

CHAPTER 4

Representation

The Government's proposed reforms

4.1 As described in Chapter 1, on 15 April 2004, the Government announced its intention to abolish ATSIC.¹ The abolition was to be in two phases, reflected in the structure of the Bill: the national organisation was to be abolished immediately, while the sections of the Act creating the Regional Councils were to cease operating on 30 June 2005. The revised Bill, re-introduced to the Senate in December 2004, proposes the abolition of ATSIC on a date to be proclaimed, and the abolition of Regional Councils on 1 July 2005, or the day following the abolition of ATSIC, whichever is the later.²

4.2 The Government does not propose to create a replacement representative organisation, though it has established a National Indigenous Council as an advisory body on policy issues:

We will not replace ATSIC with an alternative body. We will appoint a group of distinguished indigenous people to advise the Government on a purely advisory basis in relation to aboriginal affairs.³

4.3 The rationale for not creating a replacement body seems to have been that such a body should arise from amongst indigenous people themselves, avoiding government interference with the creation of structures that reflected diverse Indigenous needs. The Minister for Citizenship and Multicultural Affairs and Minister Assisting the Prime Minister commented it:

would be far more consistent with Indigenous self-management for Indigenous people to develop and establish their own representative bodies.⁴

4.4 This reflects the Government's view that it is not the role of government to either create by legislation, or fund, representative structures – a view which is examined in detail later in the chapter. However, the Government has committed to supporting ongoing regional representative arrangements:

1 Hon John Howard MP, Joint Press Conference with Senator Amanda Vanstone, Parliament House, Canberra, 15 April 2004.

2 ATSIC Amendment Bill, Item 2.

3 Hon John Howard MP, Joint Press Conference with Senator Amanda Vanstone, Parliament House, Canberra, 15 April 2004.

4 *House of Representatives Hansard*, 2 June 2004, p. 29858.

At the regional level we are working with State and Territory Governments, Regional Councils and a range of Indigenous organisations and communities to establish new regional representative arrangements. We recognise that different models are likely to emerge to suit different regions and jurisdictions.⁵

4.5 The Government has also indicated that it has budgeted funds to support consultative processes in relation to the Shared Responsibility Agreements and Regional Partnership Agreements.⁶

4.6 The Torres Strait Regional Authority will be retained as the Government believes it is delivering services effectively.⁷ The Office of Evaluation and Audit is to be retained and given a broader role. Indigenous representation will continue on the boards of organisations such as the Indigenous Land Corporation, Indigenous Business Australia and the Australian Institute for Aboriginal and Torres Strait Islander Studies.

National representation

4.7 The Committee found that there was considerable support for ATSIC's continued existence, although many witnesses and submissions believed that there needed to be significant changes to the way the body operated and was structured. Certainly, the support for the continued existence of a national Indigenous representative body was overwhelming. The Committee acknowledges that the Government has been widely criticised for the process that led to the Bill proposing ATSIC's abolition. As chapter 2 noted, several witnesses independent of ATSIC drew attention to its achievements. Few witnesses supported the complete dismantling of ATSIC. Most focussed on making its regional infrastructure work better.

4.8 The Committee's experience to a large extent reflected that of the ATSIC Review. The ATSIC Review noted that 'the organisation is in urgent need of structural change'.⁸ It argued that ATSIC had failed to be shaped by Aboriginal and Torres Strait Islander people at the regional level,⁹ and lacked effective relationships with the main service providers to Indigenous people, the state and territory governments.¹⁰ In spite of the problems, the Review recommended ATSIC be retained because:

5 ATSIC Amendment Bill, Second reading speech, *Senate Hansard*, 1 December 2004, p. 1.

6 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 21.

7 The Hon Gary Hardgrave MP, *House of Representatives Hansard*, 27 May 2004, p. 29316.

8 *'In the Hands of the Regions'*, p. 5.

9 *ibid.*

10 *ibid.*, p. 7.

To the extent ATSIC has succeeded, it has done so because Aboriginal and Torres Strait Islander people largely want it to continue as a representative organisation on their behalf.¹¹

4.9 The Committee accepts that there have been criticisms of the operation of ATSIC. At the same time, it recognises that, almost without exception, participants in the Inquiry have been strongly in favour of having a national, elected Indigenous representative body. This was the common opinion of a diverse range of Inquiry participants, including both Indigenous and non-Indigenous people and organisations. This view was expressed by individuals, NGOs, religious organisations and states and territories.

