



VACCHO

Response to Finance and Public Administration References Committee Inquiry into Indigenous Advancement Strategy Tendering Processes

The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) is the lead advocate for Aboriginal Health in Victoria. VACCHO is the peak body for Aboriginal Community Controlled Health Organisations (ACCHOs) in Victoria. VACCHO has 27 member organisations across the state that deliver a wide range of services including primary health care.

VACCHO welcomes the opportunity to provide feedback regarding the Commonwealth Indigenous Advancement Strategy (IAS) tendering processes and input into the Finance and Public Administration References Committee Inquiry. This matter has been a point of concern within the Victorian ACCHO sector since its inception and it is appropriate that the matter has been referred from the Senate. VACCHO commends the work of Senator Rachel Siewert, Senator Jan McLucas and Senator Nova Peris¹ in bringing this issue to the fore and advocating for a more transparent assessment of the process.

This submission has been prepared by VACCHO on behalf of the organisation and its member organisations. It highlights the general concerns from the ACCHO sector regarding the process undertaken to develop the Strategy, engage grant recipients and ensure the best possible outcomes for Aboriginal people and communities.

VACCHO has shared our concerns and issues with the IAS tendering process to the National Aboriginal Community Controlled Health Organisation (NACCHO) with support and endorsement from other NACCHO Affiliates.

Terms of Reference

The impact on service quality, efficiency and sustainability of recent Commonwealth Indigenous Advancement Strategy tendering processes by the Department of the Prime Minister and Cabinet, with particular regard to:

- a. the extent of consultation with service providers concerning the size, scope and nature of services tendered, determination of outcomes and other elements of service and contract design**

There was no consultation with service providers on cutting \$534.4million over five years from the Indigenous Affairs budget through programme rationalisation.

VACCHO and its Members have a strong working relationship with staff within the Vic/Tas office of the Department of the Prime Minister and Cabinet (DPMC or the Department). Representatives from DPMC Vic/Tas have continually shown goodwill and support to our sector. At every request, they have attended VACCHO Member meetings and workshops specifically held for Victorian ACCHOs.

A VACCHO forum was held for the ACCHO sector on 11th September 2014 to provide information to organisations tendering for IAS funding. DPMC Vic/Tas obliged our request to attend the forum and discuss the process with ACCHOs yet the representatives were only able to provide limited information about the funded areas of the IAS. There was very little information in the funding application resources. Queries from VACCHO Members regarding the continuation of their current funded programmes and what level of information was required, given these programmes were previously funded by the Commonwealth, could not be answered.

1. Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015.

VACCHO is unaware of any consultation occurring with the Victorian ACCHO sector prior to inception of the IAS. If NACCHO was consulted at a national level, it should be noted that this is not an adequate means to gathering information and adequately consulting with Aboriginal organisations. Regional variations do exist and proper consultation requires taking into account the differences between and within jurisdictions.

b. the effect of the tendering timeframe and lack of notice on service collaboration, consortia and the opportunity for innovative service design and delivery

Good planning requires time and a clear vision. Roughly six weeks was provided for applications and this was completely unreasonable to enable organisations to thoroughly plan, develop and present quality projects for assessment. The majority of ACCHOs do not have a dedicated grants writer or equivalent position. Those organisations with limited resources would have been unable to recruit a dedicated grants writer, and prepare an application, in that space of time. Some VACCHO Members chose to employ an external consultant to ensure their applications would be prepared in a timely manner. These organisations chose to bear the substantial cost but this should not have been necessary.

All VACCHO Members have established working relationships with local service providers and community agencies. All have worked in partnership with other agencies in the past and have the potential to deliver effective collaborative programmes. That said, the development of collaborative projects requires substantial effort from all parties and significant time to ensure programmes are of optimum quality. The short time frame for applications stifled attempts to build upon existing partnerships and appropriately collaborate. It created a rushed effort that ultimately put organisations with common interests in competition with one another. In the spirit of cooperation, ACCHOs acted as referees for affiliated agencies and vice versa. VACCHO has no evidence that the referee process was followed. VACCHO's Members have provided feedback, many indicating that their referees were not contacted in the assessment process, nor were they contacted as referees for other agencies.

