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SELECT COMMITTEE ON THE ADMINISTRATION OF
INDIGENOUS AFFAIRS

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SENATE

SELECT COMMITTEE ON THE ADMINISTRATION OF INDIGENOUS AFFAIRS

Tuesday, 8 February 2005

Members: Senator Moore (*Chair*), Senator Johnston (*Deputy Chair*), Senators Carr, Crossin, Heffernan, Nettle, Ridgeway and Scullion

Senators in attendance: Senators Carr, Crossin, Heffernan, Johnston, Moore, Ridgeway and Scullion

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;
- (b) the proposed administration of Indigenous programs and services by mainstream departments and agencies; and
- (c) related matters

WITNESSES

PATTERSON, Ms Michelle, Assistant Secretary, Indigenous Policy Branch, Department of the Prime Minister and Cabinet..... 1

SHERGOLD, Dr Peter, Secretary, Department of the Prime Minister and Cabinet 1

Committee met at 11.02 a.m.

PATTERSON, Ms Michelle, Assistant Secretary, Indigenous Policy Branch, Department of the Prime Minister and Cabinet

SHERGOLD, Dr Peter, Secretary, Department of the Prime Minister and Cabinet

CHAIR—Good morning, everybody. We will open this session of the ongoing hearings of the Senate Select Committee on the Administration of Indigenous Affairs. We welcome the witnesses and also the people who are here as observers. This is part of ongoing committee hearings. We have had a number of public hearings throughout the country. As an experienced witness, Dr Shergold, you would understand the provisions of being a public servant and of in camera evidence if you choose to take that up; is that okay?

Dr Shergold—That is absolutely fine, Chair.

CHAIR—For this particular committee, we would like to acknowledge the Indigenous people of the country. It is a standard provision, but we should note it particularly for this committee. For the record, we have agreed that a number of media outlets will be taping the evidence—and it seems they are pretty sure whom they are taping, Doctor! For the information of the group, the members of this committee are Senator Aden Ridgeway from New South Wales, Senator David Johnston from Western Australia, Senator Kim Carr from Victoria, Senator Nigel Scullion from the Northern Territory, Senator Trish Crossin from the Northern Territory, Senator Bill Heffernan from New South Wales, Senator Kerry Nettle from New South Wales, and I am Claire Moore from Queensland. On that basis, you are welcome to make an opening statement, Dr Shergold, and then we will go into discussion with senators.

Dr Shergold—I will make a very brief opening statement, first of all, of thanks. Thank you for being so helpful in arranging a mutually convenient time. I am sorry that it was difficult to do, and I appreciate very much the fact that you made such a time available. I looked forward to meeting with you. My key role in this is as the head of the secretaries group on Indigenous affairs and also chairing the senior officers meeting for COAG. I obviously have some experience in this area: I spent 3½ years at ATSIC, I was Public Service Commissioner, I was given the opportunity to launch an Indigenous employment policy and, most recently, I had responsibility for Indigenous education. But obviously from my position now I cannot comment in detail on the other agencies.

CHAIR—That was very brief, Dr Shergold. Ms Patterson, do you have an opening statement?

Ms Patterson—I am not sure if you realise, but I am the Assistant Secretary of the Indigenous Policy Branch in the Department of the Prime Minister and Cabinet. That is newly formed, after the new government arrangements for Indigenous affairs. My primary role, apart from supporting the Prime Minister on Indigenous affairs, is to support Dr Shergold and the secretaries group in that secretariat function.

CHAIR—Thank you. On that basis, we will begin discussion. We have limited time, so I ask senators to limit themselves to two questions. Is that okay with everyone?

Senator CARR—I have quite a few.

CHAIR—That is not a surprise.

Senator RIDGEWAY—I am a bit concerned about being limited to two questions. I want to put that on the record.

CHAIR—We will see how it goes.

Senator RIDGEWAY—Dr Shergold, I want to go to one of the speeches you gave last year, where you remarked that the solution to functional demarcation rarely lies in the structures of officialdom. Given that there appears to be no research available that gives any support to the view that mainstreaming would or should work—in fact, there is probably a body of literature that indicates mainstreaming would fail—how do you respond?

Dr Shergold—The point I made in my speech, which I strongly adhere to, is that complex problems, particularly in public policy, are rarely resolved by structures. Public servants are remarkably good at structures. Put public servants together for half an hour and they can rearrange the boxes very easily. They can create new departments, create new agencies and shuffle the divisions around. In my experience, it is never the solution.

The solution that is required here on Indigenous affairs is necessarily a whole-of-government solution. One of our key failings, I think, in terms of public policy is the failure to have a whole-of-government approach to issues. Certainly I learnt when I was secretary of the education department that I could not improve the standard of education in schools if I was not also dealing with the hearing problems that the kids suffered. I knew that I could not get good results in schools if, when children returned home at night, they were subject to family violence. In other words, we have to link the whole together, and that is why my view is that the way we need to do it is not by creating new structures or new boxes. That is only a part of the solution. The key is to change the culture of how public servants deliver public policy. That is my first point.

My second point is that I think mainstreaming has been an enormous failure. If I thought we were returning to mainstreaming in the old sense I would not support it at all. But define mainstreaming. All the literature that I have seen says there are a number of qualities to mainstreaming. The first is that you do not have Indigenous specific programs. The second is that each department and agency makes its own decisions in a non-coordinated way. The third is that you do not have an Indigenous specific agency. The fourth is that you have national programs that are delivered in the same way no matter where they are delivered. Those are the four key ingredients of mainstreaming.

The government's new approach is completely at odds with each of those four criteria. It is committed to maintaining the funding for Indigenous specific programs. It has established an Office of Indigenous Policy Coordination and Indigenous coordination centres across the country. It has made it clear that the mainstream departments have to work together, and it has said that there needs to be flexibility in programs so they can respond to local need. What we have here is a quite new approach. It will not work quickly; this is in for the long term. It is not mainstreaming in the sense of the articles that have been written criticising it. It is a new whole-of-government approach, and that is what I am committed to.

Senator RIDGEWAY—Can I go to the question of shared responsibility agreements and the example of the Mulan community agreement in Western Australia. Given what you have just said, does that represent the benchmark that the federal government are establishing? Is it fair or reasonable to accept that on one hand the government will discharge its obligations by providing two petrol pumps and on the other the community is left with the challenge of reducing instances of trachoma by being asked to wash the faces of children? Is that fair and reasonable?

Dr Shergold—It is fair and reasonable if the shared responsibility agreement expresses the negotiated will of the community. It is very easy to become paternalistic in this regard. It is very easy to become paternalistic and say that I, sitting in the Prime Minister's department or sitting in Canberra, know what is best for the people in a community. One thing that is clear to me is that that sort of paternalism has failed and it has failed disastrously. With shared responsibility agreements, I see every one of them being different and every one of them setting different balances in terms of shared responsibility.

Of course, the one thing that is clear with the shared agreements is in terms of the additional benefits. It is not a requirement in order to access the benefits that are available to all Australians. For some communities, it may be that the discretionary benefit that they would like is two petrol bowsers; for others, I know, it is a swimming pool. For the SRA in which I was engaged, they wanted air-conditioning at home so their children could come back to do homework in appropriate conditions. In other communities, it is to set up a women's resource centre. Each community decides what discretionary benefit they want and the government works with them to say, 'What are the key objectives that we should set here?' It might involve combating domestic violence, improving attendance at school or trying to deal with the awful disease of trachoma. I have no idea at this stage what the 50 shared responsibility agreements will look like. They will probably be set in place by the middle of this year. What I do know is that for the first time they will genuinely reflect community decision making.

Senator RIDGEWAY—Do you think that washing faces, in and of itself, will cure a disease like trachoma without looking at other determinants?

Dr Shergold—Of course I do not believe that, Senator. I do not believe that for one moment.

Senator RIDGEWAY—Why is it fair and reasonable?

Dr Shergold—It is not fair and reasonable, and that is not what is set out in the shared responsibility agreement. It is entirely fair and reasonable that a community can sit down with the Commonwealth government and the WA government and say, 'This is a major issue facing our community. There are things that we as leaders in the community can do to try and address that. Personal hygiene and cleanliness is one of those things. In return, there are things that this community would really benefit from that we would like to see.' And there is a commitment on the part of the WA government in regard to what action they need to take in terms of primary health care. Now that is what is captured in that SRA. Perhaps sitting here in Canberra I could say, 'Well, I don't think your commitment to washing the faces of children is what I would put forward.' But I feel a great sense of achievement sitting here in Canberra knowing that that is what the community has put forward. I am not going to sit here or have my secretaries sit here in Canberra second-guessing what communities want and the action that communities want to take.

Senator RIDGEWAY—How will you evaluate that shared responsibility agreement?

Dr Shergold—I anticipate that shared responsibility agreements will develop over time.

Senator RIDGEWAY—I am talking about this particular one in Mulan.