4.10 The Committee heard that a national Indigenous voice is important to ensure effective policy outcomes for indigenous people. Jackie Huggins, a member of the ATSIC Review panel, told this Committee of the 'critical importance of a nationally elected representative voice'.¹²

4.11 The Foundation for Aboriginal and Islander Research Action considered that:

The development of a replacement body for ATSIC is inevitable, even if it is beyond the vision of the existing government administration. It is to government advantage to get a body in place quickly which has credibility at the community level...[S]uch a body will have to consist of elected representatives and those representatives will have to be as well-financed and supported and powerful as the outgoing ATSIC representatives...¹³

4.12 The submission from Whitehorse Friends for Reconciliation stated:

The right of representation and the power to determine their own affairs have ... been shown to be critical factors in improving the well-being of Indigenous Australians. Outcomes are significantly better where there is full and effective Indigenous involvement in decision-making accompanied by strong Indigenous organisations and governance and appropriate cultural recognition within both Indigenous and non-Indigenous institutions.¹⁴

4.13 Similarly, the ACT Government:

is of the view that ATSIC should be immediately replaced with an Australian Government funded elected representative body able to promote and protect the interests and welfare of Aboriginal and Torres Strait Islander people at the national level.¹⁵

11 *'In the Hands of the Regions'*, p. 30.

12 *Submission 243*, p. 2.

13 *Submission 242*, 'The Steps Taken'.

14 Whitehorse Friends for Reconciliation, *Submission 55*, p. 2.

15 ACT Chief Minister, *Submission 169*, p. 2.

4.14 Thus, one of the concerns about ATSIC's abolition has been that it will disempower Indigenous people, leading to poorer outcomes. The ATSIC Wunan Regional Council argues that:

Just as passive welfare has been recognised as a problem, so too will passive policy processes lead to worse outcomes for Indigenous people. The abolition of ATSIC will disempower Indigenous people and create a passive policy process in which we have no voice.¹⁶

4.15 While the Victorian Aboriginal Legal Service criticisms of the failure to provide a replacement national body are that:

- Indigenous Australians are being disenfranchised and disempowered, rather than empowered. The Government is throwing the baby out with the bathwater.
- The national Indigenous Voice is being silenced with the abolition of ATSIC, an advocate for Indigenous Australians.¹⁷

4.16 At the heart of Indigenous arguments for national representation was a desire for self-determination:

We are talking about sovereign rights and self-determination, which are lacking in...the ATSIC Act—[it is] very silent on self-determination. As Aboriginal people I think we have all learnt a lesson from Wave Hill Station and Gurindji. We are very patient people. We do not need to rush these things.¹⁸

4.17 There was a clear view that Indigenous people need control of their representative organisations and that they should decide how those organisations operate:

There must be a sustainable, independent National Indigenous Representative Body that:

- reflects the aspirations and values of Aboriginal and Torres Strait Islander peoples;
- is open, transparent and accountable to the Aboriginal and Torres Strait Islander peoples; and
- is established with the informed consent of Indigenous peoples through inclusive processes that acknowledge their diversity and traditional authority structures.¹⁹

4.18 AIATSIS stated that:

16 ATSIC Wunan Regional Council, *Submission* 107, p. 2.

17 Victorian Aboriginal Legal Service, *Submission* 185, p. 5.

18 Mr Stewart, *Committee Hansard*, Moree, 1 February 2005, p. 17.

19 Melbourne Catholic Commission for Justice, Development and Peace, *Submission* 173, p. 7.

Indigenous peoples own representative structures [should] be withdrawn only with the consent of indigenous peoples.²⁰

4.19 Furthermore, Indigenous representation is essential at a national level:

ATSIC is not perfect but it does provide, for the first time since the British arrived, a co-ordinated national and regional avenue through which Indigenous issues can be highlighted, debated and resolved.²¹

[T]he abolition of ATSIC (and of the Regional Councils by July 2005) threatens Indigenous representation at the Commonwealth level and deprives regionally-based Indigenous organisations of their united voice.²²

4.20 The Committee found that the theme of Indigenous people having control of their own organisation was a strong one, whether or not the witness was supportive of ATSIC in its current form. The Central Remote Land Council, for example, recognised there had been problems with ATSIC, but argued that these stemmed partly from its self-determination being too limited:

We are concerned that the real issues about ATSIC have been overlooked in the current debate, which has focussed on a couple of members of the elected arm whereas there needs to be recognition [that] the practical application of the ideal of self-determination was limited in practice by the bureaucratic culture that informed ATSIC from the start... ATSIC is an example of a policy failure, not a philosophy failure.²³

