



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001 (Commonwealth)

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission by:

RICHARD JAMES SOUTH

1. BACKGROUND

The Parties

- 1.1. Richard James South ("**Mr South**") is an auditor registered under Part 9.2 of the Corporations Act 2001, registration number being 1373.
- 1.2. Koompahtoo Local Aboriginal Land Council ("**KLALC**") was a Local Aboriginal Land Council created under the Land Rights Act 1983 ("**the Land Rights Act**"). Under the Land Rights Act, KLALC is deemed a body corporate by virtue of section 50(2) of the Land Rights Act.
- 1.3. The Land Rights Act required that Local Aboriginal Land Councils prepare financial statements for each financial year in accordance with section 41B(1) of the Public Finance and Audit Act 1983 (NSW).
- 1.4. The financial statements were required to be submitted for audit by an auditor selected by the New South Wales Aboriginal Land Council. Mr South was registered with the New South Wales Aboriginal Land Council as an auditor who was approved to audit Aboriginal Land Councils.
- 1.5. Mr South audited the financial accounts of KLALC for the financial years 30 September 1996 to 30 September 2002 ("**the relevant Financial Years**").
- 1.6. In February 2003, the Minister for Aboriginal Affairs appointed Mr Terry Lawler ("**Mr Lawler**") to be the administrator for the affairs of KLALC in accordance with the then section 222 of the Land Rights Act. KLALC remains in administration.

The Independent Commission Against Corruption ("ICAC") investigation into certain property dealings by KLALC

- 1.7. On 16 September 2003, the ICAC publicly announced that it would investigate the conduct of certain officers of the KLALC in relation to certain property dealings, which took place between 1996 and 2002. In April 2005, the ICAC released to the public a report on its investigation ("**the ICAC Report**").
- 1.8. The ICAC Report, among other things, made findings that there were material deficiencies in the audit of the KLALC accounts over the Relevant Financial Years.

The ICAC Report stated that the deficiencies in Mr South's auditing processes constituted the failure of an important protective measure.

Review by Bishop Collins, Chartered Accountants

- 1.9 Mr Lawler, as Administrator for KLALC, requested Bishop Collins, Chartered Accountants, to conduct an independent review of the audited financial statements of KLALC for the financial years ending 30 September 1997 to 30 September 2002.
- 1.10 In its report dated 19 November 2003 to Mr Lawler ("**the Bishop Collins Report**"), Bishop Collins expressed an opinion in respect of the financial accounts audited by Mr South and commented that the auditor most probably ought to have issued a qualified audit report.

Australian Securities and Investments Commission's concerns

- 1.11 Pursuant to Part 9.2 of the Corporations Act 2001, ASIC has a statutory function in respect of the registration of auditors as well as the cancellation or suspension of registration of auditors.
- 1.12 ASIC concerns primarily arise from findings made in the ICAC Report and opinions expressed in the Bishop Collins Report.

ASIC's concerns arising from ICAC Report

- 1.13 The primary purpose of the investigation of the ICAC was to determine whether members of the executive of the KLALC or its employees, as well as those who dealt with them in organising various land dealings, engaged in corrupt conduct within the meaning of the ICAC Act. The ICAC made findings of corrupt conduct in relation to eight persons as well as made recommendations for prosecution for offences under the Crimes Act. The ICAC Report is available on www.icac.nsw.gov.au.
- 1.14 ASIC has concerns arising from the findings in the ICAC Report on the material deficiencies in the audit of the KLALC accounts, some of which are stated below:-
 - (a) the decision to exempt the application of the accounting standard on related party disclosures;
 - (b) the inclusion of a disclaimer limiting the use of the financial reports to KLALC members only, notwithstanding that they were supposed to be general purpose financial reports;
 - (c) the omission in the 1999 accounts of the contingent liability of KLALC under the mortgage to Inteq;
 - (d) the omission from the 2001 and 2002 accounts of the expenditure of the KLALC -CKT joint venture; and
 - (e) the omission from the 2002 accounts of reference to KLALC's joint liability with CKT in respect of the loan for the KLALC -CKT joint venture.

ASIC's concerns arising from Bishop Collins Report

- 1.15 ASIC has concerns arising from the opinions expressed in the Bishop Collins Report in respect of the audit of the KLALC accounts, some of which are stated below:-

- (a) on the compliance of the financial statements with section 41B(1) of the Public Finance and Audit Act 1983;
 - (b) on the non application of specified Accounting Standards in the circumstances; and
 - (c) on the form and content of the Auditors report.
- 1.16 For the reasons referred to in clauses 1.14 and 1.15, ASIC is concerned that Mr South, in relation to his audit of the KLALC accounts for the Relevant Financial Years, may have breached the provisions of section 1292 of the Corporations Act 2001.
- 1.17 ASIC acknowledges that Mr South has co-operated fully with ASIC in dealing with this matter.
- 1.18 Mr South has offered, without admission of any liability, and ASIC has accepted this Enforceable Undertaking in relation to the ASIC's concerns.

2. UNDERTAKINGS

Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001, Mr South offers the following undertakings to ASIC, without admission of any liability:

Request ASIC to cancel his registration

- 2.1 Mr South will, no later than the 10 February 2006 request ASIC to cancel his registration as an auditor pursuant to section 1290 of the Corporations Act 2001

No future application for registration

- 2.2 Upon ASIC's cancellation of Mr South's registration as referred to in paragraph 2.1 above, Mr South will not make any future application to ASIC for registration as an auditor pursuant to section 1279 of the Corporations Act 2001.

3. ACKNOWLEDGMENTS

- 3.1 Mr South acknowledges that ASIC:
- (a) may from time to time publicly refer to this undertaking;
 - (b) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution; and
 - (c) will place a copy of the executed undertaking on a Public Register.
- 3.2 Further, Mr South acknowledges that:
- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct;
 - (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking; and
 - (c) this undertaking has no operative force until accepted by ASIC:

EXECUTED BY RICHARD JAMES SOUTH)
IN THE PRESENCE OF:)
)

R James South

Witness *Calver*

Name: *CHRISTOPHER S CALVER*

Address: *96 MADISON DRIVE ADAMSTOWN HTS 2289*

Position: *ACCOUNTANT*

Witness *Rice*

Name: *ROBERT C RICE*

Address: *53 HESLOCK DRIVE LARKIN PARKS 2287*

Position: *Accountant*

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS DULY AUTHORISED
DELEGATE:

Jan Redfern
.....
Jan Redfern
Executive Director, Enforcement
Australian Securities and Investments Commission

DATE: *25 November 2008*