
INDIGENOUS CORPORATE GOVERNANCE

AND SOCIAL ENTERPRISE

by Heron Loban, Sue Ciccotosto and Peter Boulot

INTRODUCTION

Recent media comments by the newly-appointed Chair of the federal government's Indigenous Advisory Council ('IAC') has circled around Indigenous corporate governance. In particular, the comments have focused on the Office of the Registrar of Indigenous Corporations ('ORIC'), the federal government agency charged with the oversight and administration of the *Corporations Aboriginal and Torres Strait Islander Act 2006* (Cth). This recent commentary signals that Indigenous corporate governance is likely to be a political priority at the federal level. It is an area which the authors believe requires further investigation particularly in the commercial context. The authors have commenced a research project aimed at considering the complex mix of legal, business and cultural issues that arise for Indigenous corporations, more specifically Indigenous social enterprises. This paper provides the context for this research project.

WHAT IS A SOCIAL ENTERPRISE?

In Australia, the Indigenous Social Enterprise Fund ('ISEF') has defined social enterprises as organisations that '[a]re established to fulfill a social, cultural or environmental mission which has a public or community benefit; trade to fulfill their mission; derive a substantial portion of their income from trading revenue; [and] may be not-for-profit or for-profit businesses'.¹ The social enterprise model can be applied to a range of industries. Social enterprises can sell art and crafts or they can operate as fishing cooperatives that process fish product. In the international literature, where this model has been mostly considered, social enterprise has emerged as a trans-disciplinary approach to the advancement of socially and economically vibrant communities.

A social enterprise is an enterprise that is established and works on a for-profit basis with a part or all of the profits applied to a social need. They can provide an opportunity for 'local economic development' and can work on 'addressing human development issues that other sectors and government agencies cannot (or will not) tackle'.² The value of a social enterprise is that it can provide a model

of governance which facilitates economic independence. While there is some fluidity around the definition of a social enterprise, a key characteristic is that it has a double or triple³ bottom line.⁴ To be successful, a social enterprise must have 'healthy financial and social returns'.⁵

Despite the recent establishment of an ISEF, the term 'Indigenous social enterprise' features rarely in the Australian literature. The term 'social enterprise' is predominantly found in the international discourse on business models. Though little has been written about social enterprise in the Indigenous context, according to the definition of social enterprise given by the ISEF there are likely to be hundreds of existing Indigenous businesses that could be viewed as social enterprises across Australia.

WHY INVESTIGATE SOCIAL ENTERPRISE AND INDIGENOUS PEOPLE?

International research reports that the benefits of social enterprise include addressing 'social exclusion', creating employment and providing 'innovative products and services...overlooked by the public and private sectors'.⁶ Social enterprises are businesses squarely aimed at the pursuit and furtherance of the dual aims of economic and social development and freedom. With these benefits in mind there is potential, on the face of it at least, for Indigenous social enterprises to contribute substantially to community goals such as greater economic independence, sustainability and self-determination.

While available literature on Indigenous businesses is mostly of a case-study nature,⁷ such case studies do raise a range of matters pertinent to Indigenous corporations more broadly. In reflecting upon their success, the Gumatj Clan timber business found that to be successful, the social organisation of the community and its cultural considerations must be factored into the business model.⁸ This must occur if the business is to have a positive impact on the community and have longevity.⁹ A comparative illustration in New Zealand, in the case of Maori Maps, emphasised the worth of social enterprises in being able to more readily match cultural values to governance

structures.¹⁰ This matching was seen as paramount to success.¹¹ Furthermore, the greater the match between the cultural values and the governance structure of the business, the higher the chance of success.¹² In addition, 'historical' and 'cultural' factors were considered to yield more opportunity for 'innovation and entrepreneurial sustainability'.¹³

AN INDIGENOUS SOCIAL ENTERPRISE RESEARCH PROJECT

The Indigenous Social Enterprise Research Project aims to catalogue current models of social enterprise operating for the benefit of remote Indigenous communities in northern Australia. It aims to provide some baseline information for further research by defining Indigenous social enterprise in the Australian context and by conducting a survey of the governance structures adopted by Indigenous businesses in northern Australia. In doing so the research aims to find the advantages and disadvantages of the range of models used from legal, financial and cultural points of view. The value of social enterprise as a business model for achieving social, cultural and economic goals for Indigenous communities will then be assessed. The Project will explore the question of sustainable Indigenous businesses through social enterprise and explicitly consider the role of the law in conducting successful social enterprises in remote Indigenous communities, and, whether law reform would enhance success.