4.21 Similarly, defenders of ATSIC such as ACOSS also argued that Indigenous people had a right to be heard:

The role of [ATSIC] as a representative voice for the aspirations of Indigenous people – to their fellow Australians, to the world and, by reflection, to themselves – needs to be retained and strengthened. By its existence, the Aboriginal and Torres Strait Islander Commission sends a strong message to Indigenous Australians that they are valued and respected on their own terms, for who they are as a people and with a legitimate right to be heard on issues affecting the nation and its people.²⁴

4.22 One of the key functions of ATSIC that its abolition puts at risk is the capacity of Indigenous Australians to present their concerns internationally. The UN recognises that organisations other than governments can legitimately represent

20 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Submission* 144, p. 14.

21 ATSIC NT North Zone Commissioner Hill, *Submission* 100, p. 4.

22 Combined Aboriginal Organisations, *Submission* 51, p. 3.

23 Central Remote Regional Council, *Submission* 52, pp. 1–2.

24 Australian Council of Social Services, *Submission* 157, p. 6.

citizens in international fora. ATSIC has had such recognition for Indigenous issues since 1995.²⁵

A particular concern raised in ANTaR's submission is the Government's decision to abolish the Aboriginal and Torres Strait Islander Commission—ATSIC—a body welcomed by the United Nations Committee on the Elimination of Racial Discrimination.²⁶

Another area of strength has been ATSIC's ability to lobby in the international arena where it frequently advocated positions contrary to the Federal Government's.²⁷

I think it is a shame that it is only now we are seeing the powers of ATSIC being curtailed that people are starting to understand what those limitations will mean in ways that had not even been thought about—in particular, the ability to put forward an alternative view on issues like Australia's record under human rights instruments. ATSIC was quite active in the international arena in putting forward an Indigenous perspective on certain issues.²⁸

4.23 A number of submissions have also argued that abolition of ATSIC may contravene Australia's obligations under international human rights laws. The Aboriginal and Torres Strait Islander Social Justice Commissioner particularly notes Article 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that:

places a positive obligation on States Parties to the Convention to adopt special measures to address discrimination in the provision of economic, social and cultural rights to groups defined by race. This provision suggests that it would be inappropriate to discontinue activities that constitute a special measure prior to those activities having achieved their stated objective of removing inequalities in the enjoyment of human rights by Indigenous peoples.²⁹

4.24 The Commissioner goes on to suggest that 'it is likely that the Committee [on the Elimination of Racial Discrimination] would consider the abolition of ATSIC, without the informed consent of Indigenous peoples, and its replacement with an appointed, non-representative council as in breach of Article 5 of the ICERD'.³⁰

25 United Nations website: <http://www.un.org/esa/coordination/ngo/> (accessed 1 March 2005).

26 Mr Glendinning, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 59.

27 Jumbunna Indigenous House of Learning, *Submission* 191, p. 4.

28 Professor Behrendt, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 22.

29 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission* 3, p. 9.

30 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission* 3, p. 11.

4.25 Other submissions draw on the principles of other international law instruments, including the:³¹

- International Covenant on Civil and Political Rights (ICCPR)
- Universal Declaration of Human Rights (UDHR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Prevention and Punishment of the Crime of Genocide
- Draft Declaration on the Rights of Indigenous Peoples
- UNESCO Declaration on Race and Racial Prejudice
- International Labour Organisation Convention 111, concerning Discrimination in respect of employment and occupation
- Vienna Declaration and Program of Action (1993)
- Durban declaration arising out of the World Convention Against Racism, (2000)

4.26 A detailed analysis of these international law principles is beyond the scope of this report. However, it might be argued that, in abolishing the national Indigenous representative body and not replacing it with another such body, the Government's move goes contrary to the spirit of at least some of those conventions and declarations. The Committee was not in a position to determine whether the process currently proposed for abolishing ATSIC in itself formally contravenes Australia's international law obligations. Specifically, Indigenous people still have full legal rights to participate fully in all aspects of Australia's democratic processes, and the freedom to establish representative groups. These groups are also able to continue ATSIC's role in international fora and to seek recognition as Non-Government Organisations, though they lack the status conferred upon ATSIC as a statutory body. The Committee fully supports the formation of national Indigenous representative organisations that can seek to perform such a role.

4.27 The fact that Australia will have diminished the formal representative rights currently accorded to its Indigenous people is more than likely to be poorly regarded in international fora.

