

**Human Rights and
Equal Opportunity Commission**



**Aboriginal Torres Strait Islander
Social Justice Commissioner**

Committee Secretary
House of Representatives Standing Committee on
Aboriginal and Torres Strait Islander Affairs
Parliament House
Canberra ACT 2600

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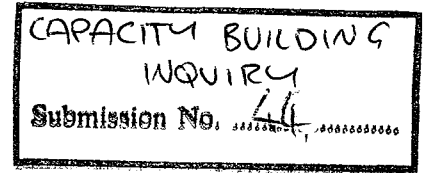
Dear Secretary

Please find enclosed the submission of the Aboriginal and Torres Strait Islander Social Justice Commissioner to the inquiry into Indigenous community capacity building.

Please do not hesitate to contact my office if you have any queries.

Yours sincerely

Dr William Jonas AM



**House of Representatives Standing Committee on
Aboriginal and Torres Strait Islander Affairs**

**Inquiry into Capacity-building in Indigenous
Communities**

**Submission of the Aboriginal and Torres Strait
Islander Social Justice Commissioner**

**Human Rights and Equal Opportunity Commission
GPO Box 5218
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October 2002

Executive Summary: Basic Human Rights Principles for Indigenous Community Capacity-building

From a human rights perspective, a major challenge for policymakers in Indigenous and non-Indigenous government agencies and non-government organisations is to effectively recognise, facilitate and protect Indigenous rights in the context of community capacity-building.¹

The Aboriginal and Torres Strait Islander Social Justice Commissioner's 2001 Report noted that to date there has been insufficient attention given by governments to processes which ensure greater Indigenous participation and control over service design and delivery as part of an overall strategy to redress Indigenous disadvantage and economic marginalisation. It observed that:

The development of governance structures and regional autonomy provides the potential for a successful meeting place to integrate the various strands of reconciliation. In particular, it is able to tie together the aims of promoting recognition of Indigenous rights, with the related aims of overcoming disadvantage and achieving economic independence².

Over the past two years, Reconciliation Australia and the Council of Australian Governments have included strategies in these areas as part of their frameworks for progressing reconciliation. Government initiatives have also been introduced following the Indigenous Community Capacity Building Roundtable held in October 2000 and as part of the welfare reform package in the 2001 federal budget.

This submission considers the importance of, and recent developments in, Indigenous capacity-building and their relationship to governance. Capacity-building relates to 'the abilities, skills, understandings, values, relationships, behaviours, motivations, resources and conditions that enable individuals, organisations, sectors and social systems to carry out functions and achieve their development objectives over time'.³ Governance concerns 'the structures and processes for decision making... [and] is generally understood to encompass stewardship, leadership, direction, control authority and accountability'.⁴

There are many familiar elements in current proposals for capacity-building and governance – such as the need for increased Indigenous participation in decision-making, better coordination and less duplication of services, and greater regional and local involvement – that have been put forward previously at the Indigenous policy-making table in other contexts. This submission examines some of the necessary requirements for capacity-building to be effective in reversing the disadvantage experienced by many Indigenous communities today and considers a range of recent

¹ For discussion of the need for adequate recognition of Indigenous rights in Australian legislation, see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC, Sydney, 2000, (Herein *Social Justice Report 2000*), chapter 4; HREOC Social Justice Unit, 'Indigenous rights recognition in public policy – a domestic perspective', ATSI National Policy Conference, Canberra, 25-27 March 2002, http://www.atsic.gov.au/Events/Previous_Events/National_Policy_Conference_2002/docs/RightsPaper.doc

² *Ibid*, p107.

³ ATSI, 'Discussion paper on ATSI's approach to community capacity building', unpublished paper, ATSI, Canberra, 2001, p1.

⁴ ATSI, 'Regional autonomy for Aboriginal and Torres Strait Islander communities – Discussion paper', ATSI, Canberra, September 1999, p22.

initiatives to develop or enhance Indigenous governance and capacity from a human rights perspective.

It advocates that in considering how policymakers can support a rights-based approach to Indigenous capacity-building, the adoption of human rights principles to establish protocols and best practices, and to inform frameworks for Indigenous policy and service delivery should be fundamental.

Of relevance is the rights framework for reconciliation advocated by the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Social Justice Report 2000*, which is based on the following four inter-related principles:

- *No discrimination*: A guarantee of equal treatment and protection for all, extending to recognising cultural distinctiveness of Indigenous peoples and the adoption of special measures to redress historically derived disadvantage;
- *Progressive realisation*: The commitment of sufficient resources through well-targeted programs to ensure adequate progress in the realization of rights on a non-discriminatory basis;
- *Effective participation*: ensuring the participation of Indigenous people in decisions that affect them, including in the design and delivery of programs; and
- *Effective remedies*: the provision of mechanisms for redress where human rights are violated.

Ensuring effective Indigenous participation entails building equitable partnerships with Indigenous peoples and communities, especially in regard to decision-making processes concerning service delivery. For example, benchmarks should be negotiated with Indigenous peoples, with clear timeframes for achieving longer term and short-term goals. The development of effective community capacity and governance arrangements may further give rise to the creation of regional arrangements that link local community control with state level decision-making.⁵

Effective participation also needs to be linked to the principle of self-determination. Indigenous self-determination is not 'merely an end in itself' but 'has at its end the process of social and economic equality'⁶. It involves the 'right to demand full democratic partnership' in society, by which Indigenous peoples 'negotiate freely their status and representation in the State in which they live.... This does not mean the assimilation of Indigenous individuals as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the State, on agreed terms'⁷.

This means respect and support for Indigenous self-determination as it is realised through Indigenous organisational structures or forms of self-government, and sensitivity in working with these arrangements. Building community capacity provides a potential vehicle for the renewal of societal structures and the political recognition and representation of Indigenous peoples' status.

⁵ For further discussion, see *Social Justice Report 2000*, pp112-21.

⁶ *ibid*, p28.

⁷ Daes, E., *Discrimination against Indigenous people – Explanatory note concerning the draft declaration on the rights of Indigenous peoples*, UN Doc E/CN.4/Sub.2/1993/26/Add.1, 19 July 1993, para 26.

This submission responds directly to two of the questions which the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs put forward for discussion in regard to capacity building in Indigenous communities:

- How best can community and regional organizations do business and make decisions in traditional ways while meeting wider governance and accountability standards? What can governments do to help more Indigenous organizations remain stable, well-managed and successful?
- To what extent are governments and their agencies building genuine partnerships with Indigenous groups, and are these partnerships leading to better services and improvements in communities?

