

Minority report by Government Members

Senators Johnston, Heffernan and Scullion

The Government members of the Senate Select Committee on Indigenous Affairs take issue with a number of assertions and recommendations in the Committee's (majority) report.

Reducing Indigenous disadvantage should be a bipartisan issue. It is encouraging that most State and Territory governments are working in partnership with the Australian Government to introduce reforms to benefit Indigenous Australians.

In spite of this spirit of goodwill, the committee has chosen to politicise the issue. The preface to the Committee's Majority Report, in particular, is blatantly hostile and political. It attempts to mislead people by using emotive terms such as 'assimilationist' to describe the Governments reforms, when in fact special measures for Indigenous Australians are being increased.

The Committee's Report demonstrates an ideological commitment to a second rate system that has failed Indigenous Australians and disappointed all Australians for decades. The report offers no alternative way forward to reduce the indisputable level of disadvantage faced by many Indigenous Australians.

Background to the Government's reforms

The Government has introduced sweeping reforms to Indigenous affairs that have dramatically increased the focus on Indigenous issues. The Government members believe that the reforms place responsibility back in the mainstream of government activity and welcome this. The changes involve working directly with Indigenous Australians on the ground to create their own solutions, and improving coordination of effort across key federal, state and local agencies.

Over several decades, a culture of blame and victim-hood combined with second rate service delivery has not produced satisfactory improvements for Indigenous Australians. Despite substantial increases in government expenditure and some important improvements, many of the problems have so far been intractable.

We, as a modern and affluent society, cannot tolerate a situation where average life expectancy for Indigenous citizens is almost twenty years less than other Australians. The status quo cannot be the way forward.

In Canada and the United States, where it is argued that results are better than in this country, they have not had a government constructed representative body as we have had with ATSIC over the last fourteen years.

The National Indigenous Council (NIC) is not meant to be a replacement for ATSIC. The NIC is not a representative body. The members are not encumbered by the views

of a particular constituency or interest group. They were not selected because they would be compliant, they were selected because they are outspoken, they have their own ideas and they have a track record of achievement in various fields. They agreed to be involved in the Council because they are committed individuals who want to see change.

The reforms the Government is introducing are much more far reaching than the abolition of ATSIC.

The new approach is about overhauling policy setting, reshaping service delivery, sharing responsibility and taking a bi-partisan approach to the issues. The amount of money spent, can no longer be the benchmark: outcomes must be the measure.

Critics of the Government's reforms consistently misrepresent the new arrangement. Responsibility for delivery is being given to mainstream departments, but Indigenous specific programs are being retained. It is true that mainstream departments did not serve Indigenous Australians well in the past, but under the new arrangements, the Government is not leaving the outcome to chance. New and strong accountability measures have been put in place, such as a Ministerial Taskforce to oversee activity, performance agreements for departmental heads, and an annual public report on outcomes.

New 'whole of government' Indigenous Coordination Centres are now the front line Government presence in the regions. They are gearing up to offer a simple, coordinated and flexible service.

In the past, Indigenous communities had to shop around for assistance. Governments did not do the coordinating, and it was left to a section of our population that was not well equipped, to do the coordinating for them. The Government's new approach is meant to put an end to that.

Communities do have ideas. We need to make sure that their capacity for innovation and radical approaches is nurtured and supported. The new arrangements will allow Government to listen directly to the views and aspirations of local communities about the future that they want for their children and grandchildren and to respond in a flexible way.

Over time, Australian government investment in special services for Indigenous communities will be delivered through Shared Responsibility Agreements. These agreements are not for basic citizenship entitlements, but relate to special assistance. They will not only set out what government's commitments will be, but will also set out those of the community. They also reflect the fact that no government can help a community that is not committed to helping itself. Likewise, it reflects the limits of government action, since many fundamental ingredients to the complex problems in these communities can *only* be delivered by the community.

To further promote better coordination and flexibility, each year, government ministers will join together to produce a single Indigenous affairs budget submission developed using a bottom up approach.

It is important that we do not forget the role of states and territories in reducing Indigenous disadvantage. After all, they are the key providers of primary and secondary education, access to primary health care, community infrastructure (including roads, water and sanitation and housing) and community safety and criminal justice.

The Australian Government and the states and territories are now working together across party lines through the Council of Australian Governments, the Ministerial Council on Indigenous Affairs and on the ground. Bilateral agreements between state and territory governments, that will sort out roles and responsibilities, together with new regional representative arrangements are being negotiated. Some states and territories are also considering locating their staff in the Indigenous Coordination Centres.