31 See generally FAIRA, *Submission 242*, p. 10; ATSIC, *Submission 202*, p. 7 and the discussion of Mr Malezer, *Proof Committee Hansard*, Brisbane, 31 January 2005, p. 47.

Indigenous representation and the role of government

4.28 One of the dilemmas in ensuring Indigenous people have sufficient control over their affairs is working out what role governments should have in facilitating this. Should governments legislate to ensure representation? Should they provide funding or other support? In this area, evidence from other countries about different ways in which national representation for Indigenous people has been achieved is significant.

4.29 A major international research project in this area has been the Harvard Project on American Indian Economic Development.³² One witness summarised the findings to date:

It found that the most important factors in successful economic and social development of indigenous communities have included the 'effective exercise of sovereignty in making their own decisions in capable and culturally appropriate indigenous institutions of governance'. In other words, in the light of that research and in the light of those facts, the Howard Government intends to abandon one of the key requirements for ensuring improved outcomes for Indigenous people, as proven in the United States, in Canada and in New Zealand – that is, the ability to exercise decision-making powers via 'culturally appropriate indigenous institutions'.³³

4.30 The national indigenous representative organisations in some countries, notably the United States and Canada, are not created by government legislation, yet appear well organised and effective. In Canada these include the Assembly of First Nations,³⁴ the Congress of Aboriginal Peoples,³⁵ and Inuit Tapiriit Kanatami.³⁶ In the United States they include the National Congress of American Indians.³⁷

4.31 In some Scandinavian countries, bodies designed to represent the Indigenous Sámi people have been legislated, but remain controversial amongst Indigenous people.³⁸ The formation of the three Sámi Parliaments appears to be a largely cosmetic attempt to appease the self-determination efforts of the Sámi people. The Parliaments have not given the Sámi the right to participate in decisions relating to their traditional ways, resources and lands.

4.32 For national indigenous representation to be successful, therefore, it does not have to be put in place through government legislation. The government policy is for

32 <http://www.ksg.harvard.edu/hpaied/> (accessed 1 March 2005).

33 Mr Glendinning, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 60.

34 http://www.afn.ca/Assembly_of_First_Nations.htm (accessed 1 March 2005).

35 <http://www.abo-peoples.org/mainmenu.html> (accessed 1 March 2005).

36 <http://www.itk.ca/> (accessed 1 March 2005).

37 <http://www.ncai.org/> (accessed 1 March 2005).

38 These bodies are in Sweden, Norway and Finland.

Indigenous communities to form their own representative structures. This is a legitimate judgement on the part of the Government, but requires recognition that there are a number of significant hurdles that face the Indigenous communities in doing so.

4.33 Australia's Indigenous community is numerically small, dispersed, with many people living in remote areas, and the population experiences great socio-economic disadvantage. Some sense of this was given by ATSIC Commissioner Robbie Salee:

My regions cover the remote parts of Queensland. The peninsula... goes up Mossman way – I do not know if you are aware of that area – and across to Kowanyama and north. That is the area I cover for Cape York. My other region goes out west to Normanton and down towards the southern Queensland border, taking in Mount Isa and all that area...

As you know, we had two staff but they have been taken away. It is very hard and difficult for me to operate from Cape York with the office being down here. Where I come from is a thousand kilometres away by dirt road. I drove from here only yesterday; I drove all night to get to this hearing.³⁹

4.34 These are not ideal conditions in which to expect any group of people to create a national representative organisation without significant support. The Committee considers it unreasonably optimistic to expect that Indigenous Australians will be able to organise and lobby in the same way as other national organisations such as the National Farmers' Federation. The distances involved, the limited access to telecommunications facilities, and the poverty experienced by many Indigenous communities are likely to combine to create major obstacles to organisation at either regional or national levels.

4.35 ATSIC's existence has significantly assisted in developing this organisational capacity over the past ten years, as have training programs such as that developed by the Australian Indigenous Leadership Centre.⁴⁰ But this still falls far short of what is required.

4.36 The government policy seeks the emergence of representative organisations out of Indigenous communities, and in fact needs them in order to develop its partnership agreements. For this reason, it would seem logical for the Government to build on the successes of the existing Indigenous leadership programs to build capacity in Indigenous communities. Accordingly, the Government should give consideration to various means of enhancing capacity-building in Indigenous communities. While these might include leadership training, they should go to broader empowerment strategies. Raising the general levels of education among Indigenous people is of course a necessary condition in this process.