Other issues for discussion relating to the development of community leadership and governance; coordination of government services; current and proposed governance structures are examined in the context of these two questions.

How best can community and regional organizations do business and make decisions in traditional ways while meeting wider governance and accountability standards? What can governments do to help more Indigenous organizations remain stable, well-managed and successful?

The current approach of governments to Indigenous governance and capacity-building:

- operates within short term timeframes and without adequate consideration being given to the aspirations, priorities or empowerment of Indigenous people; and
- has generally resulted in uncoordinated funding arrangements among government departments and levels of government, leading to a process that manages – rather than seeking to overcome – the level of Indigenous disadvantage and inequality in Australian society.

The Commonwealth Grants Commission's *Report on Indigenous Funding* identified the following features for enabling effective participation by Indigenous people at the community level in aligning resources to meet needs:

- full participation in identifying needs and in decision-making about funding for provision of services;
- resourcing participation in those discussions; control of service provision; and
- the ability to form productive collaborative arrangements with the main providers of services⁸.

The relationship between capacity building and achieving service outcomes needs to be recognised and acted upon – building capacity can assist Indigenous organizations to be more effective in identifying needs and appropriate funding, and in participating in collaborative decision-making arrangements. Communities lacking this kind of capacity will need a higher initial investment of resources to provide a

⁸ Commonwealth Grants Commission (CGC), *Report on Indigenous funding* 2001, Canberra, 2001 (Herein CGC Report on Indigenous funding), p89.

framework for the effective delivery of services and sustainable outcomes.⁹ An investment over time to build this capacity is crucial.

Self-determination and effective capacity-building

Many government modes of service delivery to Indigenous people have constrained Indigenous social and economic development. As ATSIC have noted:

the debate in Australia has been confined to improving the prevailing 'directed community services model'. This model aims to provide services to Indigenous people as a category of disadvantaged Australians. Most funding is at the discretion, as well as the direction, of Commonwealth, State and Territory government agencies...¹⁰

Few Indigenous people can exercise any substantive jurisdictional responsibilities over matters of the most direct concern to them. They are almost totally dependent on government funding arrangements designed to deliver programs and services based on non-Indigenous models of governance. Commonwealth, state and local governments do not share any of their substantial jurisdictional responsibilities, few are prepared even to consider negotiations with Indigenous peoples.¹¹

Such a 'community service model' is largely unrelated to economic development:

Current funding arrangements provide little encouragement to Indigenous economic development since the resourcing of Indigenous organisations does not increase with increases in economic activity in their local area. Without such a linkage, the idea of development is reduced to one of 'community development' devoid of any economic dimension. Service delivery itself brings few economic benefits and little stimulus to Indigenous economic advancement¹².

The Commonwealth Grants Commission noted the following factors as critical for improving the capacity of Indigenous communities to self-manage:

- level of social cohesion;
- strength of culture;
- provision of relevant education and training in areas such as corporate governance, management and information collection and use;
- transfer of positions in service delivery from external sources to communities over time;
- building economic and social self-reliance within communities through use of CDEP to foster small business and build up communities; and
- fostering home ownership to consolidate commitment to community's future¹³.

As ATSIC explain in highlighting the key directions necessary for change for Indigenous people:

⁹ *ibid*, p95.

¹⁰ *ibid*, piv.

¹¹ *ibid*, p22.

¹² *ibid*.

¹³ *ibid*.

The range of social, economic and cultural issues confronting Indigenous communities and peoples requires both general and specific responses in facilitating change. The wider the involvement of all the Indigenous people in developing their capacities to determine the nature, pace and objectives of change, the more likely it will be that the changes will be effective and sustainable. While there can be no certainty that outcomes will be achieved in every instance, it is certain that effective facilitation will lead to useful learning for the participants, and make a clear break with the 'Welfarist' approach to Indigenous community development¹⁴.

Reconciliation Australia also identified support for developing Indigenous community capacity as a key priority in its Strategic plan, observing that:

... overseas experience [in Canada and the United States] has confirmed that successfully addressing community dysfunction and improving socio-economic outcomes is directly linked to:

- communities having genuine decision-making power;
- exercising that power through effective institutions; and
- governing institutions acquiring legitimacy with the people whose future is at stake¹⁵.

These factors reinforce the requirement for a longer term commitment to governance and capacity building processes in order to address Indigenous economic marginalisation.

The Commonwealth Grants Commission stated specifically on the importance of developing Indigenous community capacity that:

The relationship between capacity building and the achievement of service outcomes needs to be recognised in funding decisions. The success of programs will be compromised if funding is not provided to invest in community capacity building... building community capacity, especially developing the capacity of Indigenous organizations and communities to manage service delivery, is a crucial step in ensuring that Indigenous people play a central role in decision-making and more effective use of funds¹⁶.

The Commission further argues that developing effective community capacity is of equal importance to meeting infrastructure needs and that communities lacking this kind of capacity will need a higher initial investment of resources to 'provide a framework for the effective delivery of services and sustainable outcomes.' The relationship between capacity building and achieving service outcomes needs to be recognised and acted upon – building capacity can assist Indigenous organizations to be more effective in identifying needs and appropriate funding, and in participating in collaborative decision-making arrangements.

The current 'directed community service model' does not promote effective Indigenous participation and self-determination:

¹⁴ ATSIIC, *Directions for change*, ATSIIC, Canberra, 2001, p9.

¹⁵ Reconciliation Australia, *Strategic plan 2001-2003*, Reconciliation Australia, Canberra, 2001, para 1.4.

¹⁶ *ibid*, p94.

The idea of self-determination is intimately linked with that of a political community, or people, having a right and ability to determine its own priorities and design its own instruments of communal regulation and provision. It is not furthered by the present system of highly externally directed arrangements for funding Indigenous organisations in Australia, nor service delivery by non-government organisations. Self-determination requires that there should be at least some aspects within the funding arrangements that allow Indigenous incorporated bodies to determine their own priorities and strategies, and recognise them as political communities of peoples with their own governance arrangements. It has often been argued, following this line of reasoning, that current arrangements in Indigenous affairs only amount to community self-management of individual programs, rather than self-determination¹⁷.

Indigenous community capacity and governance mechanisms could be progressed through facilitating more effective forms of financial and administrative self-government. There is a need for greater participation and community capacity with the development of Indigenous self-governance arrangements that re-define the current financial and administrative relationship between government and Indigenous communities.