Dr Shergold—In each instance we will be evaluating the outcomes from that program. Again, this is a crucial part of a shared responsibility agreement. Senator Ridgeway, you would know far better than I that often where we have failed in the past is from not appropriately evaluating the government commitments that have been made. You and I know you can go to the homelands in the Pitjantjatjara lands and you can see a community centre that the government has put there at some stage, you can see a solar windmill, a shed for equipment and a bulldozer. You can visit that community and you find that the community centre has been broken down, the equipment is not stored in the shed and has broken down and the solar wind power has broken down. It is the most immense failure of government because government has not said quite clearly: this is what we will deliver in this first stage of the agreement and, if both sides meet their obligations, then we will deliver more and more and more. That is why I say shared responsibility agreements will develop. They may start by only focusing on one or two issues but if both sides deliver—or all three sides because I hope the state governments will be involved—then what you would expect is to see shared responsibility agreements becoming increasingly comprehensive over time in terms of knowing that the investment that is being put in there has worked effectively.

Senator RIDGEWAY—In relation to the inroads that have been made in Indigenous affairs, isn't it true that the areas where there has been success have been for those programs administered previously by ATSIC?

Dr Shergold—You are saying that success is in programs delivered by ATSIC?

Senator RIDGEWAY—Yes.

Dr Shergold—No. The very last trip that I undertook as CEO of ATSIC was through the Pitjantjatjara lands and the example I have just given was the one that I came face to face with. It was just a specific instance, and I thought to myself: what an absolute failure. Every time the ATSIC board had made the decision to put an extra facility into that homeland it was a good decision but, as the CEO of ATSIC, there had been a tremendous failure to ensure that what government had put in had been maintained. There had been a failure to drive home that message of shared responsibility and, as a result, you can visit any community in this country and see just where government assets have been put in and are now in very poor condition. That is not because of the community per se; it is because the government and the public servants have not done their job, and very often when we have put in infrastructure we have not thought through the full consequences.

If you put two houses into a community which clearly needs 12 new houses, if you are not careful you will go back the next year, as you know, and those two houses are broken down because they have been overcrowded. So what we have got to introduce is to make manifest this notion of shared responsibility. Public policy on Indigenous affairs has changed profoundly over the last 30 years. I think there is one constant: shared responsibility. The difficulty is how well

we have implemented it. CDEP is the classic shared responsibility program. The government puts in the money from welfare benefits and it foots capital oncosts in return for the community doing certain things with the resources it receives—fundamentally, a shared responsibility agreement.

Senator RIDGEWAY—If ATSIC is a marked failure, as you believe, how do you explain the fact that at least four former CEOs of ATSIC, you being one of them, have all been promoted in the Australian Public Service to holders of high office, if you like, in terms of supposed failure or success? How do you explain that?

Dr Shergold—I do not think the failure of public policy can be attributed to a single person: the CEO of ATSIC, the chair of ATSIC, the minister for Indigenous affairs. This has been a challenge for public policy to find ways to try and overcome the appalling, deep-seated socioeconomic disadvantage faced by Indigenous Australians. The aim is to keep trying to find better ways of delivering. I am not saying that ATSIC alone has been a failure. During the time that I was there I was fortunate to see the most extraordinary leadership provided to ATSIC, and I think that some of the things ATSIC did were of a high order and, in an auditing sense, with a high level of accountability. What we did, however, in ATSIC—and I think it was partly because of the emphasis on the national board of commissioners—was to focus probably too much on the centre and not enough on the local community level in the way we delivered, with the local communities not having that opportunity to negotiate in a flexible way for what those communities wanted and what they wanted the government to deliver.

Senator JOHNSTON—Dr Shergold, if this new direction is going to be successful, I take it there will be some benchmarks that indicate that success. What are you looking to as indicative of success and how long do we have to wait? Is it health, education, self-reliance, life expectancy?

Dr Shergold—I think you have to focus on the type of outcomes you have suggested, and that is why I think the report that is now produced by the Productivity Commission, which focuses on outcomes, is very helpful. In my view, there are process outcomes and socioeconomic outcomes. In terms of process outcomes, what I would want to see in any evaluation is that communities are increasingly able to work in partnership with governments to deliver in a shared responsibility way what all sides want. In terms of socioeconomic outcomes, the things I am looking for are very specific. Yes, they are educational outcomes, school retention rates and school attendance rates. Yes, they are primary health outcomes and training outcomes. Those are the things that we should be looking at.

Although it is easy to focus on the failures of public policy, it is worth saying that not everything is bleak. Sometimes I think that we do a poor job with the Australian public in suggesting that no matter how we spend the money, it makes no difference. There are signs of improvement. The fact is that year 10 and year 12 retention rates have improved, attendance at university has improved, more people are accessing new apprenticeship training, life expectancy has increased, immunisation programs have worked. The frustration is the slowness with which those improvements take place and the fact that sometimes absolute improvements do not reflect relative improvements—that is, relative to the wider community. Sometimes you seem to take some steps forward and then take some steps back.

I think this is for the long term. I think the Prime Minister has made it clear that if you are assessing outcomes it has got to be over the long term. It is not going to be simply year to year. It is over five years and 10 years. Our experience has suggested that things are simply not going to change overnight.

Senator JOHNSTON—You have seen the lands—and I am gratified to hear you say that you have been out to the lands—you have seen the communities, and you have observed the day-to-day functioning of those societies. How important do you see it that SES personnel and officials responsible for delivery and maintenance of services actually visit those communities—and not just those communities but also Redfern and other inner urban communities where Aboriginal people gather, in Perth, Adelaide and other places?

Dr Shergold—I think it is very important. One of the great benefits I see in the COAG trials, and one of the great benefits of having a group of secretaries oversight the public administration of Indigenous affairs, is that an increasing number of people at the very top get to understand the problems that are faced—not just in remote areas but, as you say, in urban centres. I think that has had a profound effect and I know, in speaking to some of my colleagues who had not had that experience, that it has been both challenging and moving for them to come face to face with what is one of the most difficult areas of public policy.

I think it is very beneficial that those who are now managing the Indigenous coordination centres are generally at a more senior level than those who used to run the old ATSIC regional offices. There are now mostly EL2s but a significant number of SES officers taking on that role. I think that is very important. In trying to get people to apply to be managers of an ICC one of the things we have done is to say to them, ‘Although your experience is largely in Canberra’, or perhaps Sydney or Melbourne, ‘we will see it as a good career move for you to go and work in a remote or regional centre and do this job for two or three years.’

Senator CROSSIN—Dr Shergold, we had a number of public servants appear before this hearing last week; and I have to say, from my point of view, a number of them seemed to have their eyes rolled to the backs of their heads and their eyes glazed over. Senator Johnston and I asked a number of them if they had been outside the eastern seaboard triangle—and not too many had, I have to say. I suspect you have moved a little sideways in your definition of ‘mainstreaming’, but how exactly do you plan to achieve this? You are actually talking about a major cultural shift in the way in which public servants think; let’s face it, it is a major shift in their paradigm. What sort of training, cross-cultural awareness or other facilities do you plan to instigate to achieve this?

Dr Shergold—Let me state: if you think that I have defined ‘mainstreaming’ wrong, tell me; but that is what I understood—

Senator CROSSIN—No, I did not say ‘wrong’. I just said that I thought you had shifted your position a bit today.

Dr Shergold—I do not think I have changed my position. I have always been committed to the directions in which we are moving as public servants. Cross-cultural training is important, but I suppose my key emphasis at the moment, on which I focus not just secretaries but also all the agency heads who serve on the management advisory committee, is whole-of-government

approaches. This is not just a matter of Indigenous affairs. It is crucially important here because of the complexity of Indigenous issues, as we both know. But we need that same whole-of-government approach for dealing with national security, for example.

I think one of the key changes has been the extent to which secretaries now come together at that most senior level to discuss government issues. There is the Secretaries Committee on National Security; we are now going to have a secretaries committee to oversight the tsunami aid package to Indonesia; and there is the secretaries committee on Indigenous issues. All of those are ways in which we can ensure that we are sending out messages to the service about collegiate, cooperative, coordinated leadership. And, yes, there are quite a lot of courses on that that are now being delivered or developed by the Public Service Commission. We have put out publications on the issue of whole of government, and I am using every opportunity to emphasise in speeches that I give why that is important—and in that emphasise that how well we succeed in the delivery of Indigenous affairs is one of the real tests of whether or not we have got a whole-of-government approach working.

Senator CROSSIN—Earlier you made some comments about not necessarily having to rely on or have structures in order to achieve outcomes or measure these outcomes, but you are dealing with a society that is very reliant on structures through their moieties, their clan groups and their language groups. One of the significant pieces of evidence that we have heard from probably every Indigenous witness in the course of this inquiry is their emphasis on wanting a structure that is a conduit between the community and the grass roots, and the ICCs. They want some formalised process to be able to feed their concerns into, and to monitor and evaluate, when government do not come to the party. If you have been following this, you will know that there are some very sophisticated models of regional assemblies, regional councils or whatever name particular areas have given to that. Has there been any reconsideration of enabling ICCs to recognise the work that has been done and to have a formal regional community body, whatever it may be called, to assist in this process—to give some satisfaction to Indigenous people that their voices will genuinely be heard?

Dr Shergold—You cannot have shared responsibility agreements unless you are dealing with community voices. There has to be someone to sign off and agree. There is a clear commitment to working with Indigenous representative organisations at the community level, at the local level and at the regional level. Whether those are appointed organisations or elected organisations, we will work with them—the government is committed to working with them. At the regional level there are all sorts of possible structures. Some communities and some state and territory governments are saying, ‘We’d like something that looks a bit like the regions that existed under ATSIC.’ Some are saying, ‘We’d like to work with land councils,’ and some want to work with local government authorities. What I anticipate is that there will be a whole series of different arrangements for different communities and different regions, reflecting what best suits that community or region.