Recommendation 4.1

39 *Committee Hansard*, Cairns, 27 August 2004, pp. 57, 60–61.

40 <http://www.aiatsis.gov.au/ailc/> (accessed 1 March 2005).

4.37 The Committee recommends that the Government allocate funds to expand opportunities for Indigenous leadership, governance and administration training and development. These funds could be allocated out of money saved from ATSIC's running costs.

4.38 In Canada the problem of ensuring effective national Indigenous representation has been addressed by providing extensive government funding for national Indigenous representative organisations, but they are independent and organise their own affairs.

4.39 Whatever replaces ATSIC needs to maintain the representational capacity that ATSIC had. Indigenous representatives must be able to liaise directly with government ministers on their peoples' behalf:

ATSIC was unique in the sense that it had democratically elected Aboriginal people from the grassroots right up to the top level. It was the only Commonwealth agency in this country that had Aboriginal people advising their minister first-hand about the disadvantage in this country. That is the self-determination that we had.⁴¹

4.40 The replacement body should be consistent with the aims set out for ATSIC in the ATSIC Review's report, namely that it should be:

The primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and be an agent for positive change in the development of policies and programs to advance the interests of Indigenous Australians.⁴²

4.41 The Committee acknowledges that Indigenous leaders are already making efforts in this direction. The Committee heard from the Models for Indigenous National Representation Steering Committee.⁴³ This group is coordinating contact amongst Indigenous communities following a meeting in Adelaide in June 2004, attended by around 200 Indigenous people from around Australia. It developed a set of principles to guide the development of a national Indigenous representative body, including the following:

We are determined to establish a sustainable independent National Indigenous Representative Body that reflects the aspirations and values of our peoples.

Our National Indigenous Representative Body must be open, transparent and accountable to the Aboriginal and Torres Strait Islander Peoples.

41 Ms Anderson, *Committee Hansard*, Alice Springs, 20 July 2004, p. 53.

42 *'In the Hands of the Regions'*, p. 8.

43 Formerly the Steering Committee from the National Indigenous Leaders Meeting. See also Prof Dodson et al, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 30–44.

We have an obligation to respect and protect our right to self-determination, our human rights, our humanity, our First Peoples' status and our inherent rights that flow from that status.⁴⁴

4.42 The Committee supports this process.

Recommendation 4.2

4.43 The Committee recommends that the Government give active support and funding to the formation of a national Indigenous elected representative body, and provide it with ongoing funding. The Committee also recommends that the Government publicly commit to acknowledging that body as the primary source of advice on Indigenous advocacy and views. The Committee recommends the elected body should include a representative of Torres Strait Islander people living on the mainland.

Regional representation

4.44 Regional representation is crucial to Indigenous people. Indeed, ATSIC itself was designed to make up for perceived deficiencies in previous Indigenous representative organisations by having a strong layer of regional representation.⁴⁵ This commitment to regionalism was strengthened during the life of ATSIC, and was a strong theme in the 2003 review of ATSIC. As previously noted, the the Government has said that it has initiated consultations regarding future regional representative arrangements.

4.45 While evidence received by the Committee showed limited support for ATSIC nationally, the message about regional organisations was completely different. The Committee received submissions from a number of regional organisations keen to continue their work, whether or not that was as part of the existing ATSIC statutory framework.⁴⁶ The comment of the Murdi Paaki Regional Council exemplifies the view:

44 National Indigenous Leaders Meeting Summary Report: see Reconciliation Australia, *Submission 225a*, p. 17.

45 Will Sanders, *Prospects for regionalism in Indigenous Community Governance*, AIATSIS Seminar, 27 April 2004, http://www.aiatsis.gov.au/rsrch/smnrs/pdfs/Sanders_2004.pdf (accessed 1 March 2005).

46 See for example, the models of regional governance put forward by: The Combined Aboriginal Organisations – Alice Springs, *Submission 51*; Yamatji Marpla Barna Baba Maaja Aboriginal Community, *Submission 87A*; Wunan Regional Council, *Submission 107 & 107A*; Southwest Aboriginal Land Sea Council, *Submission 175*; Murdi Paaki Regional Council, *Proof Committee Hansard*, Moree, 1 February 2005, pp. 8-18; Miwatj Provincial Regional Council, *Committee Hansard* Nhulunbuy, 25 August, pp. 2-13.