Effective participation and Indigenous self-government

ATSIC's *Report on greater regional autonomy* discusses problems concerning the inflexibility and short-term nature of funding arrangements to Indigenous community organisations. At present, the majority of funds received by ATSIC Regional Councils are 'tied' — that is, already marked for expenditure in national programs such as CDEP, and Housing and Infrastructure.¹⁸ The Report suggested that there should be more flexible funding arrangements at the regional level by adopting an outcomes approach where targets and accountability requirements are set locally. This would involve establishing priorities and deploying funds appropriately at the regional and local levels rather than relying on parameters set, often through rigid and generic program guidelines, at the national or state level. Such an approach would be better able to respond to regional variations in needs and programs:

If current tied funding arrangements were relaxed and an outcomes-based approach to accountability was fully implemented, Councils would be able to channel funds to deal more effectively with local issues — in particular, housing, youth and domestic violence were issues cited in this context.¹⁹

The availability of funding on only a short-term basis also limits the ability of ATSIC's Regional Councils to tackle issues that are deeply entrenched and systemic in nature. In accordance with recommendations that had been made in the Royal Commission into Aboriginal Deaths in Custody in 1991, block funding and funding over triennial periods were noted by ATSIC 'as means of improving planning possibilities and outcomes for communities.'²⁰

¹⁷ *ibid*, p4.

¹⁸ For further discussion see ATSIC, *Report on greater regional autonomy*, ATSIC, Canberra, 2000, p13.

¹⁹ *ibid*, pp10-11.

²⁰ *ibid*, p20.

Related to the need to develop longer-term and more comprehensive funding strategies for targeting Indigenous disadvantage is the development of Indigenous community capacity, in terms of both financial and human resources. As the House of Representatives Standing Committee on Family and Community Affairs states in *Health is life*:

[I]t is not simply enough to say that the community should be allowed to determine the nature of their health services, if they do not have the capacity to do so. Frequently communities rely on outside professional advice and expertise. When these people leave, services deteriorate until such time as another person can be found...²¹

There needs to be a commitment to developing mechanisms that work within Indigenous autonomy, but which provide the tools to develop such autonomy, without developing a dependence.²²

The Committee identifies the need for an agreed long-term strategy, with appropriate resources, to move to community control; processes that balance accountability requirements against 'developing a core of commercial and management expertise in funded organizations and communities';²³ and for the development of mechanisms to improve the way funding bodies respond when organizations get into financial difficulties. Likewise the Commonwealth Grants Commission emphasises that given the capacity to self-manage is necessary for resources to be targeted most effectively, '[r]esources must be invested over time to increase that capacity before full community control will be a workable approach.'²⁴

'Resourcing Indigenous Development and Self-Determination', a Scoping Paper prepared for ATSIC in September 2000 by the Australia Institute links political recognition with the achievement of proper autonomy and self-sufficiency for Indigenous peoples:

Under current financial arrangements Indigenous organisations have neither the means nor the incentive to develop the economic base of their communities. Sustainable development is a long-term process that requires assured funding over a number of years. This is not available without some kind of entitlement. It requires political support from their communities that very few of the current organisations can get because they have no defined jurisdictional responsibilities (other than those stated in their constitutions).²⁵

The ATSIC Scoping Paper argues that aspects of a new order of Indigenous governance could include:

- Replacement of discretionary tied grants with more flexible and varied funding arrangements;
- A diversity of governance arrangements to be developed over time, including the potential to develop governance arrangements with new jurisdictional

²¹ House of Representatives Standing Committee on family and Community Affairs, *Health is life*, (Herein *Health is life*), Commonwealth of Australia, Canberra, May 2000, paras 3.42 – 3.44.

²² *ibid.*

²³ Commonwealth Grants Commission, *op cit*, p42.

²⁴ *ibid.*, p34.

²⁵ ATSIC, *Resourcing Indigenous development and self-determination - a scoping paper*, ATSIC, Canberra, 2000, p14.

- responsibilities (e.g. in relation to a land base) or within existing governmental structures;²⁶ and
- Allocation of rights and responsibilities for a broad range of functions and decisions, including political, cultural, social and economic.²⁷

Indigenous jurisdiction is 'likely to extend to matters that are internal to the group, integral to its distinct culture, and essential to its operation as a political and cultural community.'²⁸ Some of the areas that could be covered by these governance arrangements are:

- Establishment of governing structures, elections and membership;
- Maintenance of Indigenous languages, culture and religion;
- Child welfare, education, health and social services;
- Administration and enforcement of Indigenous laws;
- Land and resource management, including zoning, service fees, land tenure and access; development of own-source revenue opportunities;
- Management of public works, infrastructure, housing, local transport; and
- Licensing, regulation and operation of businesses located on Indigenous lands.²⁹

Strategies such as the pooling of funds; increasing the flexibility of funding at the regional and local levels; developing longer term, cyclical funding options; capacity building and providing management support could all assist in the development of Indigenous governance structures.

The following discussion examines three approaches to increasing Indigenous financial self-governance – a focus on outcomes; pooling of funds; and intergovernmental financial transfers. These actions are not necessarily targeted to developing governance mechanisms, although they could appropriately be adapted towards meeting the goal of developing regional governance processes through the negotiation with Indigenous people and communities of agreements and partnerships.

An outcomes-based approach to Indigenous funding: The CGC recommended that fundamental improvements could be made through a move to an outcomes-based approach to current Indigenous funding and arrangements. A focus on 'outcomes' takes into account what has been achieved in terms of the inputs invested in meeting needs: that is, the resources given to service providers to provide services or facilities, and the outputs these service providers achieve with their given levels of input,³⁰ whereas 'need' merely indicates the difference in relative status between particular groups or individuals – specifically, 'the difference between an existing situation and an acceptable one'³¹.

An outcomes-based approach to the distribution of funds is in keeping with the principle of substantive equality as it has the capacity to take into account different

²⁶ An example of the former is the proposals developed by the Combined Aboriginal Nations of Central Australia for governance on their own land base; of the latter, the establishment of the shire of Ngaanyatjaraku in Western Australia.

²⁷ ATSIC, *Resourcing Indigenous development and self-determination - a scoping paper, op.cit*, v-vi.

²⁸ *ibid*, p7.

²⁹ *ibid*, pv.

³⁰ CGC, *Report on Indigenous funding*, p10.

³¹ *ibid*.

variables such as the impact of geographic, economic, and demographic variables on mainstream programs across the regions, and the varying levels of Commonwealth, State and Territory involvement in service provision. It is also able to take into account the investments made over periods of time, so that assets less easily calculable, such as investments in organisational capacity and people over a long period, are not jeopardised. More importantly, the CGC's recognition of the necessity of value judgements in determining outcomes, and the role of Indigenous people at the level of decision-making, provides an opportunity to increase their participation.