c. the evidence base and analysis underlying program design

The IAS marked a shift in the approach of the Commonwealth to funding allocation. For many organisations in the not-for-profit sector, this was a

sudden introduction to competitive tendering. It was recognised in the Finance and Public Administration Legislation Committee² that small Aboriginal organisations may not have had the same capacity to ensure high quality, compliant submissions. In addition to the short notice, there was no support provided to organisations to enable them to develop and prepare submissions that accurately reflected the quality of their programmes. They were thrown into competition with large organisations such as universities and corporate entities such as AFL teams. The scale, capacity and resources of these businesses is immense and confronting when compared with small Aboriginal cooperatives. If planned effectively, this Strategy could have been an opportunity for the Department to support the not-for-profit and Aboriginal sectors to build workforce capacity. Proper lead-time and adequate resources may have enabled not-for-profits to develop their strengths as small, flexible, 'niche' providers in the increasingly competitive landscape.

The IAS was not subject to sufficiently thorough Departmental scrutiny prior to being released. VACCHO has previously expressed concern about the lack of regulatory impact assessment conducted. This was a significant Government initiative with major policy implications. Upon query VACCHO was informed by a Senior Adviser for the DPMC that the Office of Best Practice Regulation (OBPR) had advised that a Regulatory Impact Statement (RIS) was not required as the regulatory impact is minor noting that ongoing reporting requirements are comparable to current incorporation and grants administration processes.

VACCHO requested a response as to how and by whom regulatory impact is designated as 'minor'. For example was there a formal written process or procedure before that decision was made? No response was provided. Whilst reporting requirements may be similar and therefore deemed minor this does not reflect the full impact on VACCHO and our Members.

It is VACCHO's understanding that an RIS is mandatory. It is mandatory for all Cabinet submissions. Even if there will be no regulatory impact on businesses, community organisations or individuals, a RIS is mandatory for anything going before Cabinet. If a decision is not going to Cabinet, a RIS is still required where the policy proposal is likely to have a measurable impact on business, community organisations or individuals.³

2. Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p. 37.

3. Cutting Red Tape: The Australian Government's Guide to Regulation <https://www.cuttingredtape.gov.au/handbook/most-commonly-asked-questions>

VACCHO is unclear as to what is defined as a 'measurable impact'. VACCHO has evidence to suggest that the requirement to comply with the CATSI Act and register with ORIC will have a significant impact on VACCHO and ACCOs in Victoria.

The information on the Government's Cutting Red Tape website also states that even in situations where a RIS may not be required, a RIS is good practice where an agency or regulator is responsible for issuing rules or guidance material for businesses, community organisations or individuals.

It is unclear to VACCHO why the IAS was not subject to the process of undergoing a RIS. An RIS would have ensured that all the relevant information was provided to VACCHO to determine that DPMC decision making process was explicit, transparent and in consultation with affected parties.

There is no evidence provided to demonstrate that this process has 'cut red tape'. There is no evidence to illustrate that this process has enabled more effective and equitable funding distribution. There is no evidence to suggest that the Department has considered the potential gaps in service provision as a result of the Strategy. Most importantly, there is no evidence to indicate that this process will ensure high-quality, effective, value-for-money, culturally safe services for Aboriginal people.

VACCHO sincerely hopes RIS has been written as the lack of it may leave DPMC open to unfavourable public scrutiny for what may be considered a bad policy outcome.

d. the clarity of information provided to prospective tenderers concerning service scope and outcomes

The list of programme areas provided to applicants was useful but hardly comprehensive. Programme areas did not clearly align with previously funded programmes or language used in the health and community services sector. Organisations were not advised on whether exceptions were to be made for their existing funded programmes (despite efforts post-announcements to plug holes) or which stream these existing programmes would fall under. Overall, it was incredibly difficult for service providers to understand whether the outcomes their programmes were aiming to achieve aligned with the scope of the IAS.