Whatever deficiencies the Government may have perceived in the operations of the ATSIC Act, Regional Councils were effective forums of planning and decision-making, representative of all interests in the region.⁴⁷

4.46 The Committee is concerned that ATSIC may not be reaching all communities very effectively. It is possible that current ATSIC structures may not be ideal for every region and all circumstances. Certainly, the needs and viewpoints of urban Indigenous people are likely to be different from those of people in remote outback communities, and this factor might need reflection in different structural arrangements when it comes to representation. The vast areas covered by ATSIC representatives and their limited resources can present a challenge, as outlined above by ATSIC Commissioner Robbie Salee.

4.47 Mr Yanawana, Chairperson of Bidyadanga Aboriginal Community told the Committee:

To tell you the truth, we have only had one meeting with ATSIC. They have not explained to all members of the community who are on CDEP how it will affect them in their day-to-day lives. They have only come once, and then you do not see them for the next year or so.⁴⁸

4.48 Nevertheless, the Committee received evidence that ATSIC's Regional Councils have made important contributions, for example through planning processes, CDEP, cultural policy and advocacy. Professor Dodson suggested:

Murdi Paaki is a real example of a properly functioning, well-led regional council that is effective. If it works there, it is potentially able to work elsewhere. You also must remember that, given the nature of the task and the capacity of regional councils, most of them have been reasonably effective and functional.⁴⁹

4.49 The South Australian Regional Councils pointed to achievements such as:

- The development of Regional Council policies and plans for improving the implementation of services and programs,
- The establishment of critical alliances and partnerships, particularly at State and Regional levels – e.g. local government partnerships and agreements...
- Significant advocacy achievements...
- The creation of training and employment opportunities for Indigenous people through Community Development Employment Programs (CDEP),

47 Murdi Paaki Regional Council, *Submission* 141, p. 5.

48 *Committee Hansard*, Broome, 22 July 2004, p. 32.

49 *Committee Hansard*, Canberra, 3 February 2005, p. 24.

- The provision of improved infrastructure, housing and roads in remote and rural communities, and
- Significant contributions and advocacy by Regional Councillor Portfolio Holders on heritage, conservation and other boards and committees of local and state government.⁵⁰

4.50 Other Regional Councils presented similar cases.⁵¹

4.51 The Committee was more concerned by evidence that the Government's consultation process on regional representation has been ineffective. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma, noted:

that the clear view of the regional councils that I have consulted is that they are not being involved in the current processes and that there has also been very little progress in advancing alternative regional structures for Indigenous people.⁵²

4.52 These concerns were shared by Mr Jeffries from Murdi Paaki Regional Council:

the removal of the legislative framework will seriously inhibit having some formal or structured approach. We have got to maintain that as some sort of commonality, if I can call it that, to ensure that there is some formality about these arrangements, particularly in the partnership between Aboriginal people and government.⁵³

4.53 The Committee found evidence of widespread concern and confusion about the abolition of ATSIC's Regional Councils and how Indigenous people were going to be represented at the regional level. The Committee is concerned that more time and effort needs to go into the process of ensuring effective regional representation in an environment in which the national body has been abolished. In this respect it agrees with ATSIC Chairperson Mr Clark, who pointed out that regional representation is necessary for effective Indigenous partnerships to be possible.⁵⁴

4.54 Witnesses were also concerned about the resource implications for Indigenous communities:

The other issue with abolishing the ATSIC regional councils is that it is also withdrawing the funding and the resources to be able to operate those

50 ATSIC Regional Councils of South Australia, Nulla Wimila Kutju Regional Council, Patpa Warra Yunti Regional Council, Wangka Wilurra Regional Council, *Submission* 220, pp. 8–9.

51 See for example Binaal Billa Regional Council, *Submission* 213, pp. 4–5; ATSIC Yilli Reeung Regional Council, *Submission* 152, pp. 5–6; Central Remote Regional Council, *Submission* 52, pp. 6–8.

52 *Proof Committee Hansard*, Sydney, 2 February 2005, p. 3.

53 *Proof Committee Hansard*, Moree, 1 February 2005, p. 13.

54 Mr Clark, *Proof Committee Hansard*, Canberra, 4 February 2005, p. 11.

kinds of bodies. Now communities that want to retain such structures or find alternative mechanisms will have to find the resources somewhere else.⁵⁵

4.55 The question this raises is whether the Bill should abolish the regional councils and not put some alternative framework in its place at the same time.

