

The Senate

---

Select Committee on the  
Administration of Indigenous Affairs

---

After ATSIC - Life in the mainstream?

March 2005

© Commonwealth of Australia

ISBN 0 642 71501 7

**Senate Select Committee on the Administration of Indigenous Affairs  
Secretariat**

Jonathan Curtis, Secretary

Ian Holland, Principal Research Officer

Alison Kelly, Principal Research Officer

Timothy Watling, Senior Research Officer

Barbara Rogers, Executive Assistant

Sharon Babyack, Executive Assistant

Cath Drinkwater, Executive Assistant

The Senate

Parliament House

CANBERRA ACT 2600

Telephone: (02) 6277 3419

Facsimile: (02) 6277 5706

Email: [Indigenous.Affairs@aph.gov.au](mailto:Indigenous.Affairs@aph.gov.au)

Internet: <http://www.aph.gov.au/indigenouaffairsctte>

This document was produced by the Senate Select Committee on the Administration of Indigenous Affairs Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

## Members of the Committee

### Senators for the 40<sup>th</sup> Parliament

Senator Trish Crossin (ALP) (NT) (**Chair**)

Senator David Johnston (LP) WA (**Deputy Chair**)

Senator Bill Heffernan (LP) NSW

Senator Jan McLucas (ALP) QLD

Senator Kerry Nettle (AG) NSW

Senator Kerry O'Brien (ALP) TAS

Senator Aden Ridgeway (AD) NSW

Senator Nigel Scullion (CLP) NT

### Senators for the 41<sup>st</sup> Parliament

Senator Claire Moore (ALP) (QLD) (**Chair**)

Senator David Johnston (LP) WA (**Deputy Chair**)

Senator Kim Carr (ALP) (VIC)

Senator Trish Crossin (ALP) (NT)

Senator Bill Heffernan (LP) NSW

Senator Kerry Nettle (AG) NSW

Senator Aden Ridgeway (AD) NSW

Senator Nigel Scullion (CLP) NT



---

## TABLE OF CONTENTS

<b>Members of the Committee .....</b>	<b>iii</b>
<b>Summary of recommendations.....</b>	<b>vii</b>
<b>Acronyms.....</b>	<b>xi</b>
<b>Preface.....</b>	<b>xv</b>
<b>CHAPTER 1.....</b>	<b>1</b>
<b>Introduction.....</b>	<b>1</b>
Background to the inquiry.....	1
Overview of Government reforms to the administration of Indigenous affairs .....	1
Criticism of government processes .....	5
Conduct of the inquiry .....	9
Structure of the report .....	9
Assistance with the inquiry .....	10
<b>CHAPTER 2.....</b>	<b>11</b>
<b>Evolution of ATSIC .....</b>	<b>11</b>
Overview of ATSIC .....	11
ATSIC history and development .....	16
Reviews of Indigenous affairs .....	21
ATSIC's performance.....	28
Conclusion.....	41
<b>CHAPTER 3.....</b>	<b>45</b>
<b>The effects of the ATSIC Amendment Bill.....</b>	<b>45</b>
Introduction .....	45
Transfer of ATSIC assets and intellectual property.....	45
Changes to the Office of Evaluation and Audit.....	47
Changes affecting the Indigenous Land Corporation and Indigenous Business Australia.....	49
Implications for Native Title Representative Bodies.....	54
Consulting with Indigenous Australians .....	55

<b>CHAPTER 4.....</b>	<b>59</b>
<b>Representation.....</b>	<b>59</b>
The Government's proposed reforms .....	59
National representation .....	60
Indigenous representation and the role of government .....	66
Regional representation .....	69
The National Indigenous Council.....	73
Representation of Torres Strait Islanders .....	75
<b>CHAPTER 5 .....</b>	<b>77</b>
<b>Mainstreaming of service delivery.....</b>	<b>77</b>
Introduction .....	77
Old problems – the need for a new approach.....	78
'New' mainstreaming .....	82
Government policy for the new administrative arrangements .....	85
Rationale for mainstreaming .....	86
Issues with mainstreaming .....	89
Conclusion and recommendation .....	110
<b>Australian Democrats supplementary comments .....</b>	<b>113</b>
<b>Australian Greens – additional comments.....</b>	<b>121</b>
<b>Minority report by Government Members.....</b>	<b>127</b>
<b>APPENDIX 1 .....</b>	<b>135</b>
<b>Submissions Received.....</b>	<b>135</b>
<b>APPENDIX 2.....</b>	<b>147</b>
<b>Witnesses who have appeared before the Committee at public hearings.....</b>	<b>147</b>
<b>APPENDIX 3.....</b>	<b>163</b>
<b>Tabled Documents .....</b>	<b>163</b>

# Summary of recommendations

## **Recommendation 1.1 ..... 8**

1.27 The Committee accordingly recommends that the government affirms formally that ATSIC's powers remain in force until the date of proclamation of the relevant legislation, and that decisions taken in accordance with the law up to that date are recognised and implemented.