Pooling of funds: The pooling of funds has been put forward as an approach to creating more flexible arrangements for addressing disadvantage. This involves 'broad-banding' available funds from Commonwealth and state bodies to meet priorities set at the regional level, 'to result in more efficient and effective use of funds by reducing administrative burdens and better matching initiatives with local conditions'.³² Perceived benefits of this approach include less fragmentation of funds and services to ensure that 'an adequate level of funding...can be linked to an improved regional planning process', identification of long-and short-term goals for the community and the development of a partnership with mainstream services in 'determining how best to meet those needs with the available resources'.³³ This approach also seeks to address issues such as the wastage, inefficiencies and inappropriateness of funding available that occur through duplication and lack of coordination of services.

Intergovernmental financial transfers: The ATSIC Scoping Paper advocates that existing processes of intergovernmental financial transfers be extended to facilitate these governance arrangements. An Indigenous order of governance would mean that:

Indigenous organisations would be dealt with differently by Commonwealth, State and Territory, and local governments in a number of ways... negotiated with as equals, rather than simply directed to work within pre-established program and service delivery guidelines. They would be accorded their jurisdiction and some reasonably durable and guaranteed source of finance for exercising that jurisdiction.³⁴

Noel Pearson has also made arguments for government payments to be made to communities: 'Government transfers are valuable and necessary resources, but the welfare nature of these transfers has to be changed in order to make it a useful and productive resource.'³⁵

The issue here for Pearson is the way in which welfare is delivered to Indigenous communities: in the past, 'welfare in the negative sense' has been delivered to individuals or to community organizations to deliver to individuals, undercutting Indigenous patterns of sharing and obligations and creating a 'money for nothing' mentality.³⁶ Pearson argues that Aboriginal communities do not receive their 'fair share of the country's resources' and in fact need more in order to facilitate a level of development that will lead to sustainable economic participation. Pearson's notion of

³² *ibid*, p43.

³³ *Health is life*, para 2.67.

³⁴ *ibid*, pvi.

³⁵ Pearson, N., *Our right to take responsibility: Discussion paper*, Noel Pearson and Associates, Cairns, 1999, p57.

³⁶ *ibid*, pp56-8.

a 'regional interface' between government, Indigenous communities and other stakeholders would provide a means of restructuring this relationship and enable Indigenous communities to exercise greater self-determination in receiving and directing government funds through reciprocity-based programs.

All of these approaches are geared towards increasing Indigenous participation in the management of their affairs and economic self-sufficiency, goals that superficially would appear to be in keeping with the current government's policy emphases on self-reliance, practical reconciliation and mutual obligation. However, they extend this agenda in a number of ways. They project a specific relationship with government and other stakeholders in which there is scope to determine the reciprocal roles and obligations of all parties involved. The development of structures based on distinct Indigenous groupings to interface with government may also challenge the individualistic focus of much contemporary welfare reform policy.

Building community capacity provides a potential vehicle for the renewal of societal structures and the political recognition and representation of Indigenous peoples' status. The development of effective community capacity and governance arrangements may give rise to the creation of regional arrangements that link local community control with state level decision-making.³⁷ This does not necessarily entail the creation of another level of government, although this may be a possible option in areas where existing arrangements are found to be inadequate for the provision of services and political representation.³⁸

To what extent are governments and their agencies building genuine partnerships with Indigenous groups, and are these partnerships leading to better services and improvements in communities?

In recent years there have been a range of positive developments in relation to building Indigenous capacity and governance. There is increasing understanding among Commonwealth government departments that single portfolio or program-based interventions are insufficient to address problems facing Indigenous communities. Many are increasingly accepting the necessity 'to address governance issues for Indigenous communities and organizations as a priority, and [that] this should be a key factor in shaping a model of capacity building'³⁹.

There are some existing mainstream programs which are able to be utilised to strengthen Indigenous community capacity. These include the Department of Family and Community Services' (DFACS) Family and Community Networks Initiative for developing the capacity of families and communities to respond to local issues through strengthening family and community networks, improving access to information and delivering local-based initiatives. DFACS also provides support for community-based initiatives through its Stronger Families and Communities Strategy. The Department of Employment, Workplace Relations and Small Business has allocated \$10 million over four years under its Community Business Partnership for business and the community to work together to increase opportunities for people

³⁷ For further discussion, see *Social Justice Report 2000*, pp112-21.

³⁸ ATSiC, *Resourcing Indigenous development and self-determination - a scoping paper*, *op.cit.*, pv.

³⁹ ATSiC, 'Discussion paper on ATSiC's approach to community capacity building', *op.cit.*, pp1-2.

with disabilities, mature age people, Indigenous people and parents⁴⁰. ATSIC is a lead agency in COAG's framework for advancing reconciliation and the Community Participation Agreement (CPA) initiative which was introduced as part of Budget 2001's welfare reform package (32 million from July 2001 for trials in around 100 communities of in regional and remote areas).

These initiatives are important in moving towards changing the relationship between Indigenous communities and governments, and for re-empowering communities to take control of their circumstances. The commitments to this process to date, however, remain short-term and minimal in terms of funding support. While recent government initiatives are to be welcomed, they only hint at the potential for reconfiguring and transforming the relationship of Indigenous communities with the mainstream society.

Agreements and partnerships

There are several different types of agreement-making currently in operation across the country. While few of these have been in operation long enough to assess properly, it is clear that:

regional-type arrangements have the potential to move decision-making closer to the grassroots Indigenous communities and to promote further community control of service provision.⁴¹

Bilateral agreements: One form of agreement-making is bilateral agreements between the Commonwealth and a state or territory to pool resources and joint manage projects in a particular service delivery area, such as health, housing and infrastructure. An example of this is the Bilateral Housing Agreements between ATSIC, the Aboriginal Rental Housing Program and Community Housing. Agreements are currently in place in New South Wales, Western Australia, South Australia and the Northern Territory, and also between the Queensland Government and the Torres Strait Regional Authority. Through these agreements, it is possible to achieve 'greater control of the Indigenous housing sector by Indigenous people and [to] improve the co-ordination of streams of resources for housing.'⁴²

These housing agreements have been largely successful, although the Commonwealth Grants Commission warns that 'it is also necessary to ensure that Indigenous people continue to have adequate access to mainstream public housing and that their needs are not diverted to the Indigenous specific programs'.⁴³ As a matter of equity it is also important to ensure that such agreements are not used by States to buck-pass their responsibilities for service delivery by using Commonwealth monies to 'top up' State funds or to require Commonwealth monies to be offered as an incentive to get States to the bargaining table.