4.56 The process of changing regional representation needs to acknowledge that in some areas the existing structure should be preserved. The Committee was impressed by the competence and commitment of many Regional Councils, and the support they had in their communities. It takes a similar position to that expressed by the Aboriginal and Torres Strait Islander Social Justice Commissioner:

If there is some potential to influence government into considering maintaining the regional structure as it currently exists until we are able to get new arrangements in place, I think that is critically important.⁵⁶

4.57 The Committee also received evidence of support amongst indigenous organisations for the high degree of autonomy afforded to the Torres Strait Regional Authority:

we would like to just stick in our own region. It would be better to have our own, similar to the Torres Strait Islanders, for the time being. If things go wrong because of changes by the government then at least we would have our own governing body to control.⁵⁷

4.58 Like ATSIC, Torres Strait Regional Authority has a legislated foundation, and like ATSIC it administers government funding.

4.59 The Government's own support for the effectiveness of the Torres Strait Regional Authority highlights the incoherence of its approach:

The Torres Strait Regional Authority (TSRA) which provides a range of Indigenous specific services to Torres Strait Islanders living in the Torres Strait will continue to perform its current role. The TSRA had some time ago separated its representative and funding functions and is working effectively in meeting the needs of Torres Strait Islanders in the Torres Strait.⁵⁸

4.60 It has never been explained by the Government why the TSRA approach, popular with many other Indigenous communities, could not be extended to other ATSIC regions, instead of the entire infrastructure being swept aside.

55 Dr Cooper, *Proof Committee Hansard*, Moree, 2 February 2005, p. 71.

56 *Proof Committee Hansard*, Sydney, 2 February 2005, p. 19.

57 Councillor Wunungmurra, *Committee Hansard*, Nhulunbuy, 25 August 2004, p. 9.

58 The Hon. Gary Hardgrave, *House of Representatives Hansard*, 27 May 2004, p. 29316.

4.61 Any process of developing regional representation for Indigenous people will need to encompass the possibility that some regional bodies might best function like the TSRA. Some witnesses thought regional input to decisions affecting Indigenous communities should be guaranteed by law, suggesting:

a legislative interface through which the Indigenous community from that area would be able to participate, one would imagine, in policy making and service delivery. That is really important.⁵⁹

4.62 Murdi Paaki Regional Council made a similar point:

Of particular concern is the absence of a coherent legislative framework that would facilitate the creation of governance arrangements... We would urge the committee to ensure the door is not closed on regional autonomy as it was originally conceived by government and to recommend a flexible legislative model within which representative Indigenous institutions may be reconstructed and incorporated in schedules to the umbrella legislation. A precedent for such a model is the Torres Strait Regional Authority.⁶⁰

Recommendation 4.3

4.63 The Committee recommends that the government defer plans to abolish the Regional Councils, and continue with consultation processes on developing new regional representative arrangements, recognising that in some areas, the preferred outcome may be to have organisations similar to TSRA and existing Regional Councils.

The National Indigenous Council

4.64 The Government established the 14-member National Indigenous Council (NIC) as part of its new arrangements. The members are all appointed by the Minister. There is no doubt that witnesses respected the individuals involved in the NIC, however it found no support as an institution. This finding must be emphasised. The Committee did not find one witness or submission, aside from those of the Government itself, which regarded the organisation as having legitimacy. Many witnesses commented that the NIC had no mandate to speak on behalf of Indigenous people.

4.65 Senator Carr sought Commissioner Williams' response to the Prime Minister's description of the National Indigenous Council as an advisory council made up of very eminent and wide-ranging people who will be a 'principal source of advice to the Government' on Indigenous issues. For Commissioner Williams, the critical issue is that they are not elected:

That is critical. Honestly, they have not been through an elective process, like yourselves, to truly represent their people, be it through clan, family,

59 Prof. Behrendt, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 28.

60 *Submission* 141, pp. 5–6.

group representation or community representation. There has not been an elective process put in place.⁶¹

4.66 Mr Woodley, Chair of the ATSIC Peninsula Regional Council said:

The Government has moved to hand-pick key leaders to speak on Aboriginal issues. We feel it is very insulting for the federal government to have gone down that track. There has been no respect shown for us elected people, and it is an undemocratic process. We strongly believe that anybody talking in regard to Aboriginal issues should be duly elected.⁶²

4.67 Mr Dennison made similar comments:

You cannot just get rid of [ATSIC] altogether because people think it is not working. What are you going to replace it with? Are you going to replace it with 14 people from different areas around Australia most of whom are lawyers? Haven't we had enough of lawyers? ... If you are going to replace ATSIC, replace it with something for everybody. Give everybody a chance... But the fact is that nobody was given the opportunity to apply [to be on the NIC] or to get any guidelines on what is happening... Indigenous people deserve better than having only 14 people meeting four times a year, for nothing. They cannot give their best. That is what I feel. I feel that before ATSIC is diminished altogether and this new board is fully in swing, they should scrap this new board and start again.⁶³