The legal frameworks that operate to support and regulate social enterprises in Australia have not been considered in any great detail in the current available literature. This is despite legal barriers having been identified in the form of environmental legislation and the 'weak' nature of Indigenous rights to land.¹⁴ Further research is needed on the success factors and the optimum models for social enterprises to meet the broad-ranging social needs of our diverse Indigenous population.¹⁵ Unfortunately, systemic legal issues are not apparent in the case studies.

To address the aims of the Project, an analysis of publicly available documentary material published by Indigenous businesses will be conducted. Legislation and corporate documents such as annual reports and constitutions will be analysed with regard to matters such as property and corporate governance, as well as financial and economic aspects. A consideration of the cultural aspects of the Indigenous businesses will also form an integral part of the work. In outlining this information other communities may be able to learn from the work of those Indigenous communities that successfully run businesses in, with, and for their own communities.

CONCLUSION

From the case study examples and the broader international literature on social enterprise, there appears a potential framework exists of which Indigenous corporations running businesses can analyse their efforts, both failures and successes against. There is a political push for change, if not innovation, in respect to Indigenous corporate governance. With increasing scrutiny being placed on Indigenous communities in regards to financial matters, it is critical that alternative and independent sources of income for Indigenous people are explored, developed and consolidated to ensure the future and livelihoods of people living in remote Australia. It is also essential that the law provides an appropriate framework to support these ends. At a time when government is focusing on Indigenous corporations, it is hoped that findings of the Indigenous Social Enterprise Research Project will be able to contribute to the understanding of successful corporate governance for Indigenous people and communities.

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- 1 Social Ventures Australia, *Indigenous Social Enterprise Fund* (September 2013) 1 <<http://socialventures.com.au/work/iseif/>>.
- 2 Nelarine Cornelius et al, 'Corporate Social Responsibility and the Social Enterprise' (2008) 81 *Journal of Business Ethics* 355, 358.
- 3 Triple bottom line is a concept that organisations should not only add economic value, but they must add social value while also taking into account the impact their activities have on the environment. See John Elkington, *Cannibals with Forks: The Triple Bottom Line of the 21st Century Business* (Capstone Publishing Ltd, 1997).
- 4 Cornelius et al, above n 2.
- 5 John Thompson and Bob Doherty, 'The Diverse World of Social Enterprise: A Collection of Social Enterprise Stories' (2006) 33 *International Journal of Social Economics* 361, 362.
- 6 Cornelius et al, above n 2.
- 7 Case studies can also be found in the non-commercial context, for example in Indigenous welfare reform. See, eg, Stuart Le Marseny, 'The Family Responsibilities Commission: Building Indigenous Leadership and Laying the Foundation for Social Change in Aurukun' (2012) 8(1) *Indigenous Law Bulletin* 23.
- 8 Cecil A L Pearson and Klaus Helms, 'Indigenous Social Entrepreneurship: The Gumatj Clan Enterprise in East Arnhem Land' (2013) 22 *The Journal of Entrepreneurship* 43.

- 9 Ibid.
- 10 Joanna Overall, Paul Tapsell and Christine Woods, 'Governance and indigenous social entrepreneurship: when context counts' (2010) 6(2) *Social Enterprise Journal* 146.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid 158.
- 14 Michael Winter, Helen Murphy and Harold Ludwick, 'Payment for ecosystems Services Markets on Aboriginal Land in Cape York Peninsula: Potential and Constraints' (Occasional Paper No 6, Social Dimensions of Green Economy and Sustainable Development, United Nations Research Institute for Social Development, April 2012).
- 15 Martin Brueckner et al, 'A Case for Social Enterprise: At the Bottom of the Top of the Pyramid' (2010) 6(2) *The International Journal of Environmental, Cultural, Economic and Social Sustainability* 149.

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