VACCHO Members have expressed their unease with the loss of attention to social and emotional wellbeing (SEWB) since programmes were pooled

together under the IAS. In the IAS application kit⁴, the funding objectives for the 'Safety and Wellbeing' programme stream recognises social and emotional wellbeing. However, the key performance indicators note 'crime prevention', 'violence reduction' and 'reduced substance misuse' - leaning on objectionable yet common stereotypes of violence, alcohol and drugs in Aboriginal communities. It must be noted that Alcohol and Other Drugs (AOD) services are distinct from Social and Emotional Wellbeing (SEWB) services which are then also distinct from mental health services. In VACCHO's submission to the Renewal of the Aboriginal and Torres Strait Islander Social and Emotional Wellbeing Framework (2013) it was recommended that the Framework recognise the differences between mental health and social and emotional wellbeing. These elements are quite separate, complementary and equally important. VACCHO believes that the recognition of these two elements should ultimately be reflected in the nature, scope and funding of programmes allocated to address them. Social and emotional wellbeing encompasses more than clinical mental health and services must recognise the distinction. VACCHO member organisations voiced concern at the lack of funding provided for SEWB services and queried whether the Department had understood the significant difference between the projects they had presented in their grant applications.

e. the opportunities created for innovative service design and delivery, and the extent to which this was reflected in the outcomes of the tender process

In addition to limiting partnerships, the short timeframe restricted organisations' ability to be innovative and creative in regard to developing new programmes. A small number of VACCHO Members have been offered funding for new programmes, some of which are the first of their kind in the sector. This is an exciting opportunity for Aboriginal organisations. While some were successful in their applications for new projects, there was insufficient information from the Department regarding the preference for new programmes versus existing programmes. Advice was very much based on assumptions of what is 'in vogue' with the current administration. With additional information, more ACCOs may have had the confidence to apply for creative initiatives as well as tried-and-tested successful programmes.

4. Department of the Prime Minister and Cabinet, Funding under IAS.

<http://www.dpmc.gov.au/indigenous-affairs/grants-and-funding/funding-under-ias>

f. the number of non-compliant projects, the nature of the non-compliance, if and how they were assisted, and how many of these were successful

VACCHO and Members express concern regarding the admission that half of all submissions were non-compliant⁵. This is reflective of the process and not the quality of programmes presented in the applications. The application process was unclear and the Department was unable to provide clarity when organisations sought more information. This was especially pertinent to organisations applying for numerous and complex programmes within one application form⁶, with no direction given as to how these should be presented.

Many organisations did not have the capacity or the resources to put together the kind of application required by the tender process and felt that they lacked support during the process. VACCHO held a submission writing workshop and provided phone support but there was no additional support from DPMC. Several ACCHOs have voiced concerns about not being able to present an application to their desired standard within the timeframe. In some cases, it could be argued that the organisations serving the greatest need may be in a relatively weak position in a competitive tendering process. These organisations are already under a huge amount of pressure to adequately service their community and have less capacity to pull front-line staff offline to work on funding submissions.

A number of organisations made the decision not to submit an application under the IAS, for various reasons. It would be realistic to consider that they were not prepared in time for submission or could not deliver an application to their usual standard and so chose not to. Ultimately, it was decided by DPMC that late applications and non-compliant applications would be considered in the assessment process. This was not communicated to organisations. For organisations who did not apply, they may have lost an opportunity to receive funds due to this lack of communication. This has been acknowledged by the Department and must be investigated to ensure service gaps do not adversely affect outcomes for Aboriginal people⁷.

5. Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p.36.

6. Department of Prime Minister and Cabinet, Funding under IAS. <http://www.dpmc.gov.au/indigenous-affairs/grants-and-funding/funding-under-ias>

7. Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p.40.

g. analysis of the types, size and structures of organisations which were successful and unsuccessful under this process

VACCHO Members have expressed concern about the number of non-Aboriginal organisations that will receive funding under the IAS. Of the 985 recommended organisations for IAS funding⁸, less than half of these were Aboriginal organisations. We understand that these numbers do not give the full picture of the funding released and many organisations may have been offered only small grants. Without a complete list of the successful applicants' grants, we are unable to comprehensively assess the suitability of their status as funding recipients.

This does not detract from the concern regarding the number of non-Aboriginal not for profit organisations, corporate entities and educational institutions being chosen to provide services through the IAS. VACCHO and its Members query the controls in place to ensure that non-Aboriginal organisations provide culturally safe services to Aboriginal people. A requirement to note relationships with Aboriginal communities in the IAS application form, provides no assurance that services will be culturally safe. There was no requirement for non-Aboriginal organisations to partner with or engage in consultation with local Aboriginal organisations. There must be controls in place such as Memorandums of Understanding or Service-Level Agreements with Aboriginal organisations with direct accountability to their local Aboriginal communities. An understanding of Aboriginal culture is critical to non-Aboriginal organisations who wish to engage with Aboriginal people effectively and as equals.

