

CHAPTER 2

EVOLUTION OF ATSIC

2.1 This chapter examines the evolution of Indigenous governance in Australia, the role of ATSIC and its successes and failures, both real and perceived.¹

Overview of ATSIC

2.2 The objectives of ATSIC, in the view of the Committee are central to the advancement and protection of the rights and interests of Australia's Indigenous people. As such, they must be retained. According to Section 3 of the *Aboriginal and Torres Strait Islander Commission Act*, these objectives are:

- to ensure maximum participation of Aboriginal and Torres Strait Islander people in government policy formulation and implementation;
- to promote Indigenous self-management and self-sufficiency;
- to further Indigenous economic, social and cultural development, and
- to ensure co-ordination of Commonwealth, state, territory and local government policy affecting Indigenous people.

2.3 In order to achieve these objectives, ATSIC has three key functions or roles:

- it advises governments at all levels on Indigenous issues;
- it advocates the recognition of Indigenous rights on behalf of Indigenous peoples regionally, nationally and internationally; and
- it delivers and monitors some of the Commonwealth Government's Indigenous programs and services.

Structure, role and function of ATSIC

2.4 The Commission was established as a body corporate that must perform its functions, exercise its powers and administer its finances in accordance with the Finance Minister's written directions. Its structure has undergone several changes since its establishment. Prior to the changes introduced 1 July 2004, ATSIC incorporated two separate bodies:

- an elected representative body of office holders elected by ATSI people across the 35 ATSIC Regions. The function of this elected body was to make decisions pertaining to loan and grant applications and the direction of funding to service

1 This history is heavily drawn from 'The end of ATSIC and the future of administration of Indigenous affairs', *Current Issues Brief No. 4 2004-05, 9 August 2004*, Angela Pratt and Scott Bennett; also from 'Make or Break? A Background to the ATSIC Changes and the ATSIC Review', *Current Issues Brief, No. 29 2002-03, 26 May 2003*, Angela Pratt

delivery organisations. The original number of 60 regions was reduced to 36 in changes to the legislation in 1993; these changes included the ability to create of wards within each region. The following year saw the establishment of the Torres Strait Regional Authority (TSRA), when the number of regions reduced to 35.

- the administrative arm of people employed by ATSIC; their function was to implement decisions of the elected body and manage ATSIC programs. In July 2003, this became a separate agency known as Aboriginal and Torres Strait Islander Services (ATSIS); from 1 July 2004, the majority of ATSIS staff were distributed among mainstream agencies.

2.5 Each of the 35 Regions had a Regional Council, consisting of 8-12 councillors who were elected for a three year term; a Chair and Deputy Chair would be elected from among the councillors. The 35 Regions are grouped into 16 ATSIC zones across Australia. Each councillor within a zone could vote for a full-time zone Commissioner; an additional Commissioner was elected from Torres Strait. The ATSIC Chairperson was then elected by the Commissioners, with a new Commissioner elected within the zone from where the Chairperson came, making a total of 18 Commissioners comprising the ATSIC Board. The position of Chairperson was initially on appointment by the Government, until a change to the Act made it an elected position in 1999.

*ATSIC's funding*²

2.6 ATSIC has achieved much since it began operation in 1990. The body has actively promoted the interests of, and been a voice for, Indigenous people. Successive governments have looked to ATSIC for advice and have relied on its representative nature for consultation. ATSIC has, in particular, had carriage of the long-standing and successful CDEP program and has more generally concentrated and nurtured Indigenous-specific expertise and policy development capacity. The body has supported strong, effective regional structures and has worked well with state and territory governments. Most importantly, it has provided a forum for political participation by Indigenous people.

2.7 Much of the criticism which ATSIC has faced has focused on its expenditure of government funds. At the same time, how much funding ATSIC receives – and what it can and cannot do with the money – is one of the central misconceptions surrounding ATSIC. As the peak Indigenous body in the country, ATSIC is often the prime target of jibes such as that 'there's too much money thrown at Indigenous

2 Sections of this paper, particularly those dealing with the history and development of ATSIC, are drawn from *Make or Break? A background to the ATSIC changes and the ATSIC Review*, Angela Pratt, Parliamentary Library, May 2003.

affairs'. As Lowitja O'Donoghue puts it, 'out there in tabloid land, [ATSIC] has become the icon of that mischievous construct "the Aboriginal industry"'.³

2.8 The issue of funding is also the focal point for debate about ATSIC's effectiveness: while it is not the primary service provider in many portfolio areas – including primary health care and education – it is often blamed when not enough is seen to be done in these areas. An editorial in *The Australian* in March 2003, for example, which discussed the 'intensifying health crisis for remote Aboriginal Australians', said that it was ATSIC – and not the Department of Health – that 'has failed these people'. Many of the success stories among the programs for which ATSIC has carried responsibility have received little attention in the mainstream media and the public mind generally. For example, neither the Community Development Employment Projects (CDEP) nor the achievements of the economic development and investment agency, Indigenous Business Australia (IBA), are well known in the public arena. This part of the paper provides a brief overview of ATSIC's funding arrangements and responsibilities as they existed until recently.

ATSIC's budget

2.9 ATSIC received about \$1.1 billion in funding from the Commonwealth Government each year. As the table below shows, the majority of this money – usually around half of ATSIC's total budget – is spent on economic development programs, including CDEP. This is an employment, training, and community-development program that began in 1977, providing work and training opportunities for unemployed Indigenous people in community-based and community-managed activities. In June 2002, there were over 270 Indigenous community organisations and 34 182 Indigenous people participating in CDEP nationally. Participation in CDEP accounts for around twenty-five per cent of Indigenous employment.

2.10 ATSIC's second-biggest area of expenditure – usually around one-third of ATSIC's total budget – is on programs geared towards the improvement of Indigenous peoples' social and physical wellbeing, including the Community Housing and Infrastructure Program (CHIP). This program funds a variety of projects, ranging from the construction and acquisition of appropriate rental housing for Indigenous people, to providing adequate water, power and sewerage supplies to rural and remote Indigenous communities. The services provided with CHIP funding vary depending on the community's location and the mainstream services already available.

2.11 ATSIC's remaining funding – around one-fifth, or twenty per cent of its total budget – is spent on a range of programs. These include programs geared towards the preservation and promotion of Indigenous culture and heritage, and the advancement of Indigenous rights and equity.

Table 2.1: ATSIC Expenditure by Program

3 Lowitja O'Donoghue, 'The Uses and Abuses of Accountability', *ATSIC News*, August 1998, pp. 12-13.

Program	Expenditure (\$000)	% of total expenditure
Economic development (including CDEP)	574 430	50
Improvement of Social and Physical wellbeing (including CHIP)	361 078	32
Advancement of Indigenous Rights and Equity	89 174	8
Promotion of Cultural Authority	66 006	6
Capacity Building and Quality Assurance	11 982	1
Other*	31 616	3

* Includes royalties from mining and development on Aboriginal land under the *Aboriginal Land Rights (NT) Act 1976* administered by ATSIC.

ATSIC and Commonwealth expenditure on Indigenous affairs

2.12 One of the particular misconceptions about ATSIC's funding is that it is responsible for all Commonwealth spending on Indigenous affairs, when this is not, and never really has been, the case. ATSIC has only ever administered around half of the Commonwealth's total identifiable expenditure on Indigenous affairs. The other half – in the order of \$1.3 billion in 2002–03 – is spent through various agencies in other areas, in particular the employment, education and training, social security, and health portfolios. In recent years, ATSIC's share of the total Indigenous funding pie has slightly decreased. This has been interpreted by some commentators as a 'mainstreaming' of Indigenous-specific programs at ATSIC's expense.

2.13 When the Coalition Government came to office in 1996, ATSIC's overall funding was reduced in the 1996 Federal Budget by around 11 per cent. At the same time, large proportions of ATSIC's budget were quarantined by the Government: that is, ATSIC was required to maintain certain levels of expenditure on particular programs (including CDEP and CHIP). At the time, this forced the closure of many of ATSIC's smaller programs, particularly those that had been established in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Women's resource centres were also defunded. What this means is that the proportion of ATSIC's spending that is actually at its own discretion, that is, not predetermined by the Commonwealth Government, is relatively small. The size of ATSIC's

'discretionary' budget as a proportion of total identifiable Commonwealth Indigenous affairs expenditure is smaller still, as Figures 1 and 2 demonstrate.