4.68 There were concerns that the NIC would be ineffective:

I can understand why people are interested in setting up an alternative. I think that is reflective of the fact that most people do not feel that the NIC is something that is going to capture their views or that it is particularly connected with their planning processes and the issues within their regions in the same way. I think that is why it has become desirable for people to find an alternative way to put that view forward. I think it would be less than ideal if that is what we were left with, though.⁶⁴

4.69 The approach that the NIC represents was linked to past, failed strategies:

I cannot see any government setting up another structure, especially a democratic structure. If you are talking about setting up an appointee structure around the country, it will not work. Keep in mind, as politicians, that Aboriginal people worked in the welfare system many, many years ago, and it did not work.⁶⁵

61 *Proof Committee Hansard*, Brisbane, 31 January 2005, p. 8.

62 *Committee Hansard*, Cairns, 27 August 2004, p. 59.

63 Mr Anthony Dennison, *Proof Committee Hansard*, Moree, 1 February 2005, pp. 82–3.

64 Prof. Behrendt, *Proof Committee Hansard*, Sydney, 2 February 2005, pp. 26–7.

65 Mr Munro, *Proof Committee Hansard*, Moree, 1 February 2005, p. 79.

4.70 The Social Justice Commissioner, Mr Calma, felt that the NIC would become irrelevant once a national elected body was in place:

I think that once an elected body is established, and if they can become an effective body that has the confidence of government, then there will not be a need for an appointed body. An appointed body is a transitional arrangement, in my view.⁶⁶

4.71 The Committee agrees that this body lacks legitimacy in the eyes of Indigenous Australians, and is likely always to do so. The lack of legitimacy has been exacerbated by the lack of transparency in the process of identifying and selecting people to be members. It can be at best a temporary body, as the Social Justice Commissioner recognised.

Recommendation 4.4

4.72 The Committee recommends that the NIC be a temporary body, to exist only until a proper national, elected representative body is in place.

Representation of Torres Strait Islanders

4.73 Concern was expressed, particularly at hearings in Queensland, about the fate of representation and services for Torres Strait Islanders living outside the Torres Strait.

Because of the abolition of ATSIC and ATSIIS, TSIAB, the Torres Strait Islander Advisory Board, was also abolished. The Office of Torres Strait Islander Affairs in Canberra was also abolished, which has left only the non-government body, which is the national secretariat that I represent here. That is the only national representation of Torres Strait Islanders here on the mainland. We would like to see some representation and respect given to us as Torres Strait Islanders living on the mainland, especially for this national body to be resourced enough – with finances and human resources – to address the big need to help people in the other states and territories.⁶⁷

4.74 The Committee shares these concerns. They highlight one of the anomalies of the Government's reforms: that Torres Strait Islanders in the Torres Strait retain control of an organisation that both represents them and delivers services, while all other Indigenous people, including Torres Strait Islanders throughout the country, lose everything.

66 *Proof Committee Hansard*, Sydney, 2 February 2005, p. 19. A similar view was put to the Committee by Mr Malezer from the Foundation for Aboriginal and Islander Research Action, who argued that the emergence of a new national representative organisation was essential for government and would inevitably re-emerge. *Proof Committee Hansard*, Brisbane, 31 January 2005, p. 52.

67 Mr Tapim, *Committee Hansard*, Cairns, 27 August 2004, p. 8.

4.75 The anomaly here is twofold: first, Torres Strait Islanders in mainland Australia are effectively disenfranchised and unrepresented as a result of the effects of this Bill. Secondly, the Bill retains an active structure, encompassing both representative and executive functions, for Torres Strait Islanders who reside in the Torres Strait, while abolishing such a structure for all Indigenous people elsewhere in Australia. The Government has not adequately explained why it is satisfactory to retain such a structure for Torres Strait Islanders, but not for other Indigenous people.

4.76 The anomalous situation described above strengthens the case for both retaining the Regional Councils, and thinking through more carefully the form that consultative arrangements are going to take, to meet the diverse needs of Indigenous people. This is essential if service delivery is going to be responsive to their diverse needs. The challenge of service delivery in the new 'mainstreamed' environment is the subject of the next chapter.