It is widely recognised that Aboriginal organisations are best placed to provide culturally appropriate, community-driven services to Aboriginal communities. ACCHOs are at heart and by constitution an Aboriginal community organisation. Our Aboriginality is intrinsic to our identity, essential to our communities. Aboriginal culture is ancient and contemporary, dynamic, strong, and valuable. Our Members' cultural identities are an important source of strength and this informs our ways of working and our integrity. ACCHOs have a proud history as sustainable, grassroots organisations that assist in building community capacity for self-determination.

8. Department of Prime Minister & Cabinet, 2014 IAS grant funding round — recommended orgs (2015). www.dpmc.gov.au/sites/default/files/files/2014/0201AS%20grant%20funding%20round%20recommended%20orps.xlsx.

ACCHOs are committed to assisting every Aboriginal person to realise their full potential as a human being and as a member of their community. We view cultural identity as part of our strength as representatives of the Aboriginal community. Embracing our culture and our identity serves to strengthen inclusion, understanding and health.

VACCHO believes that each Aboriginal community needs its own community based, locally owned, culturally appropriate and adequately resourced primary health care facility. As well as delivering focused health and community services, they provide employment opportunities to Aboriginal people. Aboriginal organisations should be the first point of call when considering appropriate service provision for Aboriginal communities.

h. the implementation and extent of compliance with Commonwealth Grant Guidelines

On the whole, VACCHO believe the Commonwealth Grants Rules and Guidelines⁹ are comprehensive, ensuring sound principles in grant management. However, it is clear that these rules and guidelines were not adhered to during the IAS design and delivery process. The following respond to requirements of the Commonwealth Grants Rules and Guidelines. Excerpts provided for reference.

7 Robust Planning and Design

VACCHO notes the ‘outside help’¹⁰ involved in the assessment of IAS applications from contractors Ernst & Young and Mosaic. The cost of contracting these firms was significant, within the range of \$1 million to \$1.5 million. This support was described as ‘surge capacity’ and appears to be a result of the Department being unprepared for the volume and number of applications. Given the \$2.3 billion funding on offer, it should have been expected that applications would be high in volume and number. The administrative cost of the process, and in particular these contractors, would have made a significant difference if allocated to frontline services. It is completely unacceptable that this administrative expense was deemed necessary.

As per **c.** the delivery of the Strategy and lack of communication indicates that the process was not the result of robust planning and design.

8 Collaboration and Partnerships

9. Department of Finance, *Commonwealth Grants Rules and Guidelines*, 2014.

10. Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p. 37.

8.4 Officials should seek to minimise red-tape and duplication. In particular, they should not seek information from grant applicants and/or grant recipients that is collected by other parts of the entity or other Commonwealth entities and is available to them.

The Indigenous Advancement Strategy application process sought information about programmes previously funded by Commonwealth Department of Health and Department of Prime Minister and Cabinet. In many instances, this information was known to the Commonwealth and could have been made available to the Department to minimise duplication and unnecessary time spent on grant applications.

8.8 Officials should ensure that the rules of granting activities are simply expressed, are clear in their intent and are effectively communicated to stakeholders. Officials should consider testing the clarity of grant guidelines with stakeholders prior to their release.

Conversations in the early stages of the Indigenous Advancement Strategy application process revealed immediate issues with the design of the form. VACCHO and its Members expressed these concerns to the DPMC Vic/Tas representatives at a number of forums held in advance of applications being written, yet these were unable to be relayed as the application period had already begun. Had these conversations been instigated during a period of consultation, significant time and effort would have been saved in organisations navigating the unclear, clunky form and ambiguous instructions.

8.9 The design of the application form should assist applicants to provide information in respect of all selection criteria.

VACCHO enquired several times about the format of the IAS application form. No direction was given how to present complex information in one form per organisation. For organisations applying across a number of programme areas and applying for numerous discrete projects, this form was extraordinarily inadequate. Adding confusion to an already confusing process, the application form was altered several times after the opening of the funding round. Different versions of the form were published and without notification, uploaded to the website. This left VACCHO Members with incorrect application forms leading to several non-compliant applications being submitted.