## **Recommendation 3.1 ..... 47**

3.11 The Committee recommends that all assets controlled by ATSIC continue to be applied to the benefit of Indigenous Australians, and that Indigenous people retain custody of Indigenous artworks and artefacts.

## **Recommendation 3.2 ..... 51**

3.27 The Committee recommends that ILC's capacity to manage its portfolio of properties be monitored by the Parliamentary Joint Committee on Native Title as part of its statutory scrutiny role of the ILC. In the event that ATSIC and its regional councils are abolished, the ordinary members of the ILC Board include an Indigenous representative nominated by a relevant Indigenous organisation.

## **Recommendation 3.3 ..... 53**

3.42 The Committee recommends that the Bill be amended to provide appeals to the Administrative Appeals Tribunal in cases where IBA refuses a business loan. The Committee also recommends that the Government examine all new requirements that the Bill and related administrative changes impose on the IBA to ensure that these do not have a negative impact on its operation.

## **Recommendation 3.4 ..... 54**

3.46 The Committee recommends that the Parliamentary Joint Committee on Native Title carefully examine the issue of conflict of interest in the funding of Native Title Representative Bodies as part of its current inquiry into Native Title Representative Bodies.

---

**Recommendation 3.5 ..... 56**

3.53 The Committee recommends that consultation clauses in the Acts modified by the ATSIC Amendment Bill be amended to insert a requirement to consult relevant Indigenous organisations.

**Recommendation 4.1 ..... 67**

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.

**Recommendation 4.2 ..... 69**

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.

**Recommendation 4.3 ..... 73**

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.

**Recommendation 4.4 ..... 75**

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.



---

**Recommendation 5.1 ..... 94**

5.76 The Committee recommends that the Government immediately establishes a mechanism to thoroughly and impartially assess the new mainstreaming arrangements as they are implemented, including those already in place. The Committee also recommends that the resultant report is made public.

**Recommendation 5.2 ..... 98**

5.97 The Committee recommends that ICC Managers have the delegated authority necessary to make direct funding decisions, within their agreed budget, on local Indigenous programs.

**Recommendation 5.3 .....112**

5.167 The Committee recommends the establishment of a Senate Standing Committee on Indigenous Affairs, tasked with examination of:

- the implementation of the mainstreaming policy;
- the coordination of Commonwealth, state and territory agencies;
- the formation of representative arrangements; and
- the equity of Shared Responsibility Agreements



# Acronyms

ABS	Australian Bureau of Statistics
ACOSS	Australian Council of Social Services
AHL	Aboriginal Hostel Limited
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Services
CDEP	Community Development Employment Projects
CEO	Chief Executive Officer
CGC	Commonwealth Grants Commission
CHIP	Commonwealth Housing and Infrastructure Program
CLC	Central Land Council
COAG	Council of Australian Governments
DCITA	Department of Communications, Information Technology and the Arts
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DOHA	Department of Health and Ageing
DOGIT	Deeds of Grant in Trust
FACS	Department of Family and Community Services
IBA	Indigenous Business Australia
ILC	Indigenous Land Corporation
ILF	Indigenous Land Fund

MCATSIA	Ministerial Council for Aboriginal and Torres Strait Islander Affairs
NACCHO	National Aboriginal Community Controlled Health Organisation
NLC	Northern Land Council
OATSIA	Office of Aboriginal and Torres Strait Islander Affairs
OEA	Office of Evaluation and Audit
PM&C	Department of the Prime Minister and Cabinet
TSAIB	Torres Strait Islander Advisory Board
TSRA	Torres Strait Regional Authority

I would like to give you two little stories which I always carry in my mind.