Figure 2.1: Total ATSIC expenditure

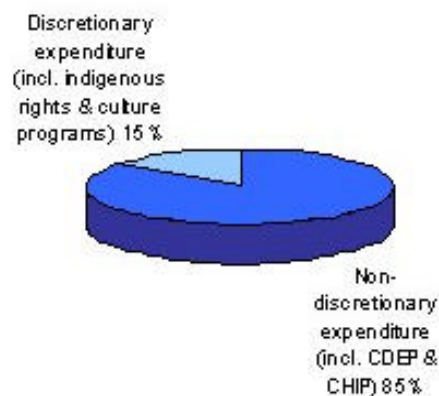
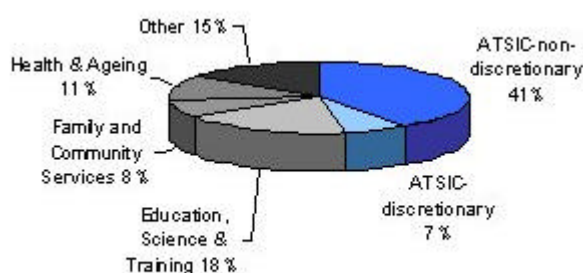


Figure 2.2: Total identifiable Commonwealth expenditure on Indigenous programs



Accountability

2.14 ATSIC is the only Commonwealth statutory authority or department that has its own internal audit office. Another organisation which operates under the ATSIC Act – the Registrar of Aboriginal Corporations – monitors funds distributed by ATSIC to Aboriginal corporations. Furthermore, ATSIC is also accountable to the Parliament by means of the tabling of a formal annual report.

Torres Strait Islander Regional Authority

2.15 In 1994, the Torres Strait Regional Authority (TSRA) was formed to give Indigenous people in the region increased control of their affairs, especially when it came to accessing and administering Indigenous program funds.

2.16 The TSRA is an independent agency within the portfolio for Indigenous Affairs and reports directly to the Commonwealth Minister. Prior to its establishment, Indigenous funds for the Torres Strait were handled by ATSIC. This agency is to be retained under the legislation before the Parliament.

2.17 Although the TSRA is a separate agency from ATSIC and the new Aboriginal and Torres Strait Islander Services (ATSIS), it still operates within the provisions of the *ATSIC Act 1989*.

2.18 TSRA aims to improve the lifestyle and well-being of Torres Strait Islander and Aboriginal people of the region, empowering them to determine their affairs based on their own culture.

2.19 The Authority consists of an elected arm and an administrative arm. The elected arm comprises twenty elected representatives, who then elect a Chairperson, a Deputy and an Alternate Deputy Chairperson. A Commissioner is also elected, who becomes Chairperson of the TSRA Board and then represents TSRA on the ATSIC Board.

2.20 The administrative arm consists of about 40 Commonwealth Public Service staff. All government grants and business loans are also managed by the administrative arm.

ATSIC history and development

2.21 After the 1967 referendum, the Commonwealth Government took over from the states some responsibility for policy-making in Aboriginal affairs. There were some developments in Aboriginal affairs under the Coalition Government – including the establishment of an advisory Council for Aboriginal Affairs (CAA), headed by Dr H. C. 'Nugget' Coombs, and the creation of a small Office of Aboriginal Affairs (OAA) within the Department of the Prime Minister. However, it was the election of the Whitlam Labor Government in December 1972 that heralded a more significant level of Commonwealth activity in the portfolio.

The Department of Aboriginal Affairs and the policy of 'self-determination'

2.22 The Department of Aboriginal Affairs (DAA) was established by the Whitlam Government in 1973 to exercise a coordinating role in the development of national policies for Aboriginal people. The DAA remained the central Commonwealth agency with responsibility for the Aboriginal affairs administration and programs until ATSIC commenced operations in March 1990.

2.23 The establishment of the DAA in 1973 was accompanied by the introduction of the policy of 'self-determination' as the underlying principle guiding the Government's approach to policy-making in Aboriginal affairs policy. This was the idea that Aboriginal people should be involved in the management of their own affairs. This concept has been pursued by Commonwealth Governments ever since, albeit that different governments have had different ideas about what 'Indigenous involvement in the management of their own affairs' meant in practice.

The NACC, NAC and the ADC

2.24 While the DAA was the central agency in Aboriginal affairs at the Commonwealth level, the policies of self-determination and self-management led to what academic Dr Will Sanders describes as two 'early experiments in the creation of government-sponsored Aboriginal representative structures'.⁴ These were the National Aboriginal Consultative Committee (NACC), and its successor, the National Aboriginal Conference (NAC).

2.25 Established early in 1973, the NACC remained primarily an advisory body to the Minister, despite some pressure to give it some degree of executive power. The NACC was an elected assembly of 40 Aboriginal and Torres Strait Islander people, representing some 800 Aboriginal communities from 41 electorates.

2.26 Following a review of the NACC after the Fraser Government was elected in 1975, it was replaced by the NAC in 1977. The review had found that the NACC had not been an effective mechanism for providing advice to the Minister, or for consulting with Aboriginal people.⁵ The main difference between the two organisations was in their structure; the new NAC representatives were elected to state branches, from which a ten-member national executive was subsequently elected. The NAC took on a high profile role as advocate of Indigenous political rights.

2.27 In 1980, the Aboriginal Development Commission (ADC) was formed, a statutory authority run by a board of ten part-time Aboriginal commissioners, who were appointed by the Government, with Charles Perkins as its first Chairperson. The ADC's role was to manage a limited range of development-oriented Aboriginal affairs programs, including the administration of loans and grants for Indigenous housing and business enterprises.

2.28 Concerns arose within Aboriginal communities that members of the NAC were not always seen as being well-connected to their constituent communities.⁶ In response to these concerns, the Labor platform in the 1983 election included a commitment to restructuring the NAC 'in order to increase its effectiveness'.⁷ The subsequent report, tabled in the Parliament in February 1985 by former CAA Chair H. C. Dr Coombs, was highly critical of the NAC's structure and recommended radical changes. Coombs had found that the NAC was 'not a significant instrument of

4 Dr Will Sanders, 'Reconciling Public Accountability and Aboriginal Self-Determination/Self/Management: Is ATSIC Succeeding?', *Australian Journal of Public Administration*, vol. 53, no. 4, December 1994, p. 487.

5 Department of Aboriginal Affairs, *The Role of the National Aboriginal Consultative Committee – Report of the Committee of Inquiry*, AGPS, 1976, p. viii.

6 T. Rowse, *Obligated to be Difficult: Nugget Coombs' Legacy in Indigenous Affairs*, Cambridge University Press, Melbourne, 2000, p. 185.

7 Sen. the Hon. Susan Ryan, 'Summary of the ALP's Election Commitments to Aboriginal Affairs', 10 February 1983, Parliamentary Library Collection.

Aboriginal political influence and power',⁸ and recommended a major restructure of the body.

2.29 Shortly after the review's publication, an audit of NAC's operations revealed serious deficiencies in its financial administration. As a result, Mr Clyde Holding, Minister for Aboriginal Affairs, announced in April 1985 that the NAC would be terminated and, following consultations with Aboriginal community groups and organisations, a new organisation would be established that would be 'more closely based on Aboriginal community aspirations'⁹.

2.30 In 1987, the Hawke Government announced its intention to establish an Aboriginal and Torres Strait Islander Commission, preceded by an extensive consultation process. The creation of ATSIC would combine the regional and national councils of elected Aboriginal people, with the program administration roles of the DAA and ADC.¹⁰ As such it would 'allay the criticism that decision-making power over Aboriginal affairs had never been fully given to Aborigines'¹¹ – a bold reform in Aboriginal affairs. By incorporating the consultation process, it was hoped that the new commission would receive 'positive endorsement from the Aboriginal and Islander people of Australia'.¹²

2.31 It is important to note that during the period 1972-1990, there was almost always an *elected* national Indigenous body providing advice to government, with the exception of the period between the NAC's disbandment and the creation of ATSIC.

The lead-up to ATSIC's establishment

2.32 The Hawke Government's intention to establish ATSIC was formally announced in December 1987 in a speech to the Parliament entitled 'Foundations for the Future', by the Minister for Aboriginal Affairs, Gerry Hand.¹³

The consultation process

2.33 In the first half of 1988, Gerry Hand and Charles Perkins conducted an extensive round of consultations with Aboriginal people and organisations around the

8 H. C. Coombs, *The Role of the National Aboriginal Conference: Report to the Hon. Clyde Holding, Minister for Aboriginal Affairs*, Department of Aboriginal Affairs, 1984, p. 14.

9 The Hon. A. C. Holding, 'Ministerial Statement: National Aboriginal Conference', House of Representatives, *Hansard*, 17 April 1985, p. 1266.