Senator CROSSIN—How is that going to be legitimised come 1 July? How is it going to be formalised so that Indigenous people clearly know what is happening in their region, who they communicate with and how they do that?

Dr Shergold—In part that is a decision that is for them and in part it would obviously reflect the regional agreements that are negotiated with the states and territories, but most of all I think

it is important to focus on the community. We know there are many communities that would actually like to deal with government on the basis of communities. There are other communities that would feel it was better to negotiate with government on the basis of a larger region. It is up to communities what organisations they want to represent them.

Senator CROSSIN—Will ICC managers be given the authority to recognise those regional structures if Indigenous people want them?

Dr Shergold—They will be authorised to work with whatever structures Indigenous communities want—the representative organisations that exist or maybe new representative organisations that will emerge. Some of them will be elected, some of them non-elected and some of them may be just a community meeting. There are all sorts of possibilities.

Senator CROSSIN—We have seen evidence of all of those possibilities.

Dr Shergold—That is right. The only thing that the government has made clear is that it will not fund organisations to have an elected structure. It is a matter for the organisations themselves.

CHAIR—This is your last question, Senator Crossin.

Senator CROSSIN—Okay. I have actually got two more so I might be able to come back.

CHAIR—Are they short?

Senator CROSSIN—They may not be. Dr Shergold, I do want to ask you about your comments on CDEP and your belief that it has been a success in terms of shared responsibility agreements. My experience in this position and getting around to Indigenous communities in the Northern Territory is that people are moving beyond CDEP and that it has outlived its life. It may well be working for some people in some communities but in a lot of communities people actually see it for what it is—commonly called ‘black fellas work for the dole’. You actually have Indigenous people in communities as child-care workers on CDEP, but if they were a child-care worker in Alice Springs they would be getting \$32,000. Is there no recognition that that is not a shared responsibility agreement? There is no incentive there.

I hear lots of arguments that there are no labour market programs in some areas so it is very hard to move Indigenous people off CDEP into jobs. The reality is that, in 80 per cent of cases in communities, the jobs are actually CDEP positions. They need to be moved off CDEP or paid for what they are worth. There are people working in aged care homes on CDEP and school assistants on CDEP. White fellas in Alice Springs who are school assistants are not on the Work for the Dole program. Is there some recognition in terms of the government’s responsibility that there needs to be a critical examination of the way some of these programs operate and that Indigenous people need to be listened to with regard to the fact that they might not necessarily want to maintain the status quo? I am talking about an across-Australia approach here because CDEP is national.

Dr Shergold—There is a very, very strong recognition of that by the government. CDEP has been a program for 30 years now. It was based upon the principle of shared responsibility. The

communities wanted this as a way of pooling funds and getting additional capital funds to do what they thought was of value to the community. The principle is still great. What you and I know is that, if you visit CDEP areas, some still operate very successfully and some are, frankly, very poorly administered and do not do very beneficial things for the community. There is a strong recognition, therefore, that in some instances, particularly where there is a labour market of sorts, CDEP can be a barrier to getting into employment or training rather than a step. That is why the government has moved in a number of urban areas from CDEP to the Indigenous Employment Program. It is why there is a very strong commitment to do more to improve the access of Indigenous people to the Job Network rather than just keeping them in a CDEP program.

Senator CROSSIN—Where Job Network exists.

Dr Shergold—I foresee a continued significant reform of the way CDEP operates. I would also see that CDEP, where it continues to exist in communities, will increasingly be tied in to the shared responsibility agreement—in other words, the CDEP will be used to achieve particular objectives that are agreed. On that basis, there may be discretionary benefits provided by government.

Senator CROSSIN—I suppose, Dr Shergold, what I am putting to you is that there are some problems that are so national that they go beyond Indigenous communities and individual shared responsibility agreements. The women at Areyonga say that the young kids do not go to secondary school at Areyonga or they do not want to go into Alice Springs. If they do and they finish year 12, they go back to Areyonga and all they have to go to are CDEP positions. Most of the main jobs in the community are actually CDEP positions—the childcare workers, the aged care workers, the community council assistants, the school assistants and the health workers. They are all on CDEP. Therefore Indigenous parents are saying to me: ‘My girl will leave school at 13 and she’ll take up a CDEP position in the council office. What’s the point of going to Alice Springs to do year 12, because she’s only going to come back to CDEP anyway?’ In terms of responsibility from the government, I suppose what I am asking you is: rather than working community by community, are there programs across this country where you are actually saying in this new world of Indigenous affairs, ‘We will take a critical look at how effective they are or they are not and make substantive changes if need be’? And what sort of programs would they be?

Dr Shergold—They are the programs that are delivered through the Indigenous Employment Program and the Indigenous education programs. They are national programs. I still think there needs to be flexibility in terms of a community. To take the most obvious example, it may be that as good public servants we have produced guidelines for Indigenous tutors which say that we will have Indigenous tutors as a national program available in primary schools. But it may be that in some communities they say to us, ‘That has been great, but what we really want here is Indigenous tutors when the kids are 11 or 12 years old.’ And I think we have to have the flexibility to say to the community, ‘Yes, we will adapt our national program in that regard.’ In terms of labour markets in remote areas, none of us can wave a wand to create a labour market in a remote area. But in most remote areas that I have visited—and, I am sure, most of the remote areas that most of you have visited—there is a labour market, there is often a community store—

Senator CROSSIN—Exactly.

Dr Shergold—there are often community workers—

Senator CROSSIN—They are all on CDEP.

Dr Shergold—and there are often primary health workers who are paid wages and salaries in the labour market.

Senator CROSSIN—They are predominantly on CDEP.

Dr Shergold—They are not Indigenous, and they should be. And therefore we do need to get people through to year 10 or to year 12 and into training—with an education and with support—so that even in those communities where there is not a large labour market, for the jobs that exist in the labour market we have Indigenous people trained and educated and able to perform in them.

Senator CROSSIN—Before I finish I want to take you back to your comment about tutors. Could you explain to me why it is that your government in the last six months has decided to only allow schools to access tutors once Indigenous students fail the year 3, year 5 or year 7 literacy or numeracy benchmark. If a community says, 'Wait a minute. We'd rather have the tutorial assistance in transitional year 1 as soon as our kids get to school,' I do not get a feeling from DEST that there is any flexibility to allow that to happen. If that is a change, I am happy to put out a press release, because all the Territory Aboriginal schools I have been in contact with would welcome that. In the minds of Indigenous people this is where there is a bit of ambiguity coming from the federal government: you want to encourage kids to pass school—we all do—but now, suddenly, the rug has been pulled out from under them and they cannot access tutors to get that specialised help unless they fail a year 3 exam when they are eight or nine years old. It does not make sense to some people.

Dr Shergold—Let me start with your introduction. You talked about 'my government'. My government is the elected government of the day. That is who I serve as a public servant. In terms of the issue, I cannot answer specifically for that DEST program; I am not there. What I can say with significant authority is that at the local community level there will be the flexibility to negotiate specific arrangements which are different from or go beyond the national programs. Of course, national programs will continue to be delivered, but there will be flexibility at the local level.

Senator SCULLION—There has been a common thread in the submissions that goes to concerns with the changes to the arrangements with respect to accountability, auditing and the transparency of those processes, particularly the responsibility for the delivery and outcomes of the programs. It has been put to me on a number of occasions that it is a backward step because ATSI are accountable at the end of the day—they run for elections in a transparent and democratic process and people can protest or otherwise about their performance. It is now effectively back to the leaders group, the secretaries committee. How are you going to ensure that there is some sort of accountability or responsibility in the same sense that we used to enjoy—or otherwise—with ATSI?

Dr Shergold—The accountability arrangements in some ways are similar, except of course there will be many more departments having to be accountable for the ways they deliver their

programs—both their Indigenous specific programs and their mainstream programs that Indigenous people should be able to access on a more equitable basis. You will have the Auditor-General, you will have the Office of Evaluation and Audit for Indigenous programs, you will have the Productivity Commission reporting on broad national outcomes and you will have the secretaries of departments involved in reporting on the extent to which they have been able to work cooperatively and in a flexible mode to deliver programs. So the level of scrutiny, the level of accountability, will remain high.

Senator SCULLION—I want to go to one of the major parts of the apparatus—I am not dealing with the hub of the ICC—which the new arrangements at a consultative level. I understand that the minister has asked the existing regional councils to provide advice from within their regions on what consultative and other arrangements are in place. Are you confident that opportunities exist to expand those arrangements sufficiently to take in issues that ATSIC and the electoral process were unable to take into consideration—for example, traditional owners and other cultural imperatives that do not deal with a democratic process? Do you think there is sufficient capacity within those communities at a regional level to give effective advice on the range of issues relating to program delivery that you require?

Dr Shergold—I think some communities or regional organisations have already developed pretty effective governance arrangements while other communities have not. A great deal depends on the leadership that is exhibited in the communities and regions, as we know, which is why I strongly support the various leadership programs that are being delivered to Indigenous people. I think that is a key. The National Indigenous Council will continue to provide advice to government at a national level in relation to delivery. I think the ministerial task force under Senator Vanstone is a very significant step forward in bringing together a group of influential ministers to consider how best to work together. The commitment to having a single budget proposal go to the Expenditure Review Committee, covering all Indigenous specific programs, I think is a very major step forward. We will be working with the states—and they are keen to work with us—on seeing what is necessary to support governance arrangements at the regional and community level.