Aboriginal Coordinated Care Trials: A further example is the Aboriginal Coordinated Care Trials in the Northern Territory. These have been directed at 'developing a funding pool for health services to be used for any client need and...directed

⁴⁰ Vanstone, the Hon A, and Abbott, the Hon T, 'The Prime Minister's community business partnership - Working together', *Australians working together - Helping people to move forward, Fact Sheet 20*, <www.together.gov.au/GovernmentStatement/FactSheets/FS20.asp> (20 December 2001).

⁴¹ CGC, *Report on Indigenous funding*, p61.

⁴² *ibid*, p89.

⁴³ *ibid*.

irrespective of program or institutional boundaries'.⁴⁴ These trials recognise the difficulties many Indigenous communities face in accessing mainstream health services, with contributions to the pooling fund made on the basis of an estimate of the amount that would otherwise have been made available to the community through the Medicare Benefits Schedule (MBS), Pharmaceutical Benefits Schedule (PBS), State health services and Home and Community Care (HACC) services.

The community is involved on an intensive basis in the consultations prior to the trial and decision-making on health services delivery during the trial. While it is too early to draw any comprehensive conclusions about the trials, *Health is life* suggests that a similar approach to funding primary health care services for Indigenous Australians should be introduced into all regions to support the current regional planning processes. Recommendation 8 proposes that:

In conjunction with the Indigenous community over the next two years, the Commonwealth develop a revised approach to funding primary health care services for Indigenous Australians, based on:

- the use of funds pooling at a regional level, determined by reference to a nominal per person Medicare Benefits Schedule (MBS) /Pharmaceutical Benefits Scheme (PBS) contribution, which takes into account not only the national average costs of MBS/PBS usage by non-Indigenous Australians, but should also be weighted for the higher costs of servicing specific communities and the poorer health status of indigenous Australians;
- the combination of these funds with an amount from the State or Territory, representing the cost of hospitals and other health services; and
- the community to be supported in taking responsibility for these funds and determining the use of the funds pool in delivering services to the community which best meet the health needs of each community.⁴⁵

State-level regional arrangements: The Commonwealth Grants Commission also suggests the development of state level regional structures to coordinate funding and service delivery. It suggests that such regional arrangements:

could emerge as a means of linking State level decision making with local community control over service delivery matters. In some circumstances regional decision making might even develop as an alternative to State level processes.⁴⁶

The Commission suggests the consideration of regional arrangements in which Commonwealth Indigenous specific funds would be 'allocated to State level Indigenous-controlled bodies that would include representatives of Commonwealth and state governments and, where relevant, local government'.⁴⁷ In addition, State funds could be 'combined with the Commonwealth funds and distributed through this mechanism'.⁴⁸ Collaborative decision-making could occur at the state level between government and Indigenous people, as well as the oversighting of additional needs

⁴⁴ CGC, *Report on Indigenous funding, op cit*, p42.

⁴⁵ *Health is life, op,cit*, para 2.95.

⁴⁶ CGC, *Report on Indigenous funding, op cit*, p61.

⁴⁷ *ibid*, p60.

⁴⁸ *ibid*.

to be met at the regional level. The Commission nominates the Aboriginal Housing Authority in New South Wales and the Indigenous Housing Authority in the Northern Territory 'as approximate working examples of such arrangements' for the function of housing.⁴⁹ Defining features of these arrangements would include:

- a commitment in line with the 1992 National Commitment to self-management by Indigenous people in the planning, decision-making, management and evaluation of service provision;
- long-term collaboration between the Commonwealth and State Governments and Indigenous people to build the capacity of communities for such self-management;
- co-ordination of related streams of funds for each key function, possibly including pooling of relevant funds from all sources, and distribution according to regional needs; and
- data gathering and reporting mechanisms which enable informed decisions to be made and provide public accountability to outcomes.⁵⁰

One of the perceived advantages of using a state-based approach is that it 'could provide a balance between the States' responsibilities and the Indigenous peoples' aspirations to control their own affairs... [s]uch regional level collaborative decision-making arrangements might be established by building on the present ATSIC structure'.⁵¹

Despite these proposed advantages, the development of state level regional structures should be considered with great caution. The distribution of state and territory funds for Indigenous service delivery is the area where there exists the least transparency and greatest cost shifting. Accordingly it is an area that requires great attention before introducing further administrative structures. The Commission's proposal is also too ambiguous and unclear as to how these new institutions might fit with ATSIC's regional council and state advisory committee structures.

Greater autonomy and regionalisation

ATSIC and greater regional autonomy: The issue of building on the ATSIC structure to increase Indigenous peoples' control over decision-making at the regional level was the focus of ATSIC's recent *Report on greater regional autonomy*. This report followed from the 1997/98 *Section 26 review of the operation of the Aboriginal and Torres Strait Islander Commission Act 1989*, in which the need to strengthen ATSIC's regional focus and pursue greater autonomy emerged as a key area of interest. The *Report on greater regional autonomy* found that there was strong support to increase the power of ATSIC Regional Councils, particularly through the capacity to make agreements, and some support, particularly in northern and remote areas, for the creation of independent governance structures such as regional authorities, of which the Torres Strait Islander Authority (TSRA) is an example.

The *Report on greater regional autonomy* considers the strategic use of regional agreements, particularly in the context of regional planning. In some areas, Indigenous people have given consideration to the development of a coalition of communities and organisations — such as 'regional advisory groups', 'community

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ *ibid.*, p61.

working parties', and 'regional forums' or 'interfaces' — as alternatives or precursors to the establishment of a governance structure.⁵² These arrangements can play an important role in representing the needs and aspirations of communities to government and non-government agencies. The NSW Murdi Paaki Regional Council Plan and the Cape York Peninsula Partnerships Plan are two models of this type.