8.10 Longer term grant agreements are conducive to improved partnerships between grant recipients and officials. Where appropriate, officials should consider longer term grant agreements.

The length of contracts within the Victorian ACCHO sector is extremely variable. Agreements vary from one- to three-year programmes. Variations do not appear to correspond with the type of programme or service. VACCHO supports the notion that longer-term agreements are conducive to good relationships between ACCHOs and the Department. This is especially pertinent to ACCHOs with existing well-established programmes that demonstrably achieve significant positive outcomes in their communities.

9 Proportionality

The level of complexity of the IAS is not proportional to the perceived benefits. The review of the IAS processes should consider the amount of administrative work by the Commonwealth and by the service providers. Proportionality should consider not only risks to the Commonwealth but risks to the sector. More importantly, considering risks to the service user, in particular the risk of no longer receiving a service.

For instance, a VACCHO Member applied for the continuation of a breakfast programme for school-aged children that had demonstrated outcomes for getting children into school, a strong focus of the current Government. This programme had run for almost ten years and was a pillar to community growth. This programme was unsuccessful in the IAS application.

10 An Outcomes Orientation

10.6 In adopting an outcomes orientation, officials should consider the use of longer term grant agreements, where appropriate, in order to achieve outcomes... it may be more appropriate to provide successful applicants with longer term grant agreements rather than conducting multiple grant rounds and offering grants for one to two years duration.

See **h.** 8.9 and **n.** for VACCHO concerns relevant to this requirement.

11 Achieving Value with Relevant Money

11.5 Competitive, merit-based selection processes can achieve better outcomes and value with relevant money.

Footnote: It may be appropriate in some circumstances to use non-competitive or targeted processes, such

as, when the number of service providers is very limited and these providers have a well-established record of delivering the grant funded activities.

The IAS application process aligns with this requirement in the Guidelines despite the direct significance of the accompanying footnote to the Aboriginal Community Controlled sector. ACCHOs have a well-established record of delivering successful and effective programmes to their Aboriginal communities. The longevity of continuous funding by Government Departments is evidenced. An expensive and laborious selection process was not required to gather this information.

12 Governance and Accountability

12.5 Officials involved in developing and/or managing granting activities should have the necessary grants management, stakeholder liaison and financial management skills. Officials involved in assessing applications should be appropriately skilled and have access to procedural instructions and/or training before processing grant applications.

In addition to the wasteful spending on contractors Ernst & Young and Mosaic, VACCHO has concerns regarding the appropriateness of contractors being involved in the assessment process¹¹. It is unclear from the current evidence what level of involvement these agencies had. There is also no evidence to demonstrate that these agencies had access to adequate information about service providers prior to involvement in this process.

VACCHO are aware that DPMC staff were involved at a state and national level in assessing the IAS applications. It is unknown if those departmental staff have the necessary skills for assessing applications or if they were provided with training and/or procedural instructions. VACCHO enquired about the process for assessing applications on a number of occasions without receiving a clear answer from DPMC staff.

Probity and Transparency

13.9 Officials should conduct granting activities in a manner that minimises concerns about equitable treatment. This can provide assurance to the various stakeholders that relevant money has been spent for the approved purposes and is achieving the best possible outcomes...those involved in grants administration should therefore be aware that the geographic and political distribution of grants may be seen as indicators of the general equity of a programme.

11. Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p. 37.

VACCHO has requested information from DPMC Vic/Tas regarding the distribution of funds and whether regional scoping has been conducted to identify where service area gaps may occur for Aboriginal communities. The assessment of applicants has not been a transparent process and there is still a significant lack of clarity surrounding the procedural aspects.

13.13 In some circumstances, it may be appropriate to use a non-competitive and/or a nonapplication based process. For example, it may be important to strike a balance between the desire to maximise access to a grant and the need for a timely and cost-effective decision making process. It may also be appropriate to target particular individuals, organisations, regions, or industry sectors, depending upon the government policy outcomes to be achieved.