Senator HEFFERNAN—Dr Shergold, some of the evidence that we have taken on the present arrangements—especially from a lady from UTS the other day—has been that the political drivers in the Indigenous communities have always had the edge on the policy drivers. As Senator Crossin has pointed out, and everyone on the committee knows, there is a great desire in Indigenous communities to have local representation, whether it is through a regional model or whatever. Have you given any thought as to how we get the policy drivers to get the edge over the political drivers?

Dr Shergold—The key to that from my point of view is the focus on the local, not the national. One of the challenges I had when I was in ATSIC was in taking decisions that may have been entirely appropriate and thoughtful at a national level but which actually then did not end up meeting the local needs. Indeed, it becomes particularly challenging when you have a political structure because in a political structure there are necessarily political trade-offs. My impression is that Indigenous politicians are not very different—in fact, I do not think they are different at all—from our politicians generally. For example, it may be that a CDEP can be particularly effective where it has large community support and in areas where the labour market is very limited. But with a political structure what happens is that those who represent urban

areas, for quite understandable reasons, say: ‘Well, CDEP is our largest program. All the CDEPs are going up to Northern Territory, the Pitjantjatjara Lands or remote Western Australia and Queensland. Victoria, Australian Capital Territory, New South Wales and Tasmania are losing out. We need to make sure we get our equal share of CDEPs.’ The difficulty is that a CDEP may not be the best option in those urban areas, for the very reasons Senator Crossin has pointed out. And that is the sort of trade-off that you have politically.

As a public servant, if I can be honest, I could see that a community needed 10 new houses and a water filtration plant. To provide that for that community would mean there would be another two or three communities that would not get money for the next two or three years. In terms of good public administration, I was pretty sure of what was the best approach. But, if you have a political representative from each of those communities, then it is perfectly understandable that if there is money this year they would want something in all of those communities. What would happen—and we would never get the same value, of course, because you get economies of scale in building—is that we would end up putting one or two houses in each community. An inevitable consequence of that was that in a year or two down the line the capital that had been invested was worth very little. So there are clear issues with the functionality of a national elected structure making those decisions. If we can work with organisations—whether they are elected organisations, appointed organisations or whatever organisations communities believe give appropriate representation for them—at the local level, I think we are much more likely to at least make sensible decisions within the constraints that are inevitably there on the resources that are available.

Senator CARR—I am advised that your department did not put a submission to this inquiry.

Dr Shergold—Yes.

Senator CARR—What was the reason for that?

Dr Shergold—Because the role that my department has is a relatively limited one. As I said just before you arrived, my role is to chair the secretaries group and to chair the senior officials from the Commonwealth and states. I think we now have only four or five people working in the Indigenous area.

Senator CARR—You are head of the Public Service and you would be familiar, no doubt, with the *State of the service report 2003-04* from the commission.

Dr Shergold—From the Public Service Commissioner, yes.

Senator CARR—The last report said:

Indigenous Australians were the only EEO group whose representation fell in both absolute and proportional terms in 2003–04, revealing that Indigenous employment has not only stalled but is at serious risk of longer term decline from the high of 2.7% in 1999 (the figure was 2.3% in 2004).

It went on to say that the arrangements with regard to the transitional arrangements for ATSIC represent an even further risk. My reading of the figures tells me that there has been a decline in the employment of Indigenous people in the Australian Public Service and that the number of

departures of Indigenous people from the Public Service has grown quite dramatically. This committee has also received advice that the number of Indigenous senior executive officers working in the new structures has declined. The percentage has declined. How do you account for that?

Dr Shergold—My reading of the *State of the service report* and of the statistics from the Public Service Commission is a little different. I am very strongly supportive of programs to encourage Indigenous people to join the Public Service and to develop careers within it. I strongly support a new program that the Public Service Commissioner will be introducing in the next month or so. My take is that over the last 10 years the proportion of public servants who are Indigenous has been pretty stable. I think it is about 2.3 per cent now; it was 2.5 per cent in 1996. I suppose it pretty well reflects the representation of Indigenous people in the wider population.

What has happened of course reflects the changing nature of the Public Service. By that I mean the very sharp decline in low-skill jobs in the Public Service—the decline in the number of APS1s and APS2s. Therefore, we have seen a very significant decrease in the number of Indigenous people at APS1 and APS2. In 1996 there were 1,122 Indigenous people at those levels. I think by 2002 there were 291. That is a huge reduction. There has been a huge reduction for non-Indigenous people at those levels. Those levels just do not exist any more. You have a very stable proportion of the Public Service which is Indigenous—in that 2.3 per cent to 2.6 per cent range—but the number of senior Indigenous people has increased very significantly indeed. In 1996, four per cent of Indigenous staff were at executive level. The figure is now 9.2 per cent. At senior executive level there were 0.4 per cent in 1996 and the figure is now 0.8 per cent. I think you are seeing in the Public Service that there is stability in total numbers and in the proportion of the Public Service, but an increasing number of those Indigenous public servants are operating at a middle and senior management level. That is how I would read the figures.

Senator CARR—The commission does not read the figures that way. It states in black and white that not only have the figures stalled but they are at serious risk of longer term decline.

Dr Shergold—And that is because of the decline in those lower level positions.

Senator CARR—Sure.

Dr Shergold—That is why I am so strongly supportive of the new program that the Public Service Commissioner is putting into practice.

Senator CARR—In fact, they are the worst figures for 10 years, Dr Shergold. Indigenous employment in the Australian Public Service is the worst for 10 years.

Dr Shergold—Obviously you will accept that it is not the worst in 10 years in terms of middle or senior management. You can pick your figure and you can tell a story. Both our figures are correct. It is just a more complex story than might initially be suggested.

Senator CARR—All I am interested in is the complex story of shared responsibilities. When did the secretaries group consider a draft proposal for shared responsibilities for Indigenous people's service delivery?

Dr Shergold—Which agreement are you talking about?

Senator CARR—When did the senior Public Service group—the secretaries group—consider the document ‘A shared responsibility approach to Australian Government investment in Indigenous Australia’?

Dr Shergold—I do not want to give a false answer because I do not know the document to which you are referring. We have discussed issues of shared responsibility right through the COAG trials. Of course, at that stage I was not chairing the committee. If it relates to when I have been chairing the committee, it would have been in the last 12 months.

Senator CARR—Let us go through your understanding of how it works. In the end, the issue really comes down to some definitional questions.

Dr Shergold—Yes.

Senator CARR—I do not believe anyone, anywhere, is arguing the toss about shared responsibilities between governments and citizens on any issue, frankly. The question arises, though, of whether or not there is an issue that applies to discretionary or core entitlements of Australian citizens. The discussions we have had have been really around that fundamental question. Does the concept of mutual obligation underpin shared responsibility, as far as you are concerned?

Dr Shergold—There is a strong relationship between the notion of mutual obligation and shared responsibility, yes.

Senator CARR—Clearly the documents would highlight that that underpins it. Could you explain to me the difference between mutual obligation and shared responsibility.

Dr Shergold—They are similar concepts. Each of them accepts that governments at different levels and communities take on certain responsibility and that, to some extent, the provision of public funds to citizens depends upon mutual obligation. That can be the case, of course, with programs like Newstart. All Australians know that, when they are in receipt of Newstart payments, there are certain obligations they have to take up in looking for a job. At certain stages there is an obligation to join a Work for the Dole program. Shared responsibility I see as rather different because, although it embraces the notion of mutual obligation, shared responsibility in Indigenous affairs means it is an agreement negotiated between government and community for the purpose of provision of discretionary benefits.

Senator CARR—So it is a partnership issue, as you see it. Is that right?

Dr Shergold—Yes.

Senator CARR—How do you get a partnership between government and Indigenous people in a community when the power relationship between the two is so unequal?

Dr Shergold—I think that is one of the great challenges. In any relationship there is an unequal power relationship. The important thing is that we do not dismiss what the community

puts forward. I have seen statements by people suggesting that, because a community wanted to put forward that its responsibility was to make sure that the kids who went to school had clean faces and hands, that was inappropriate. In my view if that is what the community wanted that is what they should be allowed. The danger in that power relationship is knowing better than the community.

Senator CARR—As I understand the policy of the government, it is proposing that the government's investments will be substantially contingent on individuals, families and communities agreeing to take on their share of the responsibility for improving outcomes. Is that a fair and accurate statement of the government's position?

Dr Shergold—It is a fair statement of the government's position that the community will take on a responsibility which is tied to the shared responsibility agreement, yes.

Senator CARR—And reciprocity between government and individuals and their communities or families can encompass a range of incentives, including both carrots and sticks. Is that a fair representation of the government's position?

Dr Shergold—It is almost a fair representation.

Senator CARR—It would want to be, because I am quoting directly from your document.

Dr Shergold—Yes. The carrot would be a discretionary benefit. The stick would be a requirement to meet those obligations, with further benefits flowing on that basis.

Senator CARR—Is a routine house repair a discretionary benefit?