The first story is about a big, fat fish in the billabong. Once this little fish was happy with his group of fish, his family, in the billabong, until one day a shadow came. This shadow threw a crumb into the billabong. This one little fish started to taste the crumb from that shadow and was going every day to that shadow. When the shadow came, the fish used to go to that shadow. At the end, he told all the other fish to go and wait for the shadow, until half the community of the fish had to wait for the shadow to get fed. But the shadow just threw a crumb after his dinner. Today we Yolngu people are like the fish and the shadow is the government people.

I will give you another story, about a magpie and a sea eagle. These two has an argument about why magpie geese lay eggs in the weeds in the swamp and why sea eagles make their nests right up the top. At the end of the day they were both birds with wings and they could both fly. Both of them were talking about one another, and they had a little argument about who was best. But, if the eagle was like the magpie goose he would die and if the magpie goose was like the sea eagle he would die, so at the end of the day they agreed that one was a magpie goose and one was a sea eagle, and they both lived happily ever after.

Councillor Tony Binalany<sup>1</sup>

---

1 *Committee Hansard*, Nhulunbuy, 25 August 2004, p. 2.



# Preface

Aboriginal law is the first law of the land; it is unchanging and must be respected. A new relationship must be established between Aboriginal and non-Aboriginal people based on mutual respect and recognising full Aboriginal self-governance on an equal basis. It is the only way we will achieve real benefits for Aboriginal people.

To this end, the provisions of the ATSIC amendment bill and the information on the replacement structure constitute a denial of the right of Indigenous people to self-determination. This is of considerable concern as self-determination needs to be enhanced and strengthened to bring about positive change. It is contrary to the aspirations of Indigenous people. The potentially destructive impact of the move from self-determination to mainstreaming will be seen in the immediate future. Our concern is that once again we will be experimented on and that, in another five to 10 years time, we will be back to discuss what went wrong.<sup>1</sup>

The issues covered in this report must be seen in the context of the Howard Government's long-term agenda in Indigenous affairs. 'Mainstreaming' and a 'whole-of-government approach' are the Howard government's terms for its approach to Indigenous policy. This agenda, apparently new and unashamedly radical, has in reality been unfolding since 1996. Starting with its defensive Ten Point Plan response to the potentially far-reaching Wik decision of the High Court in December 1996, the government has sought to set in place an 'assimilationist' policy direction that is oblivious to the rights of Australia's Indigenous people.

The Wik decision clarified, and extended the implications of, the Court's Mabo judgment of 1992 that legally established the concept of native title in Australia. The newly elected Howard government's reaction was, to use then Deputy Prime Minister Tim Fischer's words, to adopt a strategy that would provide 'bucketfuls of extinguishment' to native title on pastoral leases. This was simply the first step on a road towards a policy that ignores both the rights of Indigenous people and their dispossession and subsequent serious disadvantage in Australian society following the arrival of white colonialists over 200 years ago.

'Assimilationism' or 'inclusionism' is painted by the government as a benign policy direction: it aims, it is claimed, to bring Indigenous people into mainstream society on an equal basis with other Australians:

In the history of Aboriginal policy in Australia, going back to earliest times, we find the fault line divides the protagonists into inclusionists or

---

1 Commissioner Alison Anderson, *Proof Committee Hansard*, Alice Springs, 20 July 2004, p. 48, reading from Central Remote Regional Council, *Submission 52*.

assimilationists on the one hand, and separatists or Rousseauvian sentimentalists on the other.<sup>2</sup>

And yet this is based implicitly on the view that Indigenous culture and social organisation are inferior. Former Territories Minister Paul Hasluck used the term 'assimilation' and described his government's approach thus:

The superiority of Western civilisation both on its own merit and in its established position as the way of life of the vast majority – indeed the incompatibility of civilised usage and pagan barbarism – left only two possible outcomes: separate development or assimilation.

It is the inherent inferiority of Indigenous society, the argument goes, that necessitates this conclusion – that there are only two options, and the assimilationist route is by far the preferable one: it is not possible for Australia to recognise and respect the rights and unique attributes of Indigenous people and their society, while at the same time ensuring that Indigenous people can participate in the mainstream of Australian economic and social life.

The Committee rejects this view. Nobody would want to argue that Australia's Indigenous people should be forced to live in separate communities or to be treated differently in every respect by government from other Australians. Indigenous people themselves do not want this, and have called repeatedly for recognition of their right to participate on an equal basis in economic and social terms. Yet such participation cannot be successful unless, first, there is formal recognition that Indigenous people have been dispossessed and, second, definite, specific steps are taken to redress the grave social and economic disadvantage that followed that dispossession.