The Victorian ACCHO sector welcomes the opportunity for 'demand-driven' funding through the IAS. It is conceivable that many ACCHOs would fall within the target group for this pool of funds yet very little information has been provided to organisations. Beyond the advice to 'contact your regional DPMC' and 'give it a try', VACCHO has been unable to adequately inform Members about this additional funding source. More information should have been provided to organisations about this additional funding in order for this to have been a truly transparent process.

As per 11.5, VACCHO believes that its Member organisations did not need to be subjected to this style of resource-intensive competitive tendering. Significant time and resources had to be directed away from frontline services in order to meet the requirements of the IAS application process. VACCHO does not believe that this process would withstand a thorough cost-benefit analysis.

i. the potential and likely impacts on service users concerning service delivery, continuity, quality and reliability

VACCHO and its Members hold concerns regarding the impact on organisations, clients and communities as a result of the IAS process.

In organisations where funding was lost, impacts will be felt across the business. In particular, the sector anticipates financial and human resources pressures. Organisations may need to consider redundancies for staff with direct involvement in the DPMC funded programmes. For some ACCHOs, the loss of income is a significant proportion of their overall revenue. This has the potential to threaten the sustainability of Aboriginal organisations and the ACCHO sector as a collective.

j. the framework and measures in place, if any, to assess the impacts of these reforms on service user outcomes and service sustainability and effectiveness

In ACCHOs where programmes were lost, gaps in service delivery and job losses will have a flow-on effect on the community. ACCHOs are often the key provider of employment to Aboriginal people in regional areas. Removing a service not only impacts on an individual (client and worker) but has major impacts on the community, including negative impacts on the local economy.

To ensure service sustainability and effectiveness VACCHO included in its application to develop a statewide Aboriginal employment strategy in the ACCHO sector. This project would have had clear outcomes in the increased employment of Aboriginal people, a priority focus of the IAS. VACCHO were unsuccessful in attaining funding for this project.

k. the information provided to tenderers about how decisions are made, feedback mechanisms for unsuccessful tender applicants, and the participation of independent experts in tender review processes to ensure fairness and transparency

The process for feedback about unsuccessful programmes is unclear. Organisations whom were unsuccessful in their applications were told to contact iasfunding@pmc.gov.au for feedback. VACCHO has received complaints from its Members that 4 weeks after contacting for feedback they are yet to receive a response. For those that have received feedback it has been a generic email and not specific to their application. In order for the ACCHO sector to be a viable player for competitive tendering it is imperative they receive constructive feedback.

l. the impact on advocacy and policy services across the sector

There was significant pressure on VACCHOs capacity to advocate in regards to the concerns raised throughout this submission. Given the nature of the IAS, VACCHO saw the need to advocate extensively on the issues arising out of the IAS process. VACCHO had to balance its responsibilities as the peak body for Aboriginal health in Victoria and as an applicant for IAS funding. It was a challenge for VACCHO to ensure effective advocacy whilst also not "biting the hand" that funds the sector.

VACCHO and many of our Members had to make the decision in applying for under \$500,000, reducing service delivery, to prevent the potential coerced

move to ORIC. VACCHO believes that the IAS was 'policy on the run' and there has been a loss of trust in the Commonwealth across the sector.

VACCHO is also concerned by the impacts funding restrictions have had on national advocacy bodies within and beyond the Aboriginal health space. These bodies play a critical role in responding to public policy and representing vulnerable groups and sectors.

m. factors relating to the efficient and effective collection and sharing of data on outcomes within and across program streams to allow actuarial analysis of program, cohort and population outcomes to be measured and evaluated

VACCHO and its Members are unclear whether DPMC had the capacity to consider data collection, information sharing and measuring outcomes, given the lack of lead time for the application process and chaotic assessment of applications.