Abolition of ATSIC

The Committee's report is strident in its defence of ATSIC. This sits oddly with the statements of the former Labor leader, Mr Latham, who announced last year that:

ATSIC is no longer capable of addressing endemic problems in Indigenous Communities. It has lost the confidence of much of its own constituency and the wider community.

The underlying concepts that led to the creation of ATSIC were fundamentally flawed. As former Federal Indigenous Affairs Minister, the Hon Peter Howson said in his submission to the Committee:

The concept of having an elected body not answerable to the Federal Parliament but completely funded by it is contrary to the principles of responsible government.¹

There was serious conflict between ATSIC's representative, policy and program delivery roles. Consequently, none of its functions were performed effectively. In its submission, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) commented that:

The ATSIC Act adopted a democratic electoral system of representation at both the Regional Council and Board of Commissioners levels. The disjunction between culturally appropriate governance structures and direct election models created difficulties for Regional Councils of competing legitimacy with traditional owners and cultural authority structures. The national Board of Commissioners were a further step away from these regional accountabilities. Once elected, Commissioners were not formally

1 Howson, Submission 235, p. 1

accountable to their Regional Councils. The competition between community representation and electoral representation affected the capacity of ATSIC structures in many instances to strengthen existing Indigenous governing structures and consequently led to an argument that ATSIC was part of the machinery of government and not a part of Indigenous systems of representation and governance.²

ATSIC had little positive impact on policy development. While it did negotiate bilateral agreements with several states and territories, those were mostly about consultative mechanisms and did not produce measurable benefits for Indigenous people.

ATSIC's record in program delivery was not good. The Community Development Employments Projects (CDEP) program has not produced real job outcomes. The Business Development Program funded a long list of failed enterprises.

ATSIC has been described by some as the 'voice of Indigenous Australians'. However only twenty percent of eligible voters chose to vote in the last ATSIC election. Reconciliation Australia said in its submission:

Until now, national representative structures have been imposed by governments. The National Aboriginal Conference, Aboriginal Development Commission and ATSIC were not Indigenous creations.³

It needs to be said that ATSIC's failure is not the only cause of inadequate progress in Indigenous affairs. Many submissions to the Committee pointed to failings of government agencies, both state and federal.

However, ATSIC was meant to be at the centre of a system of policy development and program delivery for Indigenous Australians and must share a significant part of the blame.

The Government attempted to remedy ATSIC's structural flaws by introducing a 'separation of powers' with the creation of the Aboriginal and Torres Strait Islander Services (ATSIS). ATSIC would focus on advocacy and policy development while ATSIS would be responsible for programme administration and delivery.

The ATSIC Board however, was not able to grasp the opportunity to strengthen its advocacy and policy development role. Conflict and public squabbles within the Board led to further erosion of public confidence, culminating in Federal Labor's announcement that ATSIC should be abolished.

In announcing its decision to abolish ATSIC, the Government was aware that this in itself would not be sufficient to generate the improvements required. That is why the

2 AIATSIS, Submission 144, p. 16

3 Reconciliation Australia, Submission 225, p. 3

Government began a radical overhaul of policy development and program administration and delivery.

Following this complete re-alignment of program policy and delivery, ATSIC was left with little to do. Because of this, the Government has kept ATSIC operating budget to a minimum. With the agreement of the then Leader of the Opposition, the Government declined ATSIC's request for increased funding during the 2004 election campaign. Nevertheless, delaying the passage of the bill has cost around \$2 million for ATSIC Commissioner salaries and associated costs.

A number of submissions have argued that a national Indigenous representative body needs to replace the ATSIC Board. However, they argue that the body should be formed independently by Indigenous Australians themselves rather than be shaped by Government. The submissions of Reconciliation Australia and the Australian Institute of Aboriginal and Torres Strait Islander Studies make this point eloquently.

The Committee's recommendation that the Government actively supports the development of such a body is contrary to the notion of a body that is self-forming and completely the initiative of Indigenous Australians.

The Committee's suggestion that the Government should consider such a body if one did emerge as its principle source for policy advice is not supported by the government members. First, it would not be sensible to make such a commitment before such a body was formed. Further, such a formal relationship between the Government and any national Indigenous representative body would potentially reduce its independence. If a national Indigenous representative body is formed, its principle role should be advocacy and it should be unencumbered in this role.

Recommendation

That the Senate move quickly to pass the ATSIC Amendment Bill to avoid further waste of public money on ATSIC.

Regional representation

The Government's reforms have shifted the emphasis from statutory 'western style' representative bodies to working with local communities directly. Shared Responsibility Agreements will be the vehicle for engaging with local communities in a way that suits these communities.

It would be useful to have regional representative bodies or networks in place to allow Government to engage with the Indigenous people on strategic regional issues. The Government's reforms include provision for Regional Partnership Agreements which would allow formal recognition of such arrangements.