10 *ibid.*

11 W. Sanders, *op. cit.*, p. 475.

12 The Hon. G. L. Hand, 'Speech: Foundations for the Future', House of Representatives, *Hansard*, 10 December 1985, p. 3152.

13 The Hon. G. L. Hand, 'Speech: Foundations for the Future', House of Representatives, *Hansard*, 10 December 1985, p. 3152.

country. According to the account of the consultations Mr Hand gave to the Parliament:

- in January 1988, more than 21,000 copies of the Foundations of the Future statement, and 1000 copies of a video were distributed to more than 1000 separate Aboriginal and Torres Strait Islander organisations and communities throughout Australia
- over 500 preliminary meetings involving some 14 500 people were held
- Gerry Hand himself visited and spoke with around 6 000 Aboriginal and Torres Strait Islander representatives
- an options paper was prepared which identified a range of alternative proposals based on suggestions and recommendations received as a consequence of Mr Hand's consultations
- the options paper was widely circulated and was discussed at another round of meetings with several thousand Indigenous people.¹⁴

2.34 Following the consultations, Gerry Hand drafted legislation, which he introduced into the Parliament on 24 August 1988. He would later describe the ATSIC consultations as the most extensive ever undertaken on a single piece of legislation in the Australian Parliament's history.¹⁵

Debates around public accountability

2.35 During the consultation process, the ADC's Aboriginal commissioners strongly stated their opposition to the ATSIC proposal; shortly afterwards, eight of the ten ADC Commissioners were dismissed, presumably due to their opposition.

2.36 The Coalition and the Democrats combined in the Senate to establish a Select Committee inquiry into the ATSIC proposal and the ADC dismissals. Subsequently, the passage of the ATSIC legislation was delayed until after the Committee was due to report in early 1989.

2.37 Around the same time, the existing administration of Aboriginal affairs came under close scrutiny, both in the Parliament and from several external reviews and inquiries, which all focussed on public accountability and financial transparency. The Government accepted the overwhelming majority of more than 40 recommendations made by the Select Committee Report. When the revised legislation was introduced into the Parliament in May 1989, it contained a series of measures aimed at ensuring that there would be rigorous processes of public accountability in the new commission.

14 The Hon. G. L. Hand, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1988: Second Reading', House of Representatives, *Hansard*, 24 August 1988, p. 251.

15 The Hon. G. L. Hand, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1989: Second Reading', House of Representatives, *Hansard*, 4 May 1989, p. 1994.

The passage of the ATSIC legislation – November 1989

2.38 In addition to the enhanced accountability measures included when the revised ATSIC legislation was introduced into the Parliament in May 1989, over 90 amendments were made in the following six months. At that time the ATSIC Bill was the second-most amended piece of legislation to have passed through the Parliament since Federation.

2.39 The *Aboriginal and Torres Strait Islander Commission Act 1989* was eventually passed by the Parliament on 2 November 1989, almost two years after Minister Hand had first outlined Labor's ATSIC proposal in December 1987.

Ongoing changes to ATSIC

2.40 As a result of persistent criticism, ATSIC underwent several major changes during its life. When she was ATSIC Chairperson, Lowitja O'Donoghue, argued that since its establishment, the Commission had been forced to operate within a 'climate of criticism'. However, she also recognised that ATSIC should not be immune from scrutiny – 'it is after all a government-funded organisation and therefore publicly accountable' – but she did suggest that 'ignorance, resentment and impatience' were often factors in the attacks to which ATSIC was routinely subjected.¹⁶

Establishment of Aboriginal and Torres Strait Islander Services (ATSIS)

2.41 To address these issues, on 17 April 2003, the then Minister for Indigenous Affairs, the Hon. Philip Ruddock, announced the establishment of a new executive agency, Aboriginal and Torres Strait Islander Services (ATSIS), to administer ATSIC's programs and make individual decisions about grants and other funding to Indigenous organisations from 1 July 2003.

2.42 Minister Ruddock emphasised at the time of the announcement that the establishment of ATSIS did not represent a move towards 'mainstreaming' of ATSIC programs; he stated that the aim of the creation of ATSIS was merely to formally separate the role of policy development and decision-making from the task of implementation.¹⁷ With hindsight, these assurances on the part of Minister Ruddock can only be regarded with scepticism: it is clear that the Government already had access to external advice, if not internal advice, to the effect that 'separatism' in Indigenous policy implementation should be replaced by a new 'assimilationist' agenda.¹⁸ Mr Ruddock, in providing the assurances that he gave voice to on the creation of ATSIS, was at best being disingenuous.

16 ATSIC, *Annual Report, 1993-94*, p. 27.

17 The Hon. Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, 'Good Governance and Conflicts of Interest in ATSIC', *Media Release*, 17 April 2003.

18 See, for example, Gary Johns, "Aboriginal Separatism has Failed – so Let's Stop Funding it", *The Australian*, 20 June 2003, subsequently published by the Bennelong Society.

2.43 Effectively, the changes were more than merely administrative: they meant that ATSIC's elected arm no longer had direct control over the Commission's budget. The removal of the control of funding from ATSIC's elected arm, and the 'separation of powers' justification for it, was welcomed in some quarters. Other people, however, have interpreted them as a move backwards. Democrat Senator Aden Ridgeway, for example, described the changes as a 'retrograde step' which disenfranchises the ATSIC Board, and which 'takes Indigenous affairs back to a model similar to the old National Aboriginal Conference model from the 1970s'.¹⁹

2.44 It is a matter of concern, too, that the separation of powers occurred prior to the outcome of the ATSIC Review being known. This occurred despite Minister Ruddock's being in possession of advice that the manner in which he had acted might be subject to questions as to its legality. Further, the existing CEO of ATSIC became also the CEO of the new agency – thus placing that individual in the invidious position of a structural conflict of interest, when it was the very matter of potential conflict of interest on the part of ATSIC Board members that was used by the Minister to justify the separation.

Reviews of Indigenous affairs

2.45 In examining the role of ATSIC as well as making judgements on the administration of Indigenous affairs more generally, the Committee is strongly aware that this is a subject that has long been the focus of public concern and debate, and associated government scrutiny.

2.46 This section summarises the findings and methodology of a number of the key reviews of Aboriginal affairs occurring in both the lead to, and after, the establishment of ATSIC.

Senate Select Committee on the Administration of Aboriginal Affairs

2.47 A Senate Committee was formed on 1 June 1988 to inquire into the proposal to establish ATSIC, as well as the process of consultation which led to the drafting of the Bill, the alternative proposal from the Aboriginal Development Corporation, and the treatment of the ADC and its Commissioners by the Government.

2.48 The Committee recommended that ATSIC be established, but proposed substantial amendments to the enabling legislation. In all, forty Recommendations were made by the majority of the Committee, most of which were geared towards strengthening the commission's accountability mechanisms. In particular, these included findings in relation to conflicts of interest, documentation and justification of proposed expenditures, scrutiny of relevant electoral boundaries for Commission elections, and the composition and election of Regional Councils. The Committee also

19 'ATSIC Split Labelled a "Backward Step"', *ABC Online*, 15 May 2003.

recommended enhanced consultation by relevant Ministers in the appointment of the ATSIC CEO.

2.49 The Government accepted the overwhelming majority of these recommendations and incorporated them into the revised legislation. It also included in the legislation a provision for the establishment of an Office of Evaluation and Audit within ATSIC, to conduct regular audits and evaluations of ATSIC's operations, and to report at least quarterly to the ATSIC Board and the Minister.

Special audit reports

2.50 One of the Howard Government's first actions in Aboriginal affairs upon coming to government was the appointment of a special auditor to examine accountability within ATSIC (and TSRA) funded organisations to determine whether the organisations were 'fit and proper' bodies to receive public funds. This was ostensibly in response to community concern about an apparent 'haemorrhaging of public funds'. The audit, conducted by accounting firm KPMG, found that 95 per cent of the 1122 organisations reviewed were cleared for further funding, while 60 organisations (five per cent) were not.

2.51 Lowitja O'Donoghue points out that the audit 'uncovered no instances of fraud, but it did discover a system of grant administration that was so detailed as to make breaches of grant conditions almost inevitable'. The report recommended training for administrators of Aboriginal organisations – for example, in financial management expertise – but noted that budget cuts imposed on ATSIC in the 1996–1997 Commonwealth budget had resulted in the termination of the Community Training Program, significantly reducing 'the capacity of ATSIC to fund management training in organisations'.

ATSIC Internal Reviews

2.52 Section 26 of the *ATSIC Act 1989* enables the Commission to review areas of the operation of the Act and report to the Minister; this report may include suggestions for amendments to the Act.