Since winding back the rights won by Indigenous people with respect to recognition of native title, the Howard government has acted progressively to undermine the rights of Indigenous people in Australia. It has refused to replace the elected national Indigenous representative body, ATSIC, with a new, genuinely representative structure.

The Government paints what it terms the ATSIC 'experiment' as an unambiguous failure. It concludes from this characterisation that Australia's Indigenous people are incapable of managing their own affairs; that self-determination and not merely the ATSIC model, has failed.

At the same time, the Government has furthered its assimilationist agenda by dissolving the administrative structures that provided specialist, specific services to Indigenous people and their communities. Already as a result, the number of Indigenous people employed by the Commonwealth to provide these services has fallen markedly. Indigenous people will henceforth find their interactions with government more difficult and less informed by shared cultural understandings. In

---

2 Peter Howson, 'The 2004 election and Aboriginal Policy', Quadrant November 2004, republished by the Bennelong Society



health and education, where Indigenous policy and service delivery have been part of mainstream provision for many years, and despite the best efforts of many able public servants and policy makers, Aboriginal and Torres Strait Islander people's circumstances continue to lag well behind those of other Australians.

Meanwhile, many programs until now administered by ATSIC and focussed clearly on the needs of Indigenous people have brought appreciable gains – the Community Development Employment Projects (CDEP) program and the financial agency Indigenous Business Australia among them.

Under the new arrangements, these and other programs in Indigenous housing, legal aid, the arts and other areas will be dissolved into large Commonwealth departments whose primary objectives are much broader. Though the programs will be retained in name, inevitably they will fall under the cultural influence and values of those mainstream organisations. Their specific Indigenous focus could well be lost. At the same time, it will become more difficult for Indigenous people themselves, and also for the Parliament, to monitor and evaluate the performance of the government in providing for the needs of Indigenous citizens.

Assimilationism is far from a benign philosophy. On the contrary, it represents merely one aspect of a view of Indigenous people that is paternalistic and essentially arrogant in its superiority. It is a view that most Australians would find repugnant. Opponents of assimilationism, both black and white, do not want to banish Indigenous people to apartheid-inspired reservations, but recognise that, in order to take their rightful place in Australian society, Indigenous people's needs, their history, their cultures and their rights must be accorded recognition and respect. The government's agenda fails to do this. In so doing it fails its own Indigenous citizens. For all Australians, that is a matter for shame.



# CHAPTER 1

## INTRODUCTION

### **Background to the inquiry**

1.1 On 16 July 2004 the Senate resolved to appoint a Select Committee on the Administration of Indigenous Affairs, to report by 31 October 2004, into the following matters:

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

1.2 The Committee ceased activities upon the prorogation of the 40<sup>th</sup> Parliament in September 2004, and was reconstituted on 17 November 2004, with the terms of reference unchanged and a new reporting date of 8 March 2005. Amendments to membership took place on 18 November 2004, with Senator McLucas and Senator O'Brien replaced by Senator Carr and Senator Moore.

### **Overview of Government reforms to the administration of Indigenous affairs**

1.3 The Government's reforms fall within two categories: those requiring legislative change to the ATSIC Act, and administrative changes. These administrative changes represent much more than routine consequences of a legislative change. The majority, which have pre-empted the abolition of ATSIC in that they have already been effected, go to the 'mainstreaming' of programs previously operated under the aegis of ATSIC. They are driven by a government policy approach that has been termed by witnesses to the inquiry as "assimilationist": they involve the shifting of ATSIC's program responsibilities into larger, generalist Commonwealth departments. The Committee notes that this move is regarded by many as extremely controversial. A large amount of evidence was presented to the Committee on this issue, and is discussed at length and in detail in this report.

#### ***Aboriginal and Torres Strait Islander Commission Amendment Bill 2004***

1.4 The ATSIC Amendment Bill was first introduced into the Parliament on 27 May 2004, and following the election, was reintroduced largely unchanged onto the notice paper on 1 December 2004.