Consistent with a number of submissions provided to the Committee, the government members are of the view that a 'one size fits all approach' will not work and that regional bodies should be formed by Indigenous people themselves. Such bodies

should be left to emerge naturally and may be formed from existing Indigenous organisations.

Recommendation

That ATSIC Regional Councils be abolished on 30 July 2005, leaving Indigenous Australians free to form whatever new representative or regional bodies they deem appropriate.

Disposal of assets

The government members believe that assets owned by ATSIC should continue to be used for the benefit of all Indigenous communities. Government members condemn the irresponsible 'firesale' mentality of the ATSIC Board in its recent attempts to illegally gift ATSIC property.

When ATSIC is abolished, the Government intends to transfer the majority of ATSIC land and business assets to the Indigenous Land Corporation and Indigenous Business Australia, which will be able to divest these assets to local Indigenous people as appropriate. Other assets such as motor vehicles and staff housing were provided to ATSIC by the Government to deliver ATSIC programs to Indigenous people. These programs are now the responsibility of individual Government agencies. These assets should therefore continue to be available for the delivery of programs for the benefit of Indigenous people.

In relation to the ATSIC art collection, a number of submissions, including that of AIATSIS, were of the view that the collection should not be dispersed. The government members are also of the view that the art collection should be kept in tact for the benefit of Indigenous Australians and all Australians.

Recommendation

That all assets currently controlled by ATSIC continue to be applied to the benefit of Indigenous Australians, and that ATSIC's art be retained as a collection.

The Government's reforms transfer responsibility for ATSIC programs to mainstream agencies. It was the Labor Government in 1985 that decided to transfer ATSIC health program delivery to the (then) Department of Health. In its submission, the National Aboriginal Community Controlled Health Organisation (NACCHO) made the following observations:

NACCHO supports continuation of the current administrative arrangements for Aboriginal primary health care funding via the Commonwealth Department of Health and Ageing ...⁴

4 National Aboriginal Community Controlled Health Organisation, *Submission 179a*, p. 10.

The location of responsibility for Indigenous health within Australian Department of Health and Ageing is virtually universally supported within the health sector, including Indigenous health organisations. The reasons for this support include the greatly enhanced ability to bring public health expertise to bear, the emerging evidence of effectiveness, the leverage applied to the mainstream health system to enhance its response to Indigenous health disadvantage, and the record of achievement over the last eight years in allocating increased funding from within the health budget to Indigenous health. Responsibility for Indigenous health should remain with the mainstream health portfolio.⁵

Further, the former Chair of NACCHO, the late Dr Puggy Hunter observed:

We always argued that the Health Minister of Australia had responsibility for Aboriginal health and not ATSIC Commissioners and not the Aboriginal Affairs Minister. We classified ourselves as Australians first – Aboriginal Australians. So why couldn't the Minister for Health be responsible for us?⁶

A number of submissions took issue with the term 'mainstreaming', arguing that mainstream agencies have failed Indigenous Australians in the past. The government members reiterate the point made at the beginning of their report: that there is a significant difference between the delivery of undifferentiated, mainstream services, and the delivery of Indigenous specific services by mainstream departments. This point was stressed by the Secretary of the Department of Prime Minister and Cabinet, Dr Peter Shergold, when he appeared before the Committee, who described 'old' mainstreaming:

All the literature that I have seen says that there are a number of qualities to mainstreaming. The first is that you do not have Indigenous specific programs. The second is that each department and agency makes its own decisions in a non-coordinated way. The third is that you do not have an Indigenous specific agency. The fourth is that you have national programs that are delivered in the same way no matter where they are delivered.

The Government's new approach is completely at odds with each of those four criteria. It is committed to maintaining the funding for Indigenous specific programs.⁷

The government members are of the view that mainstream agencies have the specialist capacity to provide better services to Indigenous people. The government members also believe that the comprehensive accountability and 'whole of government' arrangements that have been put in place will ensure that mainstream agencies will be much more responsive to the needs of Indigenous Australians.

5 ibid, p. 9.

6 ibid

7 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 2.

Parliamentary Committees

The Committee's report recommends the establishment of a Senate Standing Committee on Indigenous Affairs. Government members however, believe that the opportunity should be taken to rationalise and strengthen existing Parliamentary Committee arrangements.

Recommendations

That the House of Representatives Standing Committee on Indigenous Affairs should be broadened to become a Parliamentary Joint Committee on Indigenous Affairs which should sit concurrently with the Parliamentary Joint Committee on Native Title and have common membership.

Senator David Johnstone Senator Nigel Scullion Senator Bill Heffernan