Welfare reform-based approaches: Since its election in 1996 the Coalition Government has actively pursued a mutual obligation approach to welfare reform which emphasises that provision of government assistance must be reciprocated by recipients through meeting a range of obligations and responsibilities. The Report of the McClure Committee, *Participation Support for a More Equitable Society* (the 'McClure Report'), in 2000 was formative in endorsing greater use of 'mutual obligations' and 'social partnerships' as principles for preventing welfare dependency and increasing avenues of economic participation. As in many initiatives proposed under the rubric of 'mutual obligations' by 'Third Way' and other welfare reform commentators, the McClure Report's key proposal of 'a model of individualised service delivery' strongly emphasises the individual's relationship to government as the context for change.⁵³

While the McClure Report recognises the severe social and economic disadvantage experienced by Indigenous people and the need to develop more culturally and locationally appropriate models for Indigenous people,⁵⁴ the specific difficulties faced by Indigenous people in developing effective social partnerships require further attention. Colonisation has had many impacts on Indigenous people which contribute to their current levels of disadvantage. These include intergenerational poverty, welfare dependency, over-representation in the justice system, substance misuse, family and societal disintegration, spiritual and cultural dislocation, and environmental damage.

Other historical, demographic, geographic and cultural factors make improvements to Indigenous employment rates and economic participation difficult to facilitate. These include poor health, low educational levels of Indigenous people (which is of increasing concern with the rapid technological change in the labour market), overcrowding of living conditions and low self-esteem. These factors are often compounded in remote areas where there is a lack of business development and employment opportunities, and where long distances can make it difficult to undertake mutual obligation activities. *Social Justice Report 2001* observes that:

As a consequence, the mutual obligation approach over-stretches itself in its application to Indigenous welfare reform by assuming that 'the intensity and scale of ... personal and social problems, wrongly attributed to welfare dependency, can be addressed through mechanisms which both enable, and ultimately compel, individuals to engage with the formal economy'.⁵⁵

Social Justice Report 2001 focused on the Mutitjulu Community Participation and Partnership Agreement and Yenbena Indigenous Training Centre as examples of

⁵² ATSIC, *Report on greater regional autonomy, op cit*, p16.

⁵³ McClure, P., (Chair), *Participation support for a more equitable society: Final report of the reference group on welfare reform*, Department of Family and Community Services, Canberra, July 2000, p.10.

⁵⁴ *ibid*, p17.

⁵⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, HREOC, Sydney, 2001, p54.

initiatives that seek to build capacity at a community level and increase Indigenous participation in and control over decision-making processes.

Mutitjulu Community Participation and Partnership Agreement: The Community Participation Agreement (CPA) initiative introduced as part of the Budget 2001's welfare reform package is to provide a specific opportunity for remote Indigenous communities to develop their own definitions and applications of mutual obligation. Modelling is now taking place with the Mutitjulu Community Council and residents (Anangu people) located near Uluru-Kata Tjuta National Park. This CPA's key concept is 'participation': all social security recipients at Mutitjulu are to design and negotiate their obligations and activities in return for income support, and plan for better delivery of services at the local level. Participation activities are to be meaningful and flexible, and include everyday cultural, social and economic activities in the community. The initiative also aims to identify innovative approaches to financial management, to build the organisational and management capacity of the community and to explore opportunities for partnerships with the business and NGO sectors. This CPA model raises the following issues:

- *Coerciveness:* The initiative seeks to offset the coercive elements of social security requirements by adapting compliance measures to suit the culture and circumstances of individual Indigenous communities.
- *Financial commitments:* There needs to be a commitment from government beyond Budget 2001's 4-year funding period: a 5-10 year commitment is seen as necessary for the CPA model to make any inroads on the current situation.
- *Interagency involvement:* Ideally the model would be based on the pooling of resources across government agencies providing one incoming financial stream to the community. There should be clarity about the forms of commitment various partners are to make, including to meeting assessable goals and objectives over a set time-frame.
- *Flexibility:* Some of solutions being considered by the Mutitjulu Community will probably be relevant and transferable to other communities participating in the CPA initiative. But it is essential that design of CPAs remains flexible:

Whatever the future level of success of the CPA initiative, Indigenous people should not be restricted to one model as a means of pursuing greater autonomy and control over their affairs. Other initiatives for furthering Indigenous capacity and governance, including those based in native title, should also be encouraged.⁵⁶

- *Ownership:* Governance models must be owned by Indigenous people themselves and the relationship of Indigenous kinship and authority structures to the processes and structures of these models must be taken into account.

... it is important that some of the more fundamental issues concerning the respective roles and authority of Indigenous, government and other partners are re-visited, or in time these new models may run the risk of becoming yet another case of a failed Indigenous policy initiative and a further source of 'blaming the victim'.⁵⁷

⁵⁶ *ibid*, p91.

⁵⁷ *ibid*, p84.

Yenbena Indigenous Training Centre: This initiative is located at Barmah near Echuca in northern Victoria and has been in operation since March 2001. It was established by Yorta Yorta Nation Aboriginal Corporation to provide targeted and culturally appropriate training for Indigenous young people in the area in order to increase employment, community participation and capacity-building outcomes.

The Yorta Yorta Aboriginal community found that Commonwealth programs such as Work for the Dole and CDEP did not provide adequate skilling and mentoring for successful transition from mutual obligation-type activities to employment. The community sought alternative Commonwealth and State funding with a view to tailoring a training program to meet their own needs.

Yenbena is now a registered training provider, and offers courses in response to identified training needs in the local area. All training modules are linked to placements and each employee has a pathway in which future jobs are identified. The program's flexibility enables the Yorta Yorta Aboriginal community to integrate cultural knowledge with training without having to create a separate opportunity. For example, courses (such as communication skills, business administration and community work) are customised to suit the local context and provide culturally-specific training. Elders also play a significant role as trainers and mentors.

Yenbena training arrangements operate on a trust basis, and are underpinned by the community's support for the younger generation's participation and development. 'Breaching' and other forms of compliance are not applied — while the majority of participants have been previously unemployed or are school leavers, none are in receipt of a social security allowance — and the community does not have any plans to develop measures to ensure participation. Fees for participants are currently waived, so youth who are asset- and skills-poor are not financially burdened.

Yorta Yorta's employment and training arrangements are a response to current shortfalls in coordination of Commonwealth and State agencies and services, and the lack of definite employment pathways provided by existing Commonwealth programs. It is also a model that draws consciously on Noel Pearson's philosophy of reciprocity — the Yorta Yorta Aboriginal community are supportive of his articulation of community participation and self-determination — and is geared towards the development of social entrepreneurship and venture philanthropy in the near future.

While this initiative is creative, self-directing and enterprising, it essentially seeks to 'fill the gaps' where the Commonwealth is not providing appropriate funding for programs to meet Indigenous employment needs. The *Social Justice Report 2001* comments:

If welfare reform is to provide greater opportunities for Indigenous participation, then government must take the need for reform of existing funding and administrative arrangements seriously. It must recognise the part the current community services model has played in generating Indigenous welfare dependency and move beyond this to find ways of developing and resourcing Indigenous capacity-building and governance arrangements that will provide an adequate basis for economic development and self-sufficiency. In doing so, it must also take up the challenge of facilitating rather than repressing the recognition of the specific characteristics and aspirations of Indigenous cultures and societies in Australia.⁵⁸

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ibid, p97.