1.5 The ATSIC Amendment Bill repeals or amends large parts of the *ATSIC Act 1989*, as well as making consequential amendments to a range of other legislation. Its effect is essentially to do away with ATSIC as an elected representative body with

specific powers and responsibilities and to distribute its program functions among other Commonwealth departments. ATSIC's international representative role, in particular, is not replaced or paralleled in the new arrangements. The main provisions:

- effectively abolish ATSIC, repealing the sections governing its functions, constitution, administration and operations;
- leave the Torres Strait Regional Authority intact, but abolish the Torres Strait Islander Advisory Board (as there will no longer be an ATSIC for it to advise);
- transfer oversight of Regional Councils from ATSIC to the Minister, and provide for the abolition of Regional Councils from July 2005;
- preserve the Office of Evaluation and Audit, changing its functions to evaluate or audit 'relevant programs administered by Australian Government bodies; and ... the activities of any individual or organisation that has received funding under any relevant program'. Relevant programs are defined as those that use resources to further 'the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders';
- transfer the Regional Land Fund to the Indigenous Land Corporation; and
- transfer the Housing Fund and Business Development Program to Indigenous Business Australia.

1.6 The Bill also contains consequential provisions that remove references to ATSIC from other legislation. More substantively, this includes:

- The transfer of the role of ATSIC under the *Native Title Act 1993* to DIMIA, giving the Government the power to both decide which Native Title organisations it will fund (and therefore which land claims will be funded), while also, through the Attorney-General's department, opposing such claims;
- ATSIC's right to be consulted pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* and the *Human Rights and Equal Opportunity Commission Act 1986*; and
- ATSIC's right to nominate an ATSIC member to the National Health and Medical Research Council under the *NHMRC Act 1992*, or for the Torres Strait Islander Advisory Board under the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*.

1.7 The main changes in the reintroduced Bill are:

- The date for the abolition of ATSIC has been changed from 1 July 2004 to a date to be proclaimed.
- The date of the abolition of the Regional Councils remains at 1 July 2005 unless the abolition of ATSIC occurs after that date in which case the Regional Councils would be abolished on the day after ATSIC is abolished.

- 
- A minor change has been made to a provision concerning secrecy of information to ensure that former ATSIC staff who transfer to other agencies can continue to pass on appropriate information in the course of their duties.
  - Minor changes have also been made to provisions governing the Office of Evaluation and Audit to allow the Minister for Finance and Administration to provide reports to other Ministers and to table them in Parliament.<sup>1</sup>

### *Mainstreaming of services*

1.8 The Australian Government implemented changes in the administration of Aboriginal and Torres Strait Islander affairs on 1 July 2004. The aim was to enable a 'whole of government' approach by building partnerships with Indigenous Australians at the local and regional level to tailor the delivery of government services.

1.9 More than \$1 billion of former ATSIC/ATSIS programs, including some 1300 staff, were transferred to mainstream Australian Government agencies. A Ministerial Taskforce on Indigenous Affairs was established to provide strategic direction and monitor outcomes of those mainstream agencies and will be supported by a Secretaries Group comprising the heads of the Commonwealth agencies responsible for program delivery. As noted, this move pre-empted the formal abolition of ATSIC by means of legislation and in effect created a *fait accompli* in policy terms. In taking these steps, the Government has acted precipitously to implement its policy agenda. The Committee, in the course of the current inquiry, heard evidence from representatives of many Indigenous organisations, as well as individuals, expressing dismay and anger at the manner in which the Government has sought to implement a set of radical changes in Indigenous affairs policy, representing a complete about-face in terms of overall policy approach from that which has obtained for the last twenty years.

1.10 Government will also be advised by the National Indigenous Council, an appointed body of Indigenous experts from various fields that will meet directly with the Taskforce up to four times yearly. This body, it must be stressed, is neither elected nor representative in any other sense, and is not formally answerable to Indigenous people. The Office of Indigenous Policy Coordination (OIPC) has been established within DIMIA to drive policy development and service delivery.

1.11 Thirty Indigenous Coordination Centres (ICC) have replaced the ATSIC/ATSIS offices in regional and remote areas, offering a whole of government response to issues identified by Indigenous communities. Service delivery will be guided by partnership agreements at the regional level and shared responsibility agreements at the local and community level. The ICCs will lead and coordinate the negotiation of these agreements.

---

1 This information was supplied by OIPC.

1.12 The Regional Councils will remain in operation until July 2005, in anticipation of the passing of the ATSIC Amendment Bill. While the Government has asserted that it intends to invite Indigenous people and organisations to form representative bodies of some form or another, to perform the functions now carried out by ATSIC regional structures, no provisions relating to such an intention are contained in the legislation before the Parliament. Nor are there any other material signs of the Government's plans in this regard.

1.13 Below is a table illustrating the transfer of programs and funding to mainstream departments and agencies that occurred on 1 July 2004.