Dr Shergold—It depends how that house repair is done. If there is an existing program to do it, then it probably is not appropriate. But if a community says, 'We want to have a program provided for us, perhaps through CDEP, perhaps not, to train our people to be able to do house repairs; we would require additional money to do this and if you provide it for us we will be able to fix the doors and windows,' that would be entirely appropriate for a shared responsibility agreement.

Senator CARR—The documents say that sanctions could be applied through a 'mixing and matching' of incentives—for example, 'if parents do not ensure their children attend school regularly, they might miss out on something else, such as a scheduled house renovation, unless the children start attending school'.

Dr Shergold—Let me give you a specific example that I know about. It reflects a shared responsibility agreement that has been signed in the Murdi Paaki region of western New South Wales. It is the one where the families wanted to have a discretionary benefit—something that is not generally available—which was the provision of evaporative airconditioning in their houses so that their kids could study. We asked what they would provide in return. The answer was that they would be willing to work with the New South Wales and Commonwealth governments in reducing the rates of truancy, in improving the rates of children attending school. There will then be other parts of this. They may decide, for example, that they would like us—if we agreed—to provide the funding for a school breakfast program, or it may be that we provide funding

because they want it for a night patrol, to make sure that children are being protected from domestic and family violence.

Senator CARR—There are the issues of a night patrol and airconditioning. Many Australians will not understand the importance of airconditioning. They might see that as a luxury. In some of the remote areas that I have visited I can assure you that I do not consider it a luxury. Nonetheless, it might be presented publicly as a luxury. But a scheduled house renovation, which is what the documents refer to, is a fundamental right. It is not discretionary—any other public housing tenant anywhere in the country would have a reasonable expectation of a scheduled house renovation. It would not be conditional.

Dr Shergold—Yes, it would, you know.

Senator CARR—On what?

Dr Shergold—It would be conditional on the upkeep of the public housing that is provided—absolutely conditional. It would be conditional on paying the rent for the accommodation that is provided. One of the key challenges that Aboriginal housing co-ops have is very often the very poor number of those with houses who pay the rent, which could then be turned back towards the renovation of houses.

Senator CARR—But in the housing commission estates that are all around my office in Carlton in Melbourne would there be a ‘mixing and matching’ of incentives so that parents were required to ensure their children attended school regularly so as not to miss out on something else, such as a scheduled house renovation?

Dr Shergold—If you were in a public housing project in Melbourne, it would certainly be on the basis that you paid the appropriate rate that was set for that accommodation. If you did not, you would probably be asked to leave that accommodation. So the answer is yes. It is one of the challenges we have with Aboriginal housing. If a community say—not if I say, but if a community say—that what they want to focus on is the collection of community housing rents, then we will look to support that community.

Senator CARR—What progress are you making on removing the remote area exemption test?

Dr Shergold—I am afraid that I do not have a clue. It is simply not a responsibility of my department, and I am not aware of it.

Senator CARR—Is it not a condition of the changes being proposed to progressively require activity and participation in exchange for all forms of income support—for example, requiring parents to bring their children for health checks while receiving parenting payments? This would include the phasing out of remote area exemptions for activity testing through SRAs. Is that not a condition of the policy?

Dr Shergold—Yes, but it is a condition that is imposed on all Australians, not just Aboriginal Australians. The challenge is how you can have mutual obligations imposed on people in Newstart who are in Aboriginal communities that are remote from the labour market. One of the

things that Indigenous communities argued very strongly is that there cannot simply be the same obligation on them as if they were sitting in Sydney or Bourke or even Alice Springs. What the government therefore did was to move to a way in which the community as a whole could meet its obligations rather than have an individual trying to make contact with an employer a certain number of times per week. It was something that was pushed by Indigenous people and was seen as a benefit, giving flexibility in terms of the general requirement.

Senator CARR—Can you tell me then what progress is being made on legislative changes for the phasing out of remote area exemptions from activity testing?

Dr Shergold—No, I am not going to go into the government's legislative program.

Senator CARR—Sorry, you can't tell me—

Dr Shergold—I am not going to answer the question on what is the government's proposed legislative program.

Senator CARR—I see. But you can confirm that it is the intention of the government to phase out remote area exemptions for activity testing for all Australians?

Dr Shergold—It is one of the options that is being considered.

Senator CARR—So it is being considered or is it in fact a requirement?

Dr Shergold—I imagine it was being considered from the document that you have in front of you.

Senator CARR—I want to try and understand the nature of the policy.

Dr Shergold—The document that you have in front of you was being considered by public servants. You are quoting from a Public Service document.

Senator CARR—I am.

Dr Shergold—There is no policy decision at the moment to require this. It is a matter of if the community decides. I keep coming back to that community decision.

Senator CARR—Okay, if the community decides. But will there be changes to the law to remove those exemptions?

Dr Shergold—It is not appropriate to talk about the government's proposed legislative program.

Senator CARR—My point is, Dr Shergold, that it changes the nature of the partnership. It further enhances the power of already very powerful public servants to arrive at these policy directions. It has been clearly indicated since 2003 that that is the position of the government. Since 2003 committees that officers have been involved in at the most senior levels of the government have been preparing these policy frameworks. It can hardly be said to be a genuine

negotiation if in fact the processes are at work to establish a policy framework backed up by legal sanction if necessary to enforce a policy outcome.

Dr Shergold—But it seems to me that the key way to judge the good faith of public servants in this regard is not on some hypothetical piece of legislation in the future. The evidence is there. We have a number of shared responsibility agreements. My guess is that by the middle of this year we will probably have 50 or 60 shared responsibility agreements.

Senator CARR—Fifty is the target number, isn't it?

Dr Shergold—What I have set is a stretch target of at least 50. I think it may be exceeded in terms of shared responsibility agreements, so that we have a group of agreements that can then be evaluated for government purposes but also to provide guidance to other communities on what they might want to incorporate within their shared responsibility agreements.

Senator CARR—When you are doing a carrot-and-stick-sum approach to these agreements, what role is there for financial incentives to be used to drive behavioural change?

Dr Shergold—The key will be to say, 'If funding or facilities have been provided to you for a purpose and that purpose has been met, the likelihood is that that shared responsibility agreement will be extended into further areas.' So if, for example, we have a shared responsibility agreement that the Commonwealth will put in a night facility for basketball, the state government agrees to maintain it and the community agrees that it will run a competition for the young people in the community two nights a week, if the community meets that then the high likelihood is that when we come to the next shared responsibility and they want to extend it to a swimming pool or youth facility then it is much more likely to succeed. In other words, it is moving away from, if you like, a grants approach to a contract approach.

Senator CARR—Yes, indeed it is. For individuals, would it also involve payment of benefits?

Dr Shergold—No. We are talking here about discretionary benefits.

Senator CARR—Like repairing a house.

Dr Shergold—It depends if there is a government program for that. I suspect that it is already still based upon an obligation on the tenant. In most instances the Aboriginal housing we are talking about is in rural and remote areas, or in urban areas, and is being maintained and looked after often on native title land or reserve land by an Aboriginal organisation and it may well not have all the funding it requires to do all the repairs that it wants.

Senator CARR—Dr Shergold, what I am concerned about is that, when I read in public service documents that it is important to ensure when applying sanctions that they do not exacerbate already difficult family poverty and violence situations, in the formulation of this policy consideration has actually been given to removal of income support. When I link it with the proposition—

Dr Shergold—Well, let me set this at rest. I can answer it now. No consideration is being given to the removal of income support.

Senator CARR—So when we talk about ‘phasing out remote area exemptions for activity testing’ or ‘progressively requiring activity and participation in exchange for all forms of income support’—they are the words—you say that is a misreading of the document?

Dr Shergold—Yes. I am giving you a complete assurance that no consideration is being given to the removal of income support that is available to all Australians, including Indigenous Australians.

Senator CARR—So what would ‘progressively requiring activity and participation in exchange for all forms of income support’ mean?

Dr Shergold—A community may well—and I say this because it is already happening—seek to negotiate away its remote area exemption and to undertake certain activity on the basis that it will get additional discretionary benefits.

Senator CARR—So are the non-monetary incentives the only things you are considering? This is a carrot-and-stick approach.

Dr Shergold—I think I have sought to explain the carrot-and-stick approach. The carrots are additional discretionary benefits that the community wants. The stick, if you want to call it a stick, is that there will be an expectation that the additional benefits provided will be maintained and will be used for the purposes for which the community sought them.

Senator CARR—Can I ask why the Mulan agreement has not been signed?

Dr Shergold—I have no idea why the Mulan agreement has not been signed. I do not have responsibility for sitting down and negotiating the individual shared responsibility agreements. I can only talk to you about a philosophical and policy construct.

Senator CROSSIN—But in this whole-of-government approach isn’t everybody sharing this information through the secretaries committee you head?

Dr Shergold—Yes. We will be reporting at the next meeting in detail on how the Indigenous coordination centres are working, and I think at the meeting following that one there will be a detailed report on how the shared responsibility agreements are working. That is not just at the secretaries group level; that is what is on the agenda of the ministerial task force.

Senator CARR—There is an article that appeared in the *West Australian* on 11 December 2004. You have no doubt been briefed that I have already raised this with Mr Gibbons.

Dr Shergold—No, I have not.

Senator CARR—I am surprised. I thought that the officers were probably better than that but I am sure that someone here can sort that out for me. The article referred to the way in which the Mulan agreement was put together, and it basically says:

There, at a function for community officials from around the region, Mulan administrator Mark Sewell introduced himself to Wayne Gibbons ... and asked for money.