1993

2.53 In 1993, a review was conducted by the ATSIC Board under Section 26 of the Act. The resultant report²⁰ made several recommendations, including that the Act be amended to remove the power of the Minister to appoint the ATSIC Chairperson, who should instead be elected by Aboriginal and Torres Strait Islander people. The report stated:

The Commission recommends that the Act be amended to:

20 Report to the Minister for Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia 1993.

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- a. repeal the provisions of section 27 which enable the Minister to select and appoint the Chairperson and two non-elected Commissioners;
 - b. require the Minister to appoint the Commissioner elected by Commissioners as Chairperson; and
 - c. provide for the election of a replacement Commissioner for the zone which the Chairperson represents²¹

2.54 This arrangement, it was argued, was more in line with the principle of 'self-determination' on which ATSIC was based. This suggested amendment did not take effect until 1999, when Geoff Clark became the first elected Chairperson.

2.55 This change emphasised the dual system of accountability within which ATSIC has struggled to operate effectively – accountability to their Indigenous constituents by virtue of their election, and accountability to the Parliament through the Minister for Aboriginal Affairs.

1998

2.56 In April 1997, the ATSIC Board commissioned another review, published in February 1998. The review's terms of reference took into account the major changes that had occurred since the previous review. These included the change of government and the Mabo and Wik High Court decisions; the terms also enabled the consideration of any aspect of the Act relating to the Commission and the Regional Councils.

2.57 A steering committee was established to oversight the conduct of the inquiry. The steering committee advertised the inquiry widely in national, regional and Indigenous media, while also writing to Aboriginal and Torres Strait Islander organisations and communities, state and territory governments and relevant Commonwealth agencies; this was to ensure there was ample opportunity for both Indigenous and non-Indigenous input. A discussion paper was prepared and its availability advertised nationally; it was circulated to all those originally contacted, in addition to all Senators and Members of the Federal Parliament, and any interested persons.

2.58 A 'Consultation Kit' was developed to assist Indigenous communities to prepare for and arrange meetings for discussing the review. A program of consultations with the Indigenous community was organised with steering committee members attending such meetings in each state and in the Northern Territory, culminating in a focus group of Indigenous leaders in January 1998.

2.59 The final report contained 38 recommendations. These included a number of substantive changes to the Act to improve its operation and better address the needs of

21 Report to the Minister for Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia 1993, p. 14.

Indigenous people; it also proposed technical changes to address legal and administrative problems

2.60 There was note of the high levels of concern in the Indigenous community following the cuts to funding; recommendations also called for the need for high standards of accountability and transparency to underpin the directing of funding for programs benefiting Indigenous people. Recommendation 11 stated that the '...Board and the Regional Councils should continue to be involved in decision-making for the funding of individual projects.'; while Recommendation 26 asked for a review of the financial provisions of the Act ... to identify how to streamline and simplify the budget process to provide for greater flexibility without detriment to desirable standards of accountability.'

2.61 Other recommendations referred to the need for flexibility to accommodate the diversity of Indigenous communities and that urgent consideration be given to simplifying the Act.

The ATSIC Review – 2003

2.62 A broader review into ATSIC's roles and functions was commissioned by Minister Ruddock in November 2002 and reported in November 2003. The review panel – John Hannaford, Jackie Huggins, and Bob Collins – was asked to 'examine and make recommendations to government on how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programmes to assist them'. In doing so, the panel was asked to look at the current roles and functions of ATSIC, including its roles in providing:

- advocacy and representation of the views of Aboriginal and Torres Strait Islander people
- programmes and services to Aboriginal and Torres Strait Islander people, and
- advice on implementation of legislation

2.63 In particular, the Minister asked the review panel to consider the 'appropriate role for Regional Councils in ensuring the delivery of appropriate government programmes and services to Indigenous people'.

2.64 The ATSIC Board stated that it saw this review as an opportunity to improve service delivery to Indigenous people, balancing this role with the Commission's fundamental responsibility to progress the recognition of inherent Indigenous rights.

2.65 The panel undertook two major rounds of public consultation; the first was to assist in the development of a Public Discussion Paper in June 2003 and the second dealt with issues and options identified in that paper. Advertisements calling for submissions and participation were placed in national, Indigenous and regional newspapers. In addition, a 'consultation hotline' was created and about 8000 copies of the Discussion Paper were mailed out. A website carried the Discussion Paper,

submissions received and a feedback mechanism. The panel met with all 35 Regional Councils, the ATSIC Board, the Women's Advisory Committee, the Torres Strait Islander Authority and the Torres Strait Islander Advisory Board. More than 100 submissions were received during Stage 2 of the consultation process, during which 44 meetings were held across the nation, the majority of them in regional and rural areas.

2.66 The discussion paper outlined four possible models for the reform of ATSIC:

- The status quo or 'parliamentary' model makes permanent the separation of policy development from budget control introduced by the establishment of ATSI. ATSIC's roles and responsibilities would be more clearly defined;
- The Regional Authority model replaces the existing ATSIC Regional Councils with a smaller number of Regional Authorities, which would be responsible for preparing regional plans, determining criteria for funding decisions, and reporting on outcomes;
- The Regional Council model retains the existing Regional Council structure, incorporating the same roles and responsibilities for the elected arm as the Regional Authority model;
- The devolution model would devolve responsibility for Indigenous-specific programs to Commonwealth and state/territory departments and agencies. ATSIC would become primarily focused on policy development.

2.67 In the final report, two over-arching recommendations were identified:

- that the existing objects of the Act be retained;
- that ATSIC remain the primary vehicle to represent the Aboriginal and Torres Strait Islander people ... and be an agent for positive change in the development of policies and programs to advance the interests of Indigenous Australians.

2.68 These were among sixty-seven recommendations throughout the report.

2.69 The report examined these four options for a new ATSIC and reiterated that there was no perfect model. However, it recommended that the preferred future for ATSIC was as a 'single organisation with a legislated delineation of roles between the elected arm and the administrative arm.' While the panel considered the abolition of ATSIC with its activities being devolved to mainstream agencies, it did not support this option. This is discussed in depth in Chapter 5.

2.70 Comment was made on the need to accommodate in future for the establishment of autonomous regional governance structures that would allow communities more direct dealing with governments and relevant agencies.

2.71 The Committee emphasises that it is imperative that effective regional representative structures be retained. A recommendation for the extension of the proposed life of the ATSIC regional structures is made later in this report. This

extension would facilitate the establishment of sound regional structures that are supported by Indigenous people.

Report on capacity building in Indigenous communities

2.72 On 19 July 2002, the (then) Minister for Immigration and Multicultural and Indigenous Affairs referred to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs terms of reference for an inquiry into capacity building in Indigenous communities. Eighty written submissions were received, and public hearings were held in each state and territory except Tasmania. The Committee reported in June 2004.

2.73 Key themes which dominated the report included:

- The need for greater coordination and integration of service provision;
- The need for improved governance within Indigenous communities and organisations;
- The need for greater individual empowerment in order that Indigenous people may play a key role in achieving a better outcome for themselves;
- An underlying problem of geographical isolation.

2.74 Key recommendations of the Committee included:

- The need for uniform data collection arrangements between Commonwealth and state/territory jurisdictions;
- The entrenchment of, and regular reporting on, COAG Trials;
- Further clarification of service delivery roles and responsibilities;
- Investigation of the extent to which new and existing community development courses could prove useful;
- Shifting the emphasis in service provision to regional and location-specific areas;
- Integrating capacity-building into the design of services provided to Indigenous people;
- The investigation of pooled funding models for community development and service provision;
- Appropriate consideration for locally-based contractors in the provision of services;
- Further cross-cultural skills development within agency staff ranks;

-
- Better design and utilisation of benchmarking for services;
 - Investigating the development of a governance training and mentoring component into the provision of Indigenous services funding, with a view to establishing a register of suitable workers for Indigenous communities;
 - That the Partnerships Against Domestic Violence Program be tasked to produce a report into Indigenous Domestic Violence.

ATSI Social Justice Commissioner Social Justice Report

2.75 The Aboriginal and Torres Strait Islander Social Justice Commissioner published the fifth *Social Justice Report 2003*, (Report No. 2/2004) which contained recommendations in four relevant areas.

Data Collection

2.76 The 2000 Social Justice Report again identified limitations in data collection as a critical problem, which reflects the findings of the Productivity Commission's *Overcoming Indigenous Disadvantage Report 2003*, (see discussions chapter 5) which also noted the availability of adequate and regular data as a critical issue for the reporting framework. The first recommendation requests that the ABS provide COAG with actions necessary to improve Indigenous data collection.

