards—it emphasises the importance of regulation, compliance and reporting as a mechanism to improve transparency and accountability. The CATSI Act also provides for incorporation models that meet the specific cultural needs of a group and community and allows for corporate governance practices to be relevant within that context.

In contrast to other regulators, the Registrar takes an active role in assisting and supporting corporations, including corporations with governance difficulties.

ORIC has a number of assistance and support programs including accredited governance training, dispute management, and a recruitment assistance service, local officers around the country providing assistance with local governance issues, and an extensive range of publications and products about corporate governance.

**The importance of independent directors**

There is a growing recognition among corporations that the appointment of independent directors with expertise in finance, law or corporate governance can greatly benefit the standards of governance and management of a corporation, and also serve to enhance the knowledge and skills of the member directors.

**Board composition, roles and powers**

This requires a clear distinction between the roles and responsibilities of the board and management as set out in the rule book of the corporation, with clear accountability to the members or stakeholders. Members should elect the majority of the board. There should be a clear distinction between the roles of the CEO and the chairperson and the same person should not perform both roles. The CEO should also not be a director of the board. The board should undertake a documented performance review of the CEO.

The board of directors should have a clear understanding of their functions and responsibilities, these include:

* setting goals, formulating strategy and approve business plans
* approving annual budgets
* monitoring the management of the corporation and its performance, including compliance, business results and risk
* setting and reviewing policies and budgets
* appointing and looking after the CEO; AND
* a clear understanding of their duties, that is that they have a duty of:
  1. care and diligence
  2. good faith
  3. disclosure of conflict of interest
  4. not to improperly use position or information
  5. not to trade while insolvent.

**Board processes and governance**

The board of the corporation should have documented policies and processes about board and member or shareholder meetings, including agendas, preparation and distribution of board papers, regular financial reports, minutes, meeting frequency—awareness of the correct procedure for running meetings is very important. The board should also have current strategic and costed business plans for the corporation. It is important for board members to carefully oversee the financial management, this means that they should carefully consider and understand the financial and budget reports put to them.

**Relationship with members/shareholders**

The board of directors should act in the best interests of the corporation as a whole and its rule book should provide transparency and accountability to its members. [Board members putting their own interests ahead of that of the corporation and other directors not knowing how to deal with this situation could create governance problems for the corporation.] The members should have the power (stipulated in the rule book) to remove directors and to hold an annual general meeting of members every year. The board should provide a comprehensive annual report at the annual general meeting.

Any major or material change in business or significant acquisition or disposal of assets should be disclosed to the members before the corporation finalises the transaction, subject to commercial confidentiality.

**Tailored Indigenous corporate governance models**

As mentioned earlier, the CATSI Act provides for corporate governance models that fit in with the specific culture of Aboriginal and Torres Strait Islander groups and communities, and allows for corporate governance practices to be relevant within that context. The rule book or constitution of the corporation can take into account Aboriginal or Torres Strait Islander customs and traditions.

A key factor that contributes to good corporate governance is where groups adopt rules and governance structures that are relevant to their context; this may include traditional leadership and decision-making practices that fit in with community. Corporations get it right when they take the trouble to set out their objectives clearly; writing their rule books to fit their purpose—– not only as they are now but as they see themselves in the future. The next step is to review the rule book regularly for any required changes.

**Why do some corporations fail?**

There are many key factors that contribute to good governance and many of them are quite reasonable and straight forward to implement. Why then do some corporations fail? What are the main contributing factors?

The Registrar commissioned a study to find out. The research was published under the title, Analysing ***key characteristics in Indigenous corporate failure*.** The study looked at all registered corporations that have been examined by the Registrar between 1996 and 2008.

It is the first time such a comprehensive investigation into Indigenous corporate failure has been undertaken.

The study reveals—–and this should come as no surprise— that Aboriginal and Torres Strait Islander corporations fail for exactly the same reasons as mainstream corporations. In short, because of poor management and poor corporate governance: these are the two leading causes for failure.

Another key factor in the failure of corporations is underlying disputes and conflict within and between corporations. ORIC responded to this by providing a new complaints assistance and dispute management service.

The research findings also show only five out of the 93 cases studied involved fraud and just one case involved a bankrupt director.

This study provides policy makers and regulators with an evidence-based approach to help shape the ongoing support they provide, especially to corporations exhibiting early warning signs of failure.

On the positive side, there are ways we at ORIC can help to prevent corporations from failing.

Providing training in corporate governance is an obvious area and ORIC offers a range of programs pitched at different educational levels and tailored to the needs and circumstances of individual corporations. Corporate governance training is a constant and vital part of what we do.

Yet one of the most interesting findings from our research—and one we’re developing further at ORIC—is the importance of offering early support. The findings suggest that early external intervention in corporations demonstrating poor corporate governance, management issues or potential insolvency could prevent failure.

The research implicitly tells us that external intervention, when things START to go wrong— not at the middle or end—can really turn around a corporation’s outlook. The prognosis significantly improves.

The research also reveals that more than 70 per cent of corporations that were struggling and which were placed under special administration were subsequently restored to members’ control.

In other words, by stepping in and getting administrative functions back on track, many corporations today are in a much healthier and happier position. Their futures look good.

**IS CORPORATE GOVERANCNE IN INDIGENOUS CORPORATIONS IMPROVING?**

**Have there been any notable trends in relation to the governance of corporations including trends of improvements in corporate governance?**

ORIC recently released top 500 report shows some notable trends especially in examination outcomes over the period 2007–08 t0 2010–11.

The outcomes of examinations conducted by the Registrar suggest there has been an increased awareness in good corporate governance of corporations in the top 500 since 2007–08.

Between 2007–08 and 2010–11 none of the corporations in the top 500 were asked to seek advice on a possible insolvency situation. There has been a significant increase in management letters, the most positive outcome of an examination.

The research shows that over the last four financial years there has been a trend towards an increasing number of examinations ending with a management letter asking the corporation to address minor matters (from 26.7 per cent in 2007–08 to 46.6 per cent in 2010–11). Compliance notices under section 439-20 decreased from 73.3 per cent in 2007–08 to 46.6 per cent in 2010–11.

This suggests that corporations in the top 500 are increasingly improving their compliance and corporate governance.

**Conclusion**

The CATSI Act and ORIC will continue to recognise the special role that Aboriginal and Torres Strait Islander corporations have by providing specific support to the sector.

I believe that by taking advantage of the opportunities available in their corporations, by encouraging them to participate in our training programs, and by raising their compliance levels, Aboriginal and Torres Strait Islander corporations will continue developing into sustainable and more independent organisations.

Thank you.