Frustrated at a series of knockbacks to his pleas for a new fuel bowser, Mr Sewell was tired and blunt.

The approach worked. Mr Gibbons—a former Aboriginal and Torres Strait Islander Commission chief executive—told Mr Sewell about the mutual obligation principle. The Federal Government was looking for “behavioural change”, he said, and asked what the community could offer.

Six weeks later, the Mulan administrator sent him two pages of commitments on community health and told of his goal to raise health standards and lower the rate of trachoma.

He wrote that perhaps this could be the behavioural change needed in exchange for the bowser. The inference to be drawn from that article is that the proposal—

Dr Shergold—No. The behavioural change that is being referred to is the notion of shared responsibility.

Senator CARR—Dr Shergold, that is the point I am making. That is your view of what it is. This article—

Dr Shergold—No, I am not going to speak to a newspaper article.

Senator CARR—Okay. I just say to you that the inference to be drawn from that article clearly is that the initiative for this proposal did not actually come from the local community; it came from the federal bureaucracy.

Dr Shergold—If we mean by ‘the initiative’ that we say to communities, ‘There is now a new way of administering Indigenous affairs and we are going to set up Indigenous coordination centres. We are going to negotiate with you not as six or seven different agencies but as a whole and you will be able to negotiate on your behalf shared responsibility agreements,’ then of course that information is provided by government through its public service. That does not undermine the fact that the shared responsibility agreements themselves are based upon partnership and negotiation.

Senator CARR—That brings us back to the point though about discretionary expenditure—which you say covers petrol bowsers. The fundamental issue here is trachoma, a primary health care issue. How many other communities in the country would expect to negotiate about how to treat a primary health care issue? We have one of the worst records in the world on trachoma. How many other communities in this country would expect that they would have to try to negotiate with the Commonwealth government about dealing with a primary health care issue? I would have thought it was the entitlement of all Australians to have this attended to.

Dr Shergold—I could not agree more, and that is why it is enormously important that in that agreement you do not just have a commitment given by the community of what it will do—and it is very important that it does it—but also a commitment from the WA government of what it will do to meet its responsibility for the provision of primary health care in this area. So it is an agreement between Commonwealth and state governments and the community.

Senator CARR—In regard to the proposals that are before this committee to allow the extension of schedule 3 of the current act, do you have a view about whether or not it would be appropriate to do that? It is a question of the regional structures.

Dr Shergold—Tell me what schedule 3 refers to.

Senator CARR—That is the schedule that deals with the existing ATSIC regional councils.

Dr Shergold—And what was your question?

Senator CARR—Representations have been put to this committee on this and we have had considerable discussion amongst committee members given that on 30 June the regional councils will be abolished. It has been proposed that we should move an amendment to allow those regional councils to continue. Given the importance of the establishment of regional partnership agreements which you have talked about, can you give the committee your view as to what problems you see with the extension of that schedule?

Dr Shergold—One problem is that the government has made it clear that it will not continue to support the funding of elected regional councils. If communities want to continue to use that regional council structure, they may well do so. The second issue we have is that we have a framework agreement with the states and territories and, apart from negotiating with Indigenous communities, we are also negotiating with the states and territories—who themselves have views on the sorts of regional structures that they would prefer the Commonwealth to use. All else being equal, there would be enormous benefit if the Commonwealth, state and territory governments could agree on which consultative framework is going to be used in that state or territory, because one of the biggest challenges—

Senator CROSSIN—Indigenous people might want to have a say in that as well.

Dr Shergold—Indigenous people will certainly want to have a say in that and are having a say in that. In some instances, obviously, we are negotiating with, for example, the Northern Territory government and the Western Australian government and with Indigenous people.

CHAIR—Let me break in briefly. We have approval to sit till one o'clock.

Senator CARR—The government does not intend to fund these regional structures—is that the position you are putting to the committee?

Dr Shergold—Not on an ongoing basis. We would obviously fund groups to come together for a consultation on a shared responsibility agreement, for example. On that basis, it is possible that, if an ex-regional council continues to exist and the community want to use that regional council, rather than a land council or a local government area or their own community, then there would be funding available to help that consultation take place.

Senator CARR—To be clear about this, you are not expecting Indigenous people to fund their own representative bodies to operate without financial support?

Dr Shergold—I think the likelihood is that there are a large number of Indigenous representative organisations that already exist and are funded, in most cases but not all, very largely from public funds, Commonwealth and state. We would see ourselves working with those organisations.

Senator CARR—So how do you answer the charge that you are prepared to talk only to certain groups and not others?

Dr Shergold—To the extent that you can, you talk with the groups that the community want to represent them. It is not very different from how you would consult with unions. Essentially, you would use the existing union structures on the basis—

Senator CARR—But you cannot pick and choose which union you are going to deal with.

Dr Shergold—In many instances there will be a choice of a number of unions. You may want to consult with a number of unions—I would have thought that is often the case—and even with staff organisations. I am saying that this is not a different problem from how you consult with farmers, how you consult with the unions, how you consult with business or how you consult with community organisations. You use existing representative structures. What we know often happens is that out of that, as part of the negotiation, people put together new structures—and that is fine too.

Senator CARR—The question that arises is: what is wrong with the existing representative structures? Since the government saw fit to continue their existence, they obviously felt there was some merit in them.

Dr Shergold—For a transitional period, and there was a value to that. What is wrong is that communities will often not support the regional council structure.

Senator CARR—Which ones? Can you give me some examples?

Dr Shergold—I am not going to go into examples, but let me put it to you this way. If a range of communities decide that they want to use the X or Y regional council in July as a vehicle for negotiating on their behalf on community agreements, that is absolutely fine. It is up to them if they want to do that.

Senator CARR—Dr Shergold, this is a very serious question. I am not putting it to you as a rhetorical riposte. The committee is seriously considering—I hope on an agreed basis—moving in this direction. If you can tell us—

Dr Shergold—Sorry; moving in which direction?

Senator CARR—Towards recommending the continuation of existing structures. If you can tell me that there are cases where significant groups of Indigenous people will not deal with existing representative arrangements—

Dr Shergold—It is not that they will not deal with them; it is that they may have preferred ways of consulting. I have to tell you that I know of many communities that would prefer to

negotiate with government directly, rather than through a regional structure. It is up to the community to decide what mechanism they want.

Senator CARR—If you can provide us with advice on that we would all find it very useful.

Dr Shergold—We will obviously see it over time because communities will decide how they want to negotiate the shared responsibility agreements.

Senator CROSSIN—I think what Senator Carr is getting at is that it goes beyond just individual communities. Miwatj, for example, has governing councils—that is what they call themselves—made up of two people from each clan group in that area. In Alice Springs, they put to us that the consultative mechanism they would like is the Aboriginal combined organisations. In the Kimberley, they put to us that the consultative mechanism they would like is traditional owners plus a mixture of clan groups. So I think what Senator Carr is saying is that Indigenous people are saying to us that come 1 July they would like in the act these structures, in whatever shape or form they decide they are going to be, to be given, as I alluded to in my question to you, some formality—not necessarily resourcing on an ongoing basis like the current regional councils but given some legality and some formal recognition. Bear in mind as well that some of these structures do not necessarily coincide with the view of state and territory government structures for consultation either. The way in which states and territories—and I emphasise territories—want to consult with Indigenous people is not necessarily what Indigenous communities want either.

Dr Shergold—What you have put to me in terms of the variety of different structures that communities want is precisely my experience. That is the opportunity that will exist. What is not going to happen is the government continuing to fund elected regional councils.

Senator CARR—Why not? That is my issue.

Dr Shergold—It is a government decision that it is not going to support elected structures.

Senator CARR—But—

Dr Shergold—I am not going to have a discussion with you about government policy.

Senator CARR—I am just trying to get to the basis of what is behind the decision. You are saying it is a straight decision at a political level and you have no further comment on it. Is that the position you are putting to the committee?

Dr Shergold—I am putting to you, because you asked me and you said this was a serious question—

Senator CARR—It is a serious question.

Dr Shergold—I am saying to you seriously that it may well be that some communities may want a regional council and that is the way they have negotiated with us. My strong suspicion is that many communities will want other regional structures or no regional structures at all, and that will be up to them. The government is happy to work with representative organisations and

elected organisations. What the government will not do from 1 July is fund the election to structures.

Senator CARR—Given that we are supposed to have these regional structures in place by June, how many do you think will be in place? What is your expectation?

Dr Shergold—I do not have a full expectation; my hope is that we will have 50 to 60 shared responsibility agreements at the community level. Understand that that at the moment is the focus. The regional focus is of secondary importance. That will depend upon negotiations that take place with Indigenous communities and organisations and state and territory governments. My expectation—and it is no more than that—is that probably we will have a couple of states or territories signing off with us agreements, including for regional structures, in the next few months.

Senator CARR—Are you able to indicate which jurisdictions you are anticipating—

Dr Shergold—No, I think that would be inappropriate.

Senator CARR—Given that you are saying 50 or 60 SRAs by the middle of the year, do you have any criteria that you use to assess or to recognise an agreement as being valid?

Dr Shergold—Yes, it will be signed off.

Senator CARR—So it is mutually signed off.

Dr Shergold—People talk about the Mulan agreement, but it has not yet been formally signed off.