It is yet to become clear as to whether current policy emphases on a broader network of obligations and social partnerships promoted through the McClure Report and the 2001-02 Budget's Welfare Reform Package's Community Participation Agreement Initiative will provide the grounds for equitable and sufficient reform of the current welfare system and employment situation for Indigenous Australians.

Regional authorities: Another approach to progressing Indigenous governance structures with greater exercise over service delivery arrangements is the ATSIC-based concept of regional authorities. A regional authority would have greater powers than an ATSIC Regional Council, such as the authority to negotiate and reach agreements with Government and other funders and service providers, and the ability to undertake functions normally performed by other services providers⁵⁹.

Currently, the Torres Strait Regional Authority is the only regional authority in operation in Australia (although proposals for modelling have also been put forward by the Kimberley Executive and Miwatj Regional Council). It was established as an independent statutory authority in 1994 in response to the findings of the 1993 review of the operation of the ATSIC Act. It includes such features as the capacity to liaise directly with both the Queensland and Commonwealth Governments in developing bilateral agreements on infrastructure, health, housing and education, and to negotiate its budget directly with the Minister.⁶⁰ The TSRA receives block funding directly from both governments, the 'goal being to devolve maximum authority to the Regional Assembly to determine the priorities for the allocation of funds consistent with appropriate Commonwealth or Queensland accountability requirements'.⁶¹

The *Report on greater regional autonomy* notes that ATSIC regional councils received the concept of an authority with 'cautious or qualified support', and that greater support was recorded from 'discrete and remote communities ... [rather] than from those in settled urban and rural centres where communities have often been dispersed'.⁶² It was also 'generally conceded that authorities were more appropriate to those in remote and northern regions, and that ... it was easier to form a regional authority over remote areas where Indigenous peoples formed a majority'.⁶³ An additional consideration here is the better access experienced by those living in settled areas to mainstream services, in comparison to those in remote areas who are often reliant on a patchwork of services. Regional authorities for those in remote and northern areas in particular suggest a means of 'finding the appropriate type of social and infrastructure program to suit people whose distinct culture alienates them from the demands of some institutions in which they are governed'.⁶⁴

A further dimension of authorities that has some appeal is their capacity to provide a vehicle for Indigenous aspirations such as those expressed by the Aboriginal Nations of Central Australia in the Kalkaringi Statement, that is, 'the rights of self-determination and self-government, including recognition of the role of Indigenous

⁵⁹ ATSIC, *Report on greater regional autonomy, op cit*, p14.

⁶⁰ *ibid*, p30.

⁶¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Torres Strait Islanders: a new deal*, AGPS, Canberra, 1997, pp.xvii, xxi.

⁶² ATSIC, *Report on greater regional autonomy, op cit*, p16

⁶³ *ibid*.

⁶⁴ Fletcher, C., 'Aboriginal Regional Australia: the hidden dimension of community governance', Regional Australia Summit paper, Parliament House, Canberra, 27-29 October 1999, p1.

governance structures and the direct Commonwealth funding of Indigenous communities and organisations, and recognition of customary law'.⁶⁵

ATSIC has emphasised that there must be Indigenous ownership of the development of any forms of regional governance or their goal of ensuring Indigenous control and participation in decision-making will be seriously compromised. In part, this is a reaction to earlier suggestions following the 1997/98 *Section 26 review of the Aboriginal and Torres Strait Islander Commission Act 1989* that Regional Councils be converted into a series of independent 'regional authorities', which would amount to a somewhat arbitrary and top-down application of 'autonomy' that does not take the needs and circumstances of specific regions into account. Concerns have also been expressed about the potential for 'top-down', quick-fix solutions for rationalisation of services to override Indigenous aspirations for self-government. The TSRA experience indicates that the establishment of authorities, or other regional structures and approaches for progressing autonomy, will be a lengthy process requiring the committed cooperation of government agencies and departments at all levels as well as national and regional Indigenous organisations.⁶⁶

Implementing greater regional autonomy and Indigenous governance

Flexibility and diversity: Greater regional autonomy and improved governance mechanisms do not necessarily mean the establishment of new structures and authorities. There is also no 'one size fits all' model that will suit the circumstances of all Indigenous people and communities. It is essential that a range of strategies and mechanisms be considered to develop and facilitate improved governance and autonomy.

National representation: Regional governance mechanisms also do not obviate the need for a strong national Indigenous voice such as ATSIC. Indeed, in consultations for the *Report on greater regional autonomy* it was noted that there was 'wide support for the retention of a representative and democratically-elected body at the national level to address government and to coordinate Indigenous advocacy'.⁶⁷

Over-regulation: The tendency for government to over-regulate Indigenous people, by imposing burdensome and inflexible structural arrangements for organization, must also be borne in mind. The *Aboriginal Councils and Associations Act 1976* (Cth), for example, has been described as 'a classic piece of over-regulation'⁶⁸ and there is concern that the prescribed bodies corporate provisions of the *Native Title Act 1993* (Cth) are too elaborate and may create a situation where 'a really free and spontaneous people become people governed by legal regulation'.⁶⁹ Indigenous

⁶⁵ ATSIC, *Report on greater regional autonomy, op cit*, p17.

⁶⁶ See *ibid*, pp22-7.

⁶⁷ *ibid*, p10. The principle of self-determination remains a key element of ATSIC's corporate vision. Cf. ATSIC Corporate Plan 1998-2001: 'We have set ourselves three broad goals over the next three years: to provide an effective voice for our communities, organisations and people: to strengthen our people and organisations; and to protect, promote and pursue our collective rights.' ATSIC, 'ATSIC corporate plan 1998-2001', Commonwealth of Australia, Canberra, http://www.atsic.gov.au/default_ie.asp (30 November 2000).

⁶⁸ Nettheim, G., 'Discussion paper 7: Governance bodies and Australian legislative provision for corporations and councils', *Governance structures for Indigenous Australians on and off native title lands*, University of New South Wales, Sydney, 1999, para 2.14, www.austlii.edu.au/au/special/rsjproject/rsjlibrary/arccrp/dp7.html.