VACCHO predicts there will be extreme difficulty in efficient and effective collection and sharing of data due to:

- Limited workforce capacity arising from reduced funding
- Inconsistency of funding period/duration of contracts across the state
- Different types and degree of service provision across the state
- Length of contracts not allowing for collection of quality long-term data
- Lack of funding for data collection purposes
- Lack of funding for evaluation of programmes

This has the potential to produce inconsistent outcomes and poor quality data within each a programme, and across programme streams. It is near-impossible to plan and execute high standard state-wide programmes without good quality clean data.

n. the extent of contracts offered, and the associated conditions, to successful applicants

It is uncertain whether another round of funding will be held. The total funding allocated to the IAS was to be \$2.3 billion, reduced to \$2 billion, to June 2018. It is anticipated that additional funding will be made available given the substantially smaller \$860 million announced in the recent funding round. It is unclear what proportion of this will be made available through demand-driven processes and organisations

It is challenging for organisations to adequately plan for the future with such uncertainty regarding funding availability. The strategic and operational planning processes of each individual ACCHO, and VACCHO's ability to plan state-wide outcomes, hinges on the knowledge of future revenue. This issue extends to organisations who received funding under one-year contracts who cannot effectively plan for long-term outcomes. Planning projects with a focus on outcomes requires a long-term, staged approach to ensure change is embedded throughout.

o. the effect of mandatory incorporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 on Indigenous organisations receiving grants of \$500 000 or more per annum

Each of VACCHO's Member organisations made an independent decision to incorporate under a specific State or Commonwealth legislation, as a community through the appointed Board. At the time of incorporation, these decisions were not made lightly and took into account the business model of the organisation, its size, structure and purpose. Most of VACCHO's Members chose to register with Consumer Affairs Victoria as co-operatives or incorporated associations and several are registered companies with Office of the Registrar of Indigenous Corporations (ORIC) or Australian Securities and Investments Commission (ASIC).

Firstly, it is inappropriate to force any organisation to register under an Act when they are already incorporated and can demonstrate good governance and risk management systems are in place. For all organisations, not just Aboriginal organisations, it is the sovereign right of the members and the Board to choose under which legislation the business is incorporated. In the 'Registering not for profit or charitable organisations' advice to organisations, the ASIC website¹² provides the following statement:

Before you register your organisation, you should consider what structure best suits your organisation's purposes.

It is unreasonable to expect independently governed organisations to reverse these decisions without adequate justification. It is unethical to coerce them through financial inducements -upon which many rely- and the threat of not being able to continue delivering programmes to their clients. This goes beyond incentivising many organisations will be forced to choose between relinquishing their autonomy or closure. VACCHO is of the legal

12. ASIC website <http://www.asic.gov.au/for-business/starting-a-company/how-to-start-a-company/registering-not-for-profit-or-charitable-organisations/>

understanding that the Strengthening Organisational Governance policy is deemed discrimination as it prevents 'freedom of association'.

Beyond these concerns, there is the critical matter of mandatory incorporation for Aboriginal organisations under the Corporations (Aboriginal and Torres Strait Islander Act) 2006. ASIC is the nationally recognised registrar for corporations. Despite this, DPMC's policy does not allow eligible Aboriginal Organisations the choice to register with ASIC.

VACCHO is totally opposed to this move and considers it to be discrimination. It shows no respect or acknowledgement of good governance practices in Victorian Aboriginal organisations and limits self-determination of Aboriginal communities, which has been directly linked to better health and wellbeing outcomes for Aboriginal people. It demonstrates double standards and shows disrespect towards Aboriginal organisations. On a number of occasions, VACCHO has sought to understand why Aboriginal organisations are subjected to a different set of rules when all other circumstances (i.e. process for applying for funding, funding agreements) are equivalent for all organisations. It does not make sense that there is one requirement for non-Aboriginal organisations (move to ASIC) and another for Aboriginal organisations (move to ORIC) when they are legally eligible for either.

ORIC has substantially more powers than ASIC to intervene in the governance and business of a registered organisation. Many organisations choose to register with ORIC for this reason but this is an independent decision. It undermines the authority of a Board to compel this decision.

Powers of the Registrar under ORIC that do not exist under ASIC include powers to:

- Appoint a special administrator
- Appoint an examiner to look at the business to identify financial or governance issues
- Change the rule book/constitution
- Call a general meeting
- Convene meeting of "interested persons"
- Act for members "in certain circumstances"
- Give notices to Board/CEO to "direct" compliance with the CATSI Act
- Remove directors from office
- Disqualify persons from managing a CATSI corporation
- Apply to have the corporation "wound up"

Powers that are consistent with ASIC include powers to:

- Initiate an investigation
- Seek a search warrant to obtain information about a corporation
- Inspect the books and report on non-compliance

VACCHO publicly expressed our concerns regarding the discriminatory aspect of the policy¹³:

PM&C is refusing to allow eligible Aboriginal Organisations the choice to register with ASIC. Jill Gallagher AO, CEO of VACCHO: 'This is a discriminatory process. It flies in the face of Government commitments to respect and promote the rights of Aboriginal and Torres Strait Islander people as it takes away the right to self-determination. We are not being treated as equals by the government. There is simply no evidence that a move to an Aboriginal specific legislation will improve health outcomes, or contribute to the Close the Gap targets'.