Senator CARR—For instance, do you have any assessment as to whether or not signatures are being entered into freely?

Dr Shergold—I am sure they are being entered into freely.

Senator CARR—But there is no way of testing that. Do you see that as a criterion?

Dr Shergold—I believe that communities would very quickly go public if they suggested there was an agreement that they have not signed up to.

Senator RIDGEWAY—Not if they do not get the money.

Dr Shergold—Are you saying that a community may like, for example, petrol bowsers without making a commitment? Yes, that is possible, but in effect the shared responsibility agreement is signing up in the knowledge that there are responsibilities and obligations on both sides.

Senator RIDGEWAY—But isn't it true that in the case of Mulan community they applied for two petrol pumps seven years ago?

Dr Shergold—Yes. And now under these new arrangements there is a way in which that objective can be achieved.

Senator RIDGEWAY—It seems a little odd that they have had to wait so long for the government to come to some decision that it is now in their interest.

Dr Shergold—All public administration is doing what one can do with finite resources. That is the art of government. That is the art of public administration. If one had unlimited funds, everything would be so much easier.

Senator CARR—The local member of parliament described that particular example as blackmail. Would you regard that sort of term as totally inappropriate?

Dr Shergold—Yes, I have no idea who made that statement.

Senator CARR—It was the local Indigenous member of parliament.

Dr Shergold—I think there is a pernicious paternalism creeping into some people who think that somehow because of their greater level of wisdom or experience they can second-guess what communities want. I think that is enormously dangerous.

Senator CARR—This is the local elected member of the Western Australian parliament who happens to be Indigenous.

Dr Shergold—I am saying that I think it is absolutely crucial that we do not believe that communities do not have the ability to know what it is they want to achieve. In this instance, let us remember, what they wanted to achieve was not just access to two petrol bowsers; what they wanted to achieve was reducing the level of trachoma.

Senator CROSSIN—On that point, Dr Shergold, for six years in this parliament I have asked representatives from OATSIA every single estimates, three times a year, how many Indigenous people in this country have trachoma and they cannot tell me because one of the departments that you now coordinate does not keep figures. It does not want to keep these figures and has not been able answer my questions, year after year after year for six years, about the level of trachoma in this country and what your government has been doing about it. There are no answers.

Dr Shergold—The decision on that is a matter for the department. I cannot comment on it.

Senator CROSSIN—I hope the world of that department changes come 1 July.

Dr Shergold—I re-emphasise that my government is the elected government of the day. That is who public servants serve.

CHAIR—Would that be the kind of issue that the secretaries coordinating group would be able to discuss?

Dr Shergold—Absolutely. I think it is a serious issue and I think it is a matter that we would want to discuss with the Productivity Commission. You have to decide how many things you want to measure. I would have thought things like rates of trachoma and rates diabetes are pretty crucial in terms of the way we target public policy.

CHAIR—And appropriate data collection.

Dr Shergold—Absolutely.

Senator CARR—Do you see a circumstance where through these SRAs a community can agree to give away a right that other citizens enjoy?

Dr Shergold—No, I do not think so. That is why we are saying that we are talking about a discretionary benefit.

Senator CARR—So the Commonwealth would not sign such an agreement?

Dr Shergold—No, not if it was giving away a benefit to which other Australians have an entitlement in a way that exposed them to an obligation that others do not face.

Senator CARR—So they cannot give away their rights as a citizen under Australian law?

Dr Shergold—I suppose I should put some limits on that, and the limit is obviously CDEP. CDEP is a very interesting example of course because it is one where members of a community in a sense give away an entitlement to the individual receipt of their allowance on the basis of a community decision. I suppose CDEP is an example I can think of where there is that sort of trade-off. As I remember, from my ATSI days, that is a matter that the human rights commission looked at and in fact agreed was appropriate action on behalf of a community.

Senator CARR—How is the stocktake of existing Australian Indigenous specific mainstream investment for each region proceeding?

Dr Shergold—The stocktake in each region is proceeding. The focus at the moment—and you will understand this—is, not surprisingly on this year's budget and getting before ERC. My focus through the secretaries group at the moment is finalising the single budget submission that the minister on behalf of other ministers will be taking into ERC.

Senator CARR—So I suppose you cannot help me with—

Dr Shergold—But the stocktake will certainly take place.

Senator CARR—Are the states cooperating?

Dr Shergold—I negotiate really only with my colleagues in premiers' and chief ministers' departments. At that level there is a high level of cooperation. It is quite extraordinary how easy it has been to get agreement between the Commonwealth and the states on the national framework agreement. There has been extraordinary cooperation in terms of the COAG trial sites. There has also been enormous goodwill in negotiating with states and territories on the

bilateral agreements that we will have with them. It has been one of the most pleasing aspects of the whole exercise.

Senator CARR—So you cannot tell me beyond the public service heads in the various states—

Dr Shergold—I have gone beyond that. I am also getting feedback from my counterparts, as well as from the OIPC and secretaries, about what is happening at the level of official engagement.

Senator CARR—What about the mainstream projects that are currently underway? Are they part of the stocktake?

Dr Shergold—As part of the normal budget process, we will also be looking at the mainstream programs. I think there are half a dozen mainstream programs on which we will be providing advice to ERC. These are the non-Indigenous specific programs. These are mainstream programs which nonetheless have a significant impact on Indigenous Australians.

Senator CARR—Yes. Perhaps you would take this on notice: can the committee have a report on the progress that has been made in regard to that, and could you identify expenditure by agency in those particular projects?

Dr Shergold—No, I do not need to take it on notice. You cannot have access to the budget or policy papers that we are preparing. However, there will be a public report next year from the secretaries group and there will obviously also be a report from the Productivity Commission.

Senator CARR—So you do not have any figures at the moment? I see you have a figure here of \$2.9 billion. How was that arrived at?

Dr Shergold—That is the existing amount in the budget and what I can say is that obviously the amount expended in this year's budget will be greater. I can say that not because I am letting you into any secrets but because there were commitments made in the election which require that the budget be higher.

Senator CARR—I think that there have been announcements to that effect already.

Dr Shergold—That is right. So we already know that the Indigenous budget will be greater.

Senator CARR—So we have to wait for the budget for final expenditure figures for this year?

Dr Shergold—Yes, correct.

Senator CARR—For this year?

Dr Shergold—This is estimated—

Senator CARR—Could we have a copy of that?

Dr Shergold—You can. Obviously you cannot have actual until the year has ended.

Senator CARR—But we can have the estimates.

Dr Shergold—That is fine. These are just the estimated actuals.

Senator CARR—I have a final question. There was a newspaper report last year about the legal doubts about the government's decision to establish an executive agency and the transfer of funds from the ATSIC board. That report was based on a position which you had put, Dr Shergold, within the government. Do you still share those concerns about the legal status of those decisions?

Dr Shergold—No.

Senator CARR—Why is that?

Dr Shergold—Because I am persuaded by the legal advice that the government has that the concerns that were expressed in that leaked document that you are referring to have been satisfactorily met.

Senator CARR—So at the time you wrote the document you said that you were not entirely reassured by the advice from the Australian Government Solicitor, but that has now changed?

Dr Shergold—Yes. I am now entirely reassured.

Senator CARR—So you have just changed your view?

Dr Shergold—No, I have not just changed my view—

Senator CARR—You have changed your view since that time.

Dr Shergold—I have changed my view, but I changed my view of course on the basis of legal advice that is now available to government.

Senator CROSSIN—Dr Shergold changed his job as well, I think.

Senator CARR—No, he actually wrote that as head—

Dr Shergold—No, in the same job.

Senator CARR—In the same job. That is right. I want to go to the question of the establishment of this executive agency. We had a period when ATSIC basically operated as a department. Would you describe it as a department or equivalent to a department?

Dr Shergold—Equivalent to a department; it was—

Senator CARR—an agency.

Dr Shergold—Yes.

Senator CARR—I am just trying to get a point in our history since we have not had a Commonwealth department of state specifically addressing Indigenous administration in this country. We have got an office at the moment, a new executive agency, but we have no department. So this is the first time in, what, 40 years? Would that be right?

Dr Shergold—No. I would have thought that most people would be appalled at seeing ATSIC as a department of Aboriginal affairs.

Senator CARR—How would you describe it?

Dr Shergold—A very unusual structure indeed. Probably as a result of that, there were severe structural deficiencies which it needed enormous leadership by the chair of ATSIC to overcome. It is not a department of state when you have the CEO of that organisation being responsible not only to the minister of state but also to an elected board of commissioners. It is quite different from a departmental structure. The challenge, of course, is that you could cover up that structural dysfunction as long as there were high levels of leadership, but it was very difficult to hold together in the long term. My personal reflection only is that I think the difficulty was at the point at which the chair was no longer appointed to ATSIC when it became almost impossible to hold the organisation together. As long as you had an appointed chair and an appointed CEO through the government, I think that provided a framework for how the organisation could function. But once you had a fully elected board and chair I think it made it very difficult to deal with the issue where you have a CEO and public servants—because people in ATSIC remained public servants in the administrative arm—serving two masters.

Senator RIDGEWAY—Where is the evidence for that?

Dr Shergold—The evidence I can give you is my 3½ years of day-to-day challenges that took place in undertaking that balance.