⁶⁹ Burke, P, *Constructing an appropriate legislative framework for PBCs*, Presentation to Governance structures for Indigenous People workshop, Canberra, 31 March 2000, unpublished, p2. See also Mantziaris, C, and Martin, D, *Native title corporations: A legal and anthropological analysis*, Federation Press, Sydney, 2000.

people should design regional governance and autonomy mechanisms that are suitable to their needs and aspirations with government providing the necessary support for such structures.

Effective Indigenous participation: All levels of government should acknowledge that facilitating Indigenous people's efforts to achieve such autonomy and improved Indigenous governance is vital to achieving improvements in Indigenous disadvantage and the recognition of Aboriginal and Torres Strait Islander rights. Government efforts should be focused on negotiating governance arrangements with Indigenous peoples, including through the provision of appropriate support (including technical support to build capacity, long-term funding arrangements and legislative backing).

This is consistent with the key finding of ATSIIC's regional autonomy report, which recommends that there should be 'prioritisation of agreement-making to inform partnerships with Government and other agencies as a means of progressing autonomy from the "bottom up" in preference to further governance structures at this point in time'.⁷⁰ It is also consistent with the recommendations of the Social Justice Package proposals made by CAR, HREOC and ATSIIC in 1995. ATSIIC proposed that the Commonwealth accept 'the concept of regional agreements as a framework for establishing a range of formal relations and settling of outstanding social justice issues on a regional basis'.⁷¹

Social justice principles for the development of a reconciliation framework for addressing Indigenous marginalisation and the creation of effective partnerships

An agreement-making process was recommended in the Council for Reconciliation (CAR)'s documents. In its final report to Parliament,⁷² CAR included a draft bill that forms a framework for the ongoing negotiation of unresolved issues between Indigenous and non-Indigenous people. The objects of the draft legislation include:

- To acknowledge the progress towards reconciliation and establish a process for reporting on the nation's future progress;
- To establish processes to identify and resolve the outstanding issues between Indigenous peoples and the Australian community;
- To initiate a negotiation process to resolve reconciliation issues between Indigenous peoples and the wider community through the Commonwealth government that will result in a Treaty or Agreement.

The underlying assumption of the draft Bill is that reconciliation is an ongoing process in which unresolved issues are squarely raised and processes put in place for their resolution based on the informed consent of both sides. To this end the Council recommended the adoption of framework legislation that includes the negotiation by Indigenous peoples and Government of protocols to underpin negotiations on matters of unfinished business at national, regional and local levels.

⁷⁰ ATSIIC, *Report on greater regional autonomy, op.cit*, p36.

⁷¹ ATSIIC, *Recognition, rights and reform: Report to Government on native title social justice measures*, Canberra, ATSIIC, 1995, p57.

⁷² Council for Aboriginal Reconciliation, *Reconciliation: Australia's challenge: final report of the Council for Aboriginal Reconciliation to the Prime Ministers and the Commonwealth Parliament*, CAR, December 2000, www.reconciliation.org.au/final_report

In its communiqué of November 2000, the Council of Australian Governments (COAG) committed to an approach based on partnerships and shared responsibilities with Indigenous communities, programme flexibility and coordination between government agencies, with a focus on local communities and outcomes⁷³. This approach forms the basis of its reconciliation framework under which relevant Commonwealth/State Ministerial Councils are to develop actions plans for improving social and economic outcomes for Indigenous people. COAG is to take a leading role in implementing this reconciliation framework, periodically reviewing and reporting back to the Prime Minister on progress made.

The communiqué is a significant development to progress reconciliation. It cannot, however, be seen as a total response to the recommendations of CAR or by itself as an adequate response of governments.

The human rights framework put forward by the *Social Justice Report 2000* for achieving meaningful reconciliation⁷⁴ commits governments to acknowledging the necessity for a changed relationship between Indigenous people and the mainstream society, and to long-term processes to redress Indigenous marginalisation.

It identified three key structural areas for this framework to be implemented, namely redressing Indigenous disadvantage and ensuring progressive realisation; strengthening Indigenous governance; and recognising and protecting Indigenous rights in a federal system. The report recommended fourteen recommendations to progress this framework, the features of which were:

- An unqualified national commitment to redressing Indigenous disadvantage through the adoption of a long term strategy which progressively reduces the level of disadvantage and ensures whole of government and cross-governmental coordination;
- The facilitation of adequate, nationally consistent data collection to guide decision making and reporting, with appropriate monitoring and evaluation mechanisms;
- The agreement of benchmarks and targeted outcomes through negotiation with Indigenous peoples and organisations, state, territory and local governments and service delivery organisations, with clear timeframes for achieving longer term and short term goals;
- National leadership to facilitate inter-governmental cooperation and coordination;
- The development of greater partnership approaches to ensure the full and effective participation of Indigenous peoples in the design and delivery of services; and
- The adequate protection of human rights, including through constitutional protection, and negotiations on mechanisms such as agreements and treaties to overcome the structural inequalities caused by the systemic racism and lack of recognition of Indigenous cultures in the past⁷⁵.

⁷³ COAG, Communiqué November 2000, p5. <www.pmc.gov.au/docs/coag031100.cfm> (11 December 2001). This communiqué follows on from COAG's previous national commitment to improved service delivery outcomes for Indigenous people from 1992, as well as from the commitments of governments to the recommendations of the Royal Commission into Aboriginal Deaths in Custody and numerous other reports and inquiries.

⁷⁴ *Social Justice Report 2000*, Chapter 4.

⁷⁵ *Social Justice Report 2000*, pp 130-132, Recommendations 1 - 14.

The recommendations of the *Social Justice Report 2000* complement those of the Council for Aboriginal Reconciliation, and specify the central position that human rights must take for meaningful reconciliation to be achieved. It recommended that the Commonwealth government should enact framework agreement legislation, and that negotiations based on the social justice principles should commence immediately. Adequate resourcing for negotiations should also be provided. The federal government should take the lead in seeking commitments to the protocols from all levels of government through the processes of COAG.

It is appropriate that these two sets of recommendations be examined together in the context of capacity-building especially in light of the federal Government's recent COAG commitments to the development of a regular report against key national indicators of Indigenous disadvantage and a trial of a whole-of-governments cooperative approach in ten Indigenous communities.⁷⁶ Additionally it is recommended that governments continue to investigate and negotiate mechanisms for building greater capacity in Indigenous communities, facilitating greater regional autonomy through improved governance arrangements and recognising the exercise of inherent Indigenous rights.

⁷⁶ The Hon P Ruddock MP, *Reconciliation Council's Report highlights practical approach*, media release, 26 September 2002, p1.