*Table 1.1 – Transfer of ATSI-ATSIC functions from 1 July 2004*

<b>Program</b>	<b>Portfolio</b>
Community Development and Employment (CDEP); Business development and assistance; Home ownership	Employment and Workplace Relations
Community Housing and Infrastructure; Indigenous women	Family and Community Services
Art, culture and language; Broadcasting services; Sport and recreation; Maintenance and protection of Indigenous heritage	Communication, Information Technology and the Arts
Legal and preventative; Family violence prevention legal services	Attorney-General
Access to effective family tracing and reunion services	Health and Ageing
Indigenous rights; International issues; Native title and land rights; Repatriation; Indigenous land fund; Community participation agreements; TSI on the mainland; Planning and partnership development; Public information	Immigration, Multicultural and Indigenous Affairs

<b>Bodies</b>	<b>Portfolio</b>
---------------	------------------

Australian Institute of Aboriginal and Torres Strait Islander Studies	Communication, Information Technology and the Arts
Aboriginal Hostels limited	Family and Community Services
Indigenous Business Australia	Employment and Workplace Relations
Indigenous land Corporation; Torres Strait Regional Authority; Registrar of Aboriginal Corporations	Immigration, Multicultural and; Indigenous Affairs
Office of Evaluation and Audit	Finance

(Source: Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs & Minister Assisting the Prime Minister for Reconciliation, 'Australian Government Changes to Indigenous Affairs Services Commence Tomorrow', Media Release, 30 June 2004)

### **Criticism of government processes**

1.14 In the context of the introduction of the report, it is appropriate to make several comments on the process by which the Government has effected what are the most significant changes to Aboriginal affairs in a decade. Leaving aside the merits of these changes, which are the subject of the remainder of this report, the Committee is critical of the speed with which the Government has forced through these changes. The Committee also shares the concerns of the many Indigenous organisations which have expressed grave disquiet about the complete lack of consultation with Indigenous people about the changes. They have been effected without adequate information being provided to Aboriginal and Torres Strait Islander people.

1.15 Professor Mick Dodson referred to this lack of consultation during evidence given to the Committee in Canberra. Professor Dodson made the comment that the decisions were made as if Indigenous people were 'invisible':

It was like we did not exist. ... political figures ... talking about our future without any reference to us ... seemed to deal with us as totally irrelevant and to ignore us.<sup>2</sup>

1.16 His colleague reinforced this sentiment, saying that:

...the people who have most to lose out of this process are the ones who have greatest corporate knowledge ... [but] they are being ... deliberately left out of the process. Yet the documents provided publicly that describe the process sets them up as primary participants in the process.<sup>3</sup>

---

2 Professor Dodson, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 33.

3 Mr Glanville, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 35.

1.17 Continuing his criticism, Professor Dodson paused to explain the difference between what the Government means by consultation and what Indigenous people expect it to be:

In my experience, what the Government means by consultation is, 'We, the government, have an agenda. Let's go out and run that agenda past the Indigenous community organisation.' ... In that model, there is no place for Indigenous decision making. It [government consultation] is a process by which the government or bureaucratic agenda gets some sort of legitimisation.<sup>4</sup>

1.18 Commissioner Quartermaine, then Acting Chairman of ATSIC, made the following observation, which was consistent with other feedback collected during the Inquiry:

...[T]he Government's decision announced on 15 April 2004 to abolish ATSIC was devoid of any consultation with those who would be affected; Aboriginal and Torres Strait Islander peoples. In making the decision, the Prime Minister blatantly ignored the findings of his own Government's report [the ATSIC Review] and the views of the Indigenous people who had contributed to its findings.<sup>5</sup>

1.19 Firstly, and a major source of resentment for many in the Indigenous community, is the fact that having commissioned the ATSIC Review, which presented the Government with a model to reform ATSIC based on extensive consultation, the Government suddenly announced the complete abolition of ATSIC.<sup>6</sup> This was done with limited explanation and no discussion. A large number of people, organisations and communities participated in this review in good faith, with a commitment to a process of honest critique and reform. Abolition of ATSIC was never mentioned: rather, there was a legitimate expectation that the Government would proceed with at least the general direction of the Review's findings.

1.20 The Government, having decided to radically depart from the Review findings, should have provided some opportunity for comment. In his opening statement to the Committee in February 2005, the ATSIC Review Panel Convenor, Hon John