Senator RIDGEWAY—But in terms of outcomes: the Community Housing and Infrastructure Program, CDEP, native title—

Dr Shergold—I think the outcomes I would probably refer to are the outcomes that the ATSIC review highlighted so strongly: the loss of public support for ATSIC.

Senator RIDGEWAY—But didn't that also recommend the retention of a national elected voice as well as a regional structure?

Dr Shergold—Yes, but that is a different question. The question you asked me is what is my evidence that the dysfunctionality of ATSIC started to reflect in outcomes. I am saying to you that I think it started with the progressive loss of public confidence in the organisation and Aboriginal confidence in the organisation.

Senator RIDGEWAY—What do you say, then, in response to evidence that has been provided to us by Indigenous organisations and the like that have said that, besides the confusion

that exists out there currently, they fear that there will be less accountability and less transparency in relation to performance and outcomes?

Dr Shergold—I think it is entirely appropriate that they make those comments and have those fears. All I can say to you is that I believe that the level of scrutiny and accountability will be every bit as strong as it has been in the past. And through the mechanism of shared responsibility agreements it will be more effective than it has been in the past.

Senator RIDGEWAY—But wasn't the incentive to perform previously in a democratic society that if you did not perform you did not get re-elected?

Dr Shergold—I cannot comment on the politics of why people get re-elected or do not get re-elected. Certainly that was a mechanism that was available to the Aboriginal community. Do I think that it was effective in terms of the best delivery of outcomes for the available dollars? No, I do not.

Senator RIDGEWAY—If from 1 July, as you say, the government will no longer fund elections, am I to understand that, as the chair of the secretaries group, the mechanism for dealing with accountability of secretaries of heads of departments may well mean contracts would include clauses about performance in relation to Indigenous outcomes?

Dr Shergold—They already do.

Senator RIDGEWAY—They already do?

Dr Shergold—Yes. In terms of the relevant secretaries, who are the secretaries who serve on the secretaries group, part of the performance criteria that now exists by which their performance is assessed includes the extent to which a secretary works in a collegiate fashion to deliver services to Indigenous communities in a coordinated and flexible way. That is built into the range of measures against which performance is assessed.

Senator RIDGEWAY—I want to go to an article in the *Canberra Times* in February of last year that stated that one of your goals as Secretary of the Department of Prime Minister and Cabinet would be to increase Indigenous participation in the Australian Public Service. To follow on from questions earlier about the *State of the service report*, isn't it true that since 1996 the government has managed to turn a strong growth of Indigenous workers participating in the Australian Public Service into a strong decline?

Dr Shergold—No. I thought I had answered that but I will answer it again. The proportion of public servants who are Indigenous is relatively stable. There has been a marked increase in the proportion of Indigenous servants who are senior, by which I mean senior executives and middle managers. There has been a very sharp decline in the number of APS1s and APS2s and that reflects a very sharp decline in the number of APS1s and APS2s in the APS as a whole.

Senator RIDGEWAY—So it is not true that Indigenous people are leaving the public service at twice the rate that they are joining? You have undertaken some studies to confirm that that is not the case and would refute—

Dr Shergold—I am simply using the data provided me from the database which is kept by the Public Service Commission.

Senator RIDGEWAY—So you do not know for certain?

Dr Shergold—Do I believe that we should do more to continue to improve career opportunities? Do I believe that we should do more to recruit Indigenous people into the Australian Public Service? My answer to that is yes. We have to do so in ways that are now more challenging in that we do not have that large number of junior positions.

Senator CARR—Or cadetships.

Dr Shergold—I think that cadetships are particularly important as a way of trying to increase Indigenous participation. I understand that the Public Service Commissioner is about to launch a strategy in this regard and I will strongly support it. Having said that, I would make one other point: if we hold our position in terms of Indigenous people joining the public sector but find more and more Indigenous people are able to find jobs in the private sector then I will think that is a splendid outcome.

Senator CARR—It depends doesn't it? It depends because you are actually looking for corporate memory and the skills in the Australian Public Service to administer public programs. I would be very concerned to actually lose quality officers, particularly Indigenous officers, specifically when you are devolving programs back into the departments. How many SES officers did you say we have who are Indigenous?

Dr Shergold—I think it is 0.8 per cent.

Senator CARR—How many is that?

Dr Shergold—I have not got the number, I am sorry.

CHAIR—Dr Shergold, will you take those stats on notice? We are rapidly running out of time, Senator Carr. Senator Ridgeway was—

Senator CARR—I just want to get this figure. How many are there?

Dr Shergold—I have got the proportions. I will take that one on notice.

Senator CARR—Would it be less than 100?

Dr Shergold—Given that there are only about 1,500 senior executives it probably is but I will give you the figure.

CHAIR—Dr Shergold, we will take it on notice. Senator Ridgeway is next and then Senator Scullion will have the last question.

Senator CARR—I just want to know what the 0.8 per cent constituted.

CHAIR—Thank you, Senator Carr.

Senator CARR—In number terms—what it means.

CHAIR—We have got it, Senator Carr.

Senator RIDGEWAY—Dr Shergold, we have had dealings before and you have always struck me as a fair and decent man. I want to go to the question of some of the transitions or new arrangements that have been put in place. Have you had anything to do with the withdrawal of entitlements or resources to the holders of statutory office—in this case, ATSIC commissioners?

Dr Shergold—I have not had any personal experience in doing that. It is a matter for DIMIA and OIPC, so I am not sure quite what other statutory entitlements are being suggested there. It is certainly true that the government is understandably frustrated that there is continued significant payment for commissioners—money that could otherwise be directed to programs.

Senator RIDGEWAY—I was struck by your comment that the commissioners were not unlike any other politician. On this side of the table it is not lost on me that I finish at midnight on 30 June as well. But do you know of any politician on this side who may or may not have had their vehicle not re-registered, mobile phone cancelled or petrol cards cancelled—resources that were ordinarily applied earlier in the piece being withdrawn? Do you think that is a fair and decent way to treat people that are about to depart? I think that we can accept that there is some writing on the wall, but is that the best way to build up confidence and trust with Indigenous communities if you are putting in place new arrangements?

Dr Shergold—I cannot speak of the specific instances, simply because I do not know the detail. However, do I think that commissioners should only be paid what is actually necessary to undertake their role? The answer, I have to say, is yes. And the role of commissioners now is extraordinarily limited compared with the role that they had in the past.

Senator RIDGEWAY—It is not unreasonable, though, to deal with the question of property and assets, including looking at the question of the ATSIC art collection. Surely you would not see a request from the CEO of ATSI to provide an opportunity to get legal advice as unreasonable.

Dr Shergold—What I would certainly see as unreasonable—and you know, as I know, the value of that ATSIC art collection—

Senator RIDGEWAY—It is not a very valuable one at all. It just has historical significance.

Dr Shergold—It has a great deal of historical significance, and there are some pieces there that have financial significance—there are some wonderful paintings, as I remember, by Johnny Tjupurrula and others that would certainly have that.

Senator RIDGEWAY—The board of commissioners have never suggested that they were going to sell the art work.

Dr Shergold—But the key for the government is to make sure that in one way or another that collection is maintained for the people of Australia.

Senator RIDGEWAY—But it is fair and reasonable to withhold support to seek out legal advice?

Dr Shergold—Again, I cannot refer to the specific issue. I wish I could, but I do not know the details. What I can say is that I think it is fair and proper to withhold funds that are not required for the present role of the board of commissioners.

CHAIR—Senator Ridgeway, further questions will have to go on notice, because Senator Scullion—

Senator SCULLION—I am happy to put it on notice.

Senator RIDGEWAY—I just want to ask questions about property transfers. You would be aware that the government made political mileage out of the question of violence against women and children, especially in communities. I am aware of a community in northern New South Wales that took action to establish a mothers' group. The property transfers for a mothers' group to be established were decided by ATSIC. Somehow that has now been transferred across to FaCS, and they have reassessed it in the light of a very different set of criteria—rather than a common vision—and reversed that decision. How do you respond to that, particularly in the context of ICCs, which are supposed to be working in concert with each other, and having a common vision to bring about a certain outcome? Surely the local mothers' group's views have equal weighting against departmental criteria, as you say.

Dr Shergold—I start by rejecting absolutely the notion that the government made political mileage out of domestic and family violence. I have to say that I think that is quite inappropriate. I know of no politician who does not have a serious concern about this issue, and that was reflected—

Senator RIDGEWAY—I asked for \$8 million out of pathways against domestic violence to be transferred to ATSIC, and that was withheld.

Dr Shergold—in the meeting that the Prime Minister called. It continues to be reflected in the meetings that are called together of the women who have been involved in the COAG trials. It will continue to be reflected in additional financial assistance to tackle the issues of family violence.

Senator RIDGEWAY—But the money itself went back into consolidated revenue, did it not?

Dr Shergold—I do not know the details, and this is my difficulty. No, I do not at all believe the notion that money that was specifically identified for an Indigenous program has been put back into consolidated revenue.

CHAIR—As it is after one o'clock I would like to thank Dr Shergold and Ms Patterson. Dr Shergold, there may well be other questions. We have put a number on notice which will be forwarded to your office through the secretariat.

Dr Shergold—That is fine. I will provide the statistics that I have promised.

CHAIR—Thank you very much. I also thank Hansard staff and the secretariat for extending their time this afternoon.

Committee adjourned at 1.01 p.m.