In a letter to the Prime Minister¹⁴, VACCHO articulated its initial concerns regarding the Strengthening Organisational Governance policy:

VACCHO and our Members oppose this requirement for a number of reasons:

- It is an outright contradiction of the commitment by the Prime Minister to consult with the Aboriginal community on key policies that affect them.
- There is no choice provided to Aboriginal organisations to determine their registering body. This completely undermines the basic principles of Community Control and removes the sovereign right of a Board to choose.
- ORIC has substantially more powers than ASIC to intervene in the governance and business of a registered organisation.
- There are significant legal costs associated with complying with the Corporation (Aboriginal and/or Torres Strait Islander) Act and registering with ORIC. These costs far outweigh the \$10,000 one off subsidy upon receipt of registration from PM&C.
- The overall negative effect of these costs will have a significant impact on delivering front line services to the most disadvantaged people across Australia.

13. Excerpt from VACCHO Media Release 4 September 2014 <http://www.vaccho.org.au/news-media/mr/ngp-stdars/>

14. VACCHO correspondence to Prime Minister Tony Abbott re: IAS, 15 September 2014.

- ORIC support may be limited as a result of the overwhelming influx of newly registered Aboriginal corporations.
- There is no evidence to suggest that a move to an Aboriginal specific legislation will improve health outcomes, or contribute to the Close the Gap targets.

Overall, VACCHO and our Members oppose this requirement. To determine organisational registration requirements on the basis of race is discrimination.

Logistically, the move to ORIC would be time-consuming and resource-intensive. The change will need 75% support from voting members. This means educating the community on why they should support the change and ensuring a 'yes' vote in order to proceed. There is considerable groundwork required to ensure a well-informed decision. This would be a task for any organisation but is particularly challenging for Aboriginal communities that have fought hard to ensure autonomy and self-determination for their people.

There are significant costs associated with moving to ORIC. VACCHO has received advice that it may cost between \$25,000 and \$75,000 per organisation in legal fees alone. Legal advice is needed for redrafting the rule book, ensuring compliance with other Acts (ACNC, ATO, WH&S) and understanding the required changes to the organisation associated with the CATSI Act. ACCHOs are considered 'complex cases' in terms of legal support. The process is estimated to take more than 12 months from start to finish. DPMC have allowed only 6 months in their contracts.

In addition to legal costs, there is a myriad of associated expenses. Under the CATSI Act, ACCHOs will need to change their names to include the words "Aboriginal Corporation" or "Indigenous Corporation". This will mean modifying all references to their business name: transfer property and assets, all bank accounts, public and business documents, change of name on land titles, all signage on buildings/assets, website & domain name to reflect name/IBN, anything with a logo including letterheads, all policies and procedures, car decals, business cards, lanyards, name tags and uniforms.

Forcing a large number of organisations to transfer their incorporation is not only discriminatory but it would also be a logistical nightmare, a financial blow-out without discernible benefits.

p. the effect and cost impact of delays in the assessment process and the extension of interim funding on organisations pending the outcome of the Indigenous Advancement Strategy

See **h. 8.9, h.10.6** and **n.**

q. any other related matters

As previously mentioned, VACCHO received a number of complaints, queries and comments from Members. The predominant issues were the lack of consultation and understanding of the ACCHO sector by the Department. Historically, working in and responding to government programmes and making applications, VACCHO Members believe that there has never been a less transparent and convoluted process with no opportunity for input from applicants. It is clear from the IAS process that the Department requires greater understanding of Aboriginal health and wellbeing needs and what ACCHOs do (and achieve).

For further enquiries please contact Yola Frank-Gray, VACCHO Project Officer - Sector Quality Improvement on yolaf@vaccho.org.au.