Ministerial Council Action Plans

2.77 Recommendations two to five concern the Commonwealth/State Ministerial Council Action Plans to address Indigenous disadvantage. The recommendations include that the plans contain benchmarks and timeframes to ensure they are able to meet short, medium and long term objectives. It was recommended that, through the Regional Councils, ATSIC examine the plans and advise the Federal Government of whether they endorse the plans. The plans should also be made publicly available and COAG should annually report on progress made to meeting the benchmarks.

COAG Trials

2.78 Recommendations six to nine looked at the COAG whole of government community trials. It was recommended that the Government commit to the existence of the Indigenous Communities Coordination Taskforce for the duration of the trials, increasing its funding for the taskforce staffing commitments. COAG was requested to fund an independent monitoring and evaluation process for the trials, and request the Productivity Commission to provide advice on the alignment of local-level benchmarks and outcomes with COAG's national framework.

Capacity Building and Governance Reform

2.79 Recommendations ten to twelve dealt with these issues. They recommended that, as a central component of its Reconciliation Framework, COAG adopt ATSIC's integrated framework on capacity building and sustainable development. It was

suggested that COAG provide funding for research into best-practice models for capacity building and governance reform, based on overseas models and building on existing Australian research in this area. It was also recommended that the Government treat as high priority the reform of the *Aboriginal Councils and Associations Act 1976*, ensuring there is extensive consultation with Indigenous people. Any proposed changes to the legislation should be in accordance with the recommendations of the 2002 review of that Act, recognising the need for special regulatory assistance for Indigenous organisations.

ATSIC's performance

2.80 The abolition of ATSIC, together with the consequential changes, are predicated on the assertion that ATSIC has been 'a failed experiment'.²² This assertion, contained in the Minister's second reading speech to the Parliament on the introduction of the legislation to abolish ATSIC, is nowhere explained or supported by evidence. Clearly, a realistic assessment of ATSIC requires a more complicated approach, with a range of positive, and possibly negative, considerations contributing to a final judgement. This report has already expressly noted major achievements and strengths of ATSIC over the last 15 years.

2.81 Many of the achievements and perceived weaknesses of ATSIC were discussed in considerable detail by the ATSIC Review team in their report *In the hands of the regions – a new ATSIC*, summarised above, and will not be repeated in detail here. However some general examination of these problems is necessary.

Weaknesses of ATSIC

2.82 Arguably, ATSIC's weaknesses can be grouped into two central issues associated with structural problems, and failure to deliver results.

Structural problems

2.83 First, there is a view that ATSIC was hamstrung from the beginning by an unworkable legislation that created ultimately destructive structural conflicts. As the submission from UTS argues: 'The flaws are directly linked to the legislative framework in which it was structured ...'²³. The submission explained that in order to fulfil its legislated responsibility and to monitor the effectiveness of agencies, ATSIC 'required the active cooperation and involvement of Commonwealth agencies and state and territory governments', supported by 'executive authority from the Department of Prime Minister and Cabinet'²⁴, adding that:

22 To paraphrase the Second Reading Speech: '... we have no intention of repeating the failed ATSIC experiment'. See also transcript of Press Conference with the Prime Minister and Minister Vanstone, Parliament House, 15 April 2004.

23 University of Technology Sydney, *Submission* 191, p. 12.

24 *ibid*, pp. 8-9.

This executive authority was never given to ATSIC and the activities of Prime Minister and Cabinet were often contrary to ATSIC's stated policies and intentions. ... A pertinent point that needs to be made is that the executive authority needed in the Indigenous area has only just been granted now that ATSIC has been effectively removed.²⁵

2.84 UTS explained that although the State Advisory Committees (SACs)²⁶ were established in response to this problem, these bodies were also not legislated within the Act.

Therefore, individual State and Territory Governments do not treat each State Advisory Committee with the requisite legitimacy and respect. ... The failure to impose a structure that can act as the state representatives of Aboriginal and Torres Strait Islander peoples has broken a critical link in ATSIC's advocacy role.²⁷

2.85 This comment is extremely pertinent to the chapter four discussions on how representative structures under the new arrangements would be legally recognised. Given that the Government failed to provide the Committee with any assurance that there was a mechanism in place to do so once the current Regional Councils are abolished, the Committee is concerned that without this mechanism, the problem outlined by UTS will be perpetuated.

2.86 UTS reiterated that the above issues were purely legislative limitations, stating:

These could have been fixed to strengthen the governance structure enshrined within the ATSIC legislation rather than simply abolishing it [ATSIC].²⁸

2.87 A central problem is the inherent tension between on the one hand, ATSIC's role as a representative organisation, lobbying government on behalf of its Indigenous electorate, and on the other, its role as a public service agency responsible for the delivery of programs. This problem was identified by the Government as a key justification for the abolition of ATSIC.²⁹

25 *ibid*, p. 9.

26 'SACs generally comprise all Commissioners and Regional Council Chairpersons within a State/Territory. Though they have no legislative basis, they have been an expedient [vehicle] to consider State-wide policy issues and projects; negotiate with State/Territory governments; and pursue State/Territory-based strategic alliances. In some states these committees have consolidated into significant lobby groups.' See *ATSIC Annual Report 2002-2003*, Commonwealth of Australia 2003, p. 25.

27 University of Technology Sydney, *Submission* 191, p. 9.

28 *ibid*, p. 11.

29 Second Reading speech (40th Parliament) p. 2.

2.88 At the time of its establishment, this characteristic was considered by many to be one of ATSIC's main strengths. It was anticipated that this combination would enable true Indigenous power and participation in Indigenous affairs decision-making. However, the problems inherent in this approach were recognised in the report of the Senate Select Committee on the Administration of Aboriginal Affairs in 1989. The majority reported that it:

Considers that the Commissioners of ATSIC will have a difficult and at times ambiguous role in seeking to reconcile their representative and executive responsibilities. It is not difficult to envisage circumstances in which the Commissioners, as representatives of the Aboriginal and Torres Strait Islander communities, might find themselves in conflict with Minister or in disagreement with government policy.³⁰

2.89 As predicted, this structure led to the persistent potential for tension between the amalgamated roles of advocacy and service delivery. As the UTS submission notes, ATSIC's advocacy in favour of native title reform and its pursuit of a national treaty are examples of this. Similarly, ATSIC found itself in conflict with the Government through its funding role for the Native Title Representative Bodies to litigate native title claims in matters where the Federal Government is a party.³¹

2.90 These conflicts were probably the major reason for the establishment of the Office of Indigenous and Torres Strait Islander Affairs (OATSIA) in the Department of Immigration, Multiculturalism and Indigenous Affairs, in order to provide the Minister with a separate source of advice.

2.91 Professor Behrendt and her colleagues at UTS also point to the failure of the ATSIC Act to define the relationship between the ATSIC Board, the Minister and the CEO:

Before the split in the agency resulting in the creation of ATSIIS and the appointment of a separate CEO, the CEO of ATSIC was answerable to and directed by the Board of Commissioners. However, the CEO of ATSIC is also responsible to the Minister ... The agenda of [the] Board and the Minister could be very different creating difficulties in governance.³²

2.92 Dr Shergold, as Secretary to the Department of the Prime Minister and Cabinet, and a former CEO of ATSIC for three and a half years, acknowledged these problems. Dr Shergold told the Committee that 'it was very difficult to hold together in the long term', but that the turning point was :

...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

30 Paragraph 2.18.

31 UTS, *Submission* 191, p. 3.

32 UTS, *Submission* 191, p. 9.

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.³³

2.93 Michele Ivanitz and Ken McPhail discussed the issues raised by the unique structure of ATSIC, commenting that it had been the 'basis of some fundamental problems for ATSIC ...':

While this structure may be innovative in that it attempts to combine both representative and executive responsibilities and functions, ATSIC's role is problematic as principles of representative democracy, group autonomy and ministerial responsibility conflict. The representative arm is accountable to the Minister and the Aboriginal communities, however, the administrative arm is accountable to the Government. We contend that the structure of ATSIC with its conflicting systems of accountability, not only means that it will struggle to achieve its stated aims of Aboriginal empowerment but may actually be pushing it perilously close to a crisis of legitimacy.³⁴

2.94 A second structural problem derives from the inevitable difficulties inherent in trying to create an organisation that has to straddle two radically different cultures. ATSIC was attempting to impose a western style governance structure within Indigenous cultural boundaries; as such it 'cannot achieve complete representation of all cultural groups.'³⁵ Consequently, ATSIC has not lived up to even the expectations of the Indigenous peoples it represents:

A fundamental dilemma inherent in ATSIC is that is a western political and administrative model alien to Indigenous family/clan/community structures. National, State and Territory and even some regional structures cut across a cultural view that 'you can only talk for your own country.'³⁶

2.95 One Review submission with this viewpoint was from the South West Aboriginal Land and Sea Council, WA, who stated:

The selection process itself is modelled on the Westminster system and does not take into account traditional methods of selecting leadership or spokespeople from within the community. In addition, the people elected through the ATSIC system are not necessarily the same people from within a community who have the traditional authority to represent the area. This imposed and artificial structuring of a leadership model creates a conflict

33 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 29.

34 Michele Ivanitz and Ken McPhail, 'ATSIC: Autonomy or Accountability?', in Ian Holland and Jenny Fleming (eds), *Government Reformed: Values and New Political Institutions*, Aldershot, 2003, p. 193.

35 In the Hands of the Regions – A New ATSIC; Report of the review of the Aboriginal and Torres Strait Islander Commission, Commonwealth of Australia, November 2003, p. 29.

36 *ibid*, p. 31.

with the traditional authority mechanisms within a geographic region. In this way, the authority of the ATSIC representative arm is often questioned.³⁷

2.96 This factor may go some way towards explaining the low voter turnout for ATSIC elections – a factor noted by the Government in their rationale for abolishing ATSIC. Thus, while the elections cost between \$7 – \$9 million to run, 'the proportion of eligible voters participating in the 2002 election dropped to a record low (1 in 5).'³⁸

2.97 However, the significance of these statistics needs to be tempered by recognition that voting is not compulsory. Further, as Professor Behrendt and colleagues point out, voter participation rates vary enormously across the different ATSIC regions:

[V]oter turnout was highest in the areas of Western Australia, Northern Territory and Queensland. These are the areas where there are higher proportions of communities who would see the difference ATSIC makes at the ground level.³⁹

2.98 Finally, ATSIC's effectiveness was hampered by the fact that while it was intended to act as a national body to 'ensure co-ordination of policies affecting Aboriginal persons and Torres Strait Islanders',⁴⁰ it has no structural connection into the state, territory and local governments that are responsible for delivering many of the services that are most crucial to Indigenous communities.

2.99 In the Second Reading speech to the ATSIC Amendment Bill, the Minister stated:

The ATSIC experiment failed on a number of fronts. Its focus was almost exclusively on Australian Government programmes and services. The fundamentally important role of state and territory governments was neglected.

2.100 The South West Aboriginal Land and Sea Council, WA, believed that any failure was due in part to the lack of formalised interaction with the state government:

For ATSIC the failure to have a formal state government interface has been an impediment to ensuring a whole-of-government approach on issues such as Indigenous health and education.⁴¹

2.101 The failure to create a formal interface between ATSIC and these governments has resulted in an inability by ATSIC to either impact effectively on

37 *ibid*, p. 28.

38 OIPC, *Submission 128*, p. 2.

39 UTS, *Submission 191*, p. 35.

40 Objectives, ATSIC Act.

41 *ibid*, p. 29.

state and territory governments' programs, or monitor how they spend money. As the UTS submission notes, in failing to coordinate the efforts of all three levels of Australian Government, ATSIC has been condemned for being unable to achieve an aspiration which to date has eluded everyone.⁴²

2.102 In this respect, perhaps the greatest underlying impediment to Indigenous policy-making is the very nature of Australia's federal system of government. The Australian Constitution sets out the areas of policy-making responsibility for the Commonwealth and state/territory governments. In addition, within major service delivery areas, such as education and health, there are overlaps of responsibility. In these common areas, the Commonwealth will see policy-making from a 'national' perspective, while the State/Territory will have more of a local view-point.

Responsibility sharing is a crucial element of Australia's concurrent style of federalism. While the notion has great collaborative potential, it also has the potential to fall far short of cooperative ideals amidst inter-governmental and inter-organisational conflict.⁴³

2.103 There is inherent in Australia's federal system of government a set of potential policy tensions between the two levels of government. As was intended by its authors, the Australian Constitution has limited reach, with states and territories retaining power in important areas such as health, education, water services and social services. The Commonwealth Grants Commission noted that this was a particular problem of earlier mainstreaming attempts by the government.⁴⁴ In chapter four of this report, they commented:

Australia's federal system of government blurs service delivery responsibility between governments and has complex funding arrangements. ... It also results in some responsibility and cost shifting between governments. The overall result, for Indigenous people, is that they generally distrust government agencies and do not believe all the funding reaches the intended goals.⁴⁵

2.104 The report continued that:

From an Indigenous perspective, the detrimental aspects of cost shifting arise when:

- (i) services are not provided because one party has 'vacated the field', assuming another will provide the service — for example, we were told of cases where States were said to ignore the requirements of

42 UTS, *Submission* 191, p. 8.

43 I. Anderson and W. Sanders, *Aboriginal Health and Institutional Reform within Australian Federalism*, Centre for Aboriginal Economic Policy Research, Discussion Paper 117, Australian National University, Canberra, 1996, p. 23.

44 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra, 2001, chapter 4.

45 *ibid*, p. 57.

some, predominantly small, Indigenous communities in the knowledge that ATSIC would provide the services;

- (ii) funds provided from one tier of government to another for an Indigenous-specific service are diverted to other purposes; or
- (iii) Indigenous-specific services are used as a 'catch all' for deficiencies in mainstream services — for example, we were told of cases where officers in mainstream health, housing or training services routinely refer Indigenous people to the Indigenous-specific service units.⁴⁶

2.105 The ATSIC Review noted that most state and territory governments supported the devolution of power over Indigenous issues back to state/territory administrations.

2.106 Flowing from this difficulty in policy-making is the administrative uncertainty when trying to implement policy and service delivery. This also makes it difficult to know who to turn to when policy fails. Concurring with the Productivity Commission report on funding, Professor Larissa Behrendt has commented on the 'merry dance of cost-shifting between federal and state governments on responsibility for service delivery', resulting in a 'lack of clarity and vagary of responsibility'.⁴⁷ This ultimately leads to a failure to deliver the basic facilities needed by Indigenous Australians at a standard that the rest of the community regards as essential.⁴⁸

2.107 Indigenous policy makers will have to address the confusion created by our Federal system, while also ensuring that the needs of local communities are taken into consideration. The COAG Trials have demonstrated that in certain circumstances, a 'whole of government' approach can produce improvements in outcomes. These trials are discussed further in Chapter 5.

Failure to deliver results

2.108 One of the main criticisms ATSIC had to contend with centred around general misconceptions about how much funding ATSIC received, what it could actually do with its funding and its overall effectiveness in addressing Indigenous disadvantage.

2.109 This perception has been fuelled by continuing poor results in such key areas as literacy, school retention, life expectancy, and incarceration rates.

2.110 As the key national Indigenous agency, ATSIC is inevitably a high profile target when it comes to allocating blame for the failure to solve the problems in

46 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra, 2001, chapter 4, p. 57.

47 Larissa Behrendt, 'ATSIC Bashing', *Arena Magazine*, 67, October-November 2003, p. 28.

48 Fred Chaney, 'Alan Missen Memorial Lecture [Delivered at Parliament House, Canberra, 27 August 1997]', *Melbourne Journal of Politics*, Volume 25 1998, pp. 9-20.

Indigenous communities. Much of this criticism, however, has been misdirected and/or misinformed.

2.111 It is true that some failures in policy can certainly be attributed to ATSIC. For example, the ATSIC Review concluded that the regional planning network was not achieving results,⁴⁹ while some evidence provided to the Committee suggests that certain aspects of the CDEP program are poorly administered and not delivering the intended outcomes.⁵⁰

2.112 However, in several important respects ATSIC cannot be held responsible for the failing of Indigenous programs. According to ATSIC:

ATSIC was given the responsibility to improve the economic, social and cultural development Indigenous peoples, but was severely restricted by the quarantining of its budget for particular government programs and the lack of capacity to direct other spheres of government (federal, state, local) to improve service delivery outcomes...⁵¹

2.113 ATSIC does not have program responsibility for many areas of key program delivery. Even before the new policy of mainstreaming was instituted, State, Territory and Commonwealth agencies retained responsibility for most service delivery with respect to education, housing, and community infrastructure.

2.114 During this inquiry, submissions and witnesses alike stated that ATSIC was never intended to be the main delivery agent for programs addressing Indigenous needs. The Northern Land Council (NLC) submission argued:

Many people wrongly believe that ATSIC is to blame for the failure to achieve better outcomes ... Few recall that Parliament never anticipated that ATSIC programs alone could address Indigenous disadvantage. ... Nor does ATSIC have full control over its budget. ... The services provided by ATSIC have only ever been intended to supplement the mainstream programs provided by the States.⁵²

2.115 Similarly, the Cairns and Regional District Council stress that:

... responsibilities for the portfolios of Health, Education and Employment reside with the Ministers ...⁵³

2.116 As the discussion earlier in this chapter illustrates, ATSIC's share of the overall identifiable Commonwealth expenditure on indigenous affairs is less than fifty percent, of which only about 15% is discretionary. This becomes even less when also

49 'In the Hands of the Regions', p. 33.

50 See, for example, Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 9.

51 ATSIC, *Submission 202*, p. 4.

52 Northern Land Council, *Submission 193*, pp. 6-7.

53 Cairns and District Regional Council, *Submission 217*, p. 1.

taking into consideration state and territory funding. As the ATSIC Chairman, Mr Geoff Clarke, told the Committee:

When you talk about ATSIC, I think you are forgetting that we are the supplementary organisation. We come and plug the gaps.⁵⁴

2.117 One example of this is health. ATSIC took over responsibility for Indigenous health from DAA when the body began operations in 1990. The Keating Government, however, transferred responsibility for Indigenous health back to the then Department of Human Services and Health in 1995. Nevertheless the perception that ATSIC was totally responsible for Indigenous health has remained. If Indigenous people had been failed with regard to health, it was actually the Department of Health and Ageing that was responsible.

2.118 According to Professor Altman, the Commonwealth Grants Commission *Indigenous Funding Inquiry* of 2001, suggests that:

[T]he major problem is under-resourcing of Indigenous need on an equitable basis by mainstream Commonwealth and State/Territory service delivery agencies.

Some of the best outcomes in closing the gaps have come from ATSIC programs such as the Community Development Employment Projects (CDEP) scheme and the Community Housing and Infrastructure Program (CHIP) that accounted for 80% of ATSIC's program allocations.⁵⁵

2.119 However, the common perception that ATSIC is responsible provides a convenient scapegoat for other agencies' failings. The ATSIC Review stated that:

...mainstream Commonwealth and State agencies ... have used ... ATSIC to avoid or minimise their responsibilities to overcome the significant disadvantage of Aboriginal and Torres Strait Islander people. Because public blame for perceived failures has largely focussed, fairly or unfairly, on the Aboriginal and Torres Strait Islander Commission, those mainstream agencies, their ministers and governments have avoided responsibility for their own shortcomings.⁵⁶

2.120 The Government itself admits this, stating that, 'All too often the specialist Indigenous agency, ATSIC, provided an excuse for mainstream departments to avoid their responsibilities to Indigenous Australians.'⁵⁷

54 Mr Clarke, *Proof Committee Hansard*, Canberra, 4 February 2005, p. 9.

55 Professor Altman, *Submission* 206, p. 2.

56 *ibid*, page 30. See also ATSIC SA Regional Councils, *Submission* 220, pp. 8-9; and Public Discussion Paper, *Review of the Aboriginal and Torres Strait Islander Commission*, ATSIC Review Panel, June 2003, p. 33.

57 Second Reading Speech, p. 2.

2.121 Mr Geoff Clarke, in the ATSIIC submission, lamented the Government's handling of the perceived 'failures':

I find it the height of hypocrisy when parliamentarians and media commentators can falsely blame ATSIIC for the horrendous failures in health, education and other areas not its responsibility, then actively campaign to have ATSIIC destroyed on these false perceptions.

There is no acknowledgement of the excellent programs ATSIIC has developed and funds community organisations to deliver.⁵⁸

2.122 Submissions to the ATSIIC Review gave various other reasons for the perceived failure of ATSIIC. The Murdi Paaki Regional Council submission said:

If there has been a systemic failure [of ATSIIC], it is because the commission has been required to span too wide an activity, occasioned by the failure of mainstream services to adequately meet the needs of Indigenous people.⁵⁹

2.123 Mr Norm Fry from the NLC, a witness at the Darwin public hearing, had an interesting view point on the failures that ATSIIC experienced, referring back to a report on the NAC by Dr Coombs in the mid-seventies.

Dr Coombs talked of real self-determination and self-management and the inherent need for all of us, as Aboriginal and Torres Strait Islander people, to experience failure and success. He talked about how governments needed to stand back and allow people to go through this curve.⁶⁰

2.124 This view reminds the Committee that the process of failure is not to be considered purely as a negative experience; it is rather an opportunity to harvest the lessons learned from the 'failure' so that they can be utilised in future endeavours as part of continual improvement. Another witness had a similar viewpoint, suggesting that perhaps the changes by the Government have been a little too hasty:

If we are moving - ... - from a dependency model towards giving Indigenous independence, before we can go to the next stage of interdependence we need to be rather patient in that period of time. ...there needs to be a fair bit of shared understanding as to exactly where we all are and the mutual outcomes we are trying to achieve.⁶¹

ATSIIC strengths

2.125 Notwithstanding these criticisms, ATSIIC is able to point to many successes, as were highlighted by witnesses and within submissions. A recent media release from the ATSIIC News Room also focussed on ATSIIC's achievements. The release states:

58 Mr Geoff Clarke, *Submission 182*, p. 3.

59 *ibid*, p. 28.

60 Mr Norman Fry, Darwin, *Committee Hansard*, 24 August 2004, p. 66.

61 Mr Clinton Hoffman, Nhulunbuy, *Committee Hansard*, 25 August 2004, p. 15.

... ATSIK's record of representation and innovation on behalf of Aboriginal and Torres Strait Islander people is unmatched by any mainstream government agency. Most importantly, it is a record of achievement by Indigenous people for indigenous people.⁶²

2.126 ATSIK's assertions are not without external support. Professor Altman, for one, considers that:

First, it is important to recognise ATSIK's achievements ... including its distinctive and appropriate programs that have made a difference. The flexibility inherent in some of these programs, like the CDEP scheme, has been fundamental to their success, especially in non-mainstream situations.⁶³

2.127 Dr Sanders reinforced these sentiments.

The first and most important [of ATSIK's achievements] was the degree of political participation that ATSIK had encouraged among Indigenous people.⁶⁴

2.128 The ATSIK submission argues that despite the limitations imposed on it:

Its advocacy for Indigenous interests over the past fourteen years has been extremely important and has influenced public policy in all spheres of government.⁶⁵

2.129 At the national level, ATSIK achieved increased participation of Indigenous leaders in national policy bodies such as the National Health and Medical Research Council, Australian Indigenous Technical Advisory Council, Great Artesian Basin Committee, and the Australian Seafood Council.⁶⁶

2.130 The UTS submission claims that ATSIK was able to have a positive influence on issues such as the response to the Royal Commission into Aboriginal deaths in custody, the National Aboriginal Health Strategy, the Bringing them home report, as well as actively pushing Indigenous issues onto the COAG agenda.⁶⁷

2.131 Similarly, ATSIK successfully negotiated Memoranda of Understanding with each of the state and territory governments as well as sector specific bilateral agreements on areas such as housing and infrastructure.⁶⁸

62 Mr Troy Austin, *ATSIK's unique voice and record of achievement*, Media Release, ATSIK News Room, 22 April 2004.

63 Professor Altman, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 2.

64 Dr Sanders, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 3.

65 ATSIK, *Submission 202*, p. 4.

66 *ibid.*

67 UTS, *Submission 191*, p. 4.

68 ATSIK, *Submission 202*, p. 4.

2.132 Internationally, ATSIC participated in various UN forums, including the UN Human Rights Committee, and contributed to international standard setting in the development of the *Draft declaration on the rights of Indigenous peoples*.⁶⁹

2.133 In terms of program delivery, as noted earlier in this report, ATSIC was responsible for the CDEP scheme, which is the largest Indigenous program funded by the Australian Government. The extent of this program is often not appreciated. It provides employment and training opportunities to Indigenous participants in a range of activities that benefit both individuals and their communities. At 30 June 2003, ATSIC supported some 35,000 participants employed by around 270 CDEP organisations with expenditure in 2002-03 of \$484 million.

2.134 Likewise, ATSIC's CHIP initiatives aim to improve the living environment of Indigenous people by providing housing and associated infrastructure and municipal services in areas where these are not provided by the local government. In 2002-03, ATSIC funds built around 500 houses and renovated around 760. About 6800 people were accommodated in new or upgraded dwellings and almost 48,000 people lived in communities funded for municipal services.

2.135 In 2002-03, ATSIC's Home Ownership program made 537 home loans, housing more than 1600 people and managed a home loans portfolio worth \$327 million. ATSIC also supported thirteen Family Violence Prevention Units in areas of identified high need. ATSIC programs also support networks of Indigenous broadcasters, art and craft, and language centres, as well as a network of Link-Up offices that help to re-unite families separated by past policies of governments.

2.136 A witness in Cairns told the Committee at the public hearing that:

One of the benefits of ATSIC is that it is Indigenous in its culture and its context.⁷⁰

2.137 Another witness at the same hearing said of ATSIC:

... ATSIC amounted to a one-stop shop, where the Indigenous people of this country could make various inquiries about different schemes.⁷¹

2.138 The submission from the Women's International League for Peace and Freedom (WILPF) highlighted a number of areas they considered ATSIC had been successful.

In our view, ATSIC has been a vital contributor to the administration of Indigenous Affairs policy since its inception in 1989. ... It has been responsible for bold and culturally responsible programs such as the

69 'In the Hands of the Regions', p. 37.

70 Dr Paul David, Cairns, *Committee Hansard*, 27 August 2004, p. 26.

71 Mr Martin Dore, Cairns, *Committee Hansard*, 27 August 2004, p. 21.

Community Development Employment Projects Scheme [CDEP] and the Community Housing and Infrastructure Program (CHIP).

The importance of the nationally elected voice of ATSIC cannot be underestimated. ... By having a seat at the table on many Interdepartmental Committees and Reviews ... ATSIC has been able to lead mainstream Departments and agencies in culturally appropriate ways of doing things. ... It has brought Indigenous approaches to decision-making into play to the main arena of policy making.⁷²

2.139 Dr Will Sanders focussed his entire submission on the positive outcomes ATSIC has achieved. Commenting on the 'political participation of Indigenous people', Dr Sanders said:

ATSIC has also given those elected significant opportunities for developing a public profile and participating in public debate. ... ATSIC office holding has given many Indigenous people a status in the community ... ATSIC office holding has certainly become important, in relation to both the Indigenous and the larger communities.⁷³

2.140 Dr Sanders discussed ATSIC's status as a national Indigenous voice, stating that:

ATSIC was obliged to develop its independence from government in order to build credibility and legitimacy with its Indigenous constituency. This was an achievement and strength for ATSIC, not a mistake or an anomaly.⁷⁴

2.141 He further commented on ATSIC's successes in program delivery, echoing the comments from WILPF:

ATSIC was not just an experiment in Indigenous representation. ... ATSIC's third achievement or strength was programs which were distinctive from those of government agencies and were appropriate to the circumstances of Indigenous people.⁷⁵

2.142 The manner in which ATSIC was able to develop successful partnerships with state and territory governments was also highlighted by Dr Sanders:

ATSIC has also worked usefully with States and Territories over the years. One of the earliest examples was a housing funding agreement made between the Northern Territory Government, the Commonwealth and ATSIC in 1995. ... This ... arrangement was clearly a significant improvement on what had gone before and encouraged the development of

72 Women's International League for Peace and Freedom, *Submission* 196, p. [2].

73 Centre for Aboriginal Economic Policy Research, *Submission* 198, p. 2.

74 *ibid.*, p. 3.

75 *ibid.*

similar innovative tripartite Indigenous housing agreements in the States over the next few years.⁷⁶

2.143 The positive role that ATSIC played in developing improved relationships was also highlighted in a combined submission from the Yarra, Darebin and Moreland City Council Mayors. In their letter to the Prime Minister, they claimed:

Most importantly, ATSIC has been instrumental in improving relationships between non-indigenous and indigenous communities and service providers. ... the Tumbukka ATSIC Council has assisted in the creation of linkages and forged valuable partnerships that have served to identify culturally sensitive local solutions to indigenous issues.⁷⁷

Conclusion

2.144 The Government's abolition of ATSIC is premised on its assertion that ATSIC 'failed'. Balancing the strengths and weaknesses discussed above, is this conclusion justified?

2.145 ATSIC must be judged against its objectives, which are worth repeating here:

- to ensure maximum participation of Aboriginal and Torres Strait Islander people in government policy formulation and implementation;
- to promote Indigenous self-management and self-sufficiency;
- to further Indigenous economic, social and cultural development, and
- to ensure co-ordination of Commonwealth, state, territory and local government policy affecting Indigenous people.

2.146 From the evidence this Committee has seen, ATSIC did much to increase participation of Indigenous people and their engagement in the political process, and in so doing, helped to create a new generation of Indigenous leaders in communities across Australia. Equally, many of ATSIC's programs in housing, culture, employment and community programs undoubtedly achieved a great deal. In these respects, ATSIC was clearly not a failure.

2.147 ATSIC's success or failure in respect of the other criteria is harder to judge. A crucial focus for ATSIC has been the formulation of policy and the provision of policy advice to government, and its expert role in this regard has been extremely important. The Committee, however, does not have the resources to make a detailed examination of, and judgement on, the quality, timeliness, and effectiveness of ATSIC's efforts in providing policy advice and coordinating government policy.

2.148 What is clear though, is that at a national level, our institutions, policies and programs have failed Indigenous people. While there is evidence of slow but steady

76 *ibid*, pp. 5-6.

77 Coordinator Arts and Cultural Services, City of Yarra, *Submission 222*, p. 2.

improvement across many of the key indicators,⁷⁸ relative to the wider Australian community Indigenous people still lag far behind.

2.149 This is clearly not solely ATSIC's fault. The overall failure of public policy to successfully overcome the grave disadvantage suffered by Australia's Indigenous people is not a sign that ATSIC itself has 'failed'. Nor, indeed, is it a sign that the broader policy of self-determination is a failure. The challenges faced by public policy, and those responsible for it, in this area are significant because the disadvantage is so severe and far-reaching, and has so many complex causes. The fact that Indigenous disadvantage has yet to be overcome is not proof that any agency or individual has 'failed'. In relation to exactly who is responsible for the failures in addressing Indigenous disadvantage, Dr Shergold made the following comments to the Committee:

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.⁷⁹

2.150 There was additional evidence that mitigates ATSIC's responsibility for what some regard as its failure in areas of governance. As previously discussed, the ATSIC was structured using a Western system of governance. It was inevitable that it would take some time for many of those running ATSIC to come to terms with this foreign and culturally quite different system of governance. This was well illustrated in evidence given by the ATSIC Review Panel Convenor:

ATSIC was in our view, set up to fail. ... I use a comparison. If a local tennis club, with people of limited skills and limited education, were given millions of dollars and asked to run the Australian Open.

That is exactly what happened, in a sense, with ATSIC. A large amount was expected of them, when they did not have the capacity and skills to do it. Very little was put in place to ensure that they were given or could develop the skills.⁸⁰

78 Professor Altman, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 2; Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 5.

79 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 5.

80 Hon John Hannaford, ATSIC Review Panel Convenor, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 25.

2.151 The lack of sufficient resources to facilitate capacity building has been highlighted in several of the recommendations in previous reviews discussed in this chapter.

2.152 The Committee also acknowledges that in many respects, where ATSIC has been criticised, apparent weaknesses or failures have been due to a lack of institutional 'muscle' - in a formal sense - to achieve its objectives. ATSIC never had the power to insist that its policy advice be accepted, nor did it have the authority to compel better coordination of activities by other Commonwealth agencies, let alone state or territory agencies. In this respect, it is perhaps better to conclude that ATSIC's objectives were from the start over-optimistic and unachievable, when set against the legal 'muscle' available to the body.

2.153 Nevertheless, as the central Indigenous national organisation, with responsibility for administering up to half of the Commonwealth Indigenous specific funds, ATSIC must clearly share part of the blame for the poor outcomes. As the ATSIC Review found, ATSIC had a number of significant problems and needed change.

2.154 So while the Committee cannot agree with the Government's assertion that ATSIC has failed, it can agree with the wider conclusion that the national policy settings in Indigenous affairs have failed Indigenous people.

2.155 The then Minister stated during his Second Reading speech: 'No one can say that the current approach is working.'⁸¹ While this is true, it is important that there is a thorough assessment of the 'current approach' before jumping to the conclusion. The Committee does not accept that the approach of self-determination and recognition of Indigenous rights has been responsible for the failure to address Indigenous disadvantage. International evidence would in fact suggest that recognition and empowerment of Indigenous people are fundamental to addressing material disadvantage.

2.156 The Committee considers that national performance in Indigenous affairs should be carefully, continuously, and transparently monitored. The Government as a whole must be held accountable. A recommendation presented later in this report goes to this issue.

81 Second reading speech (40th Parliament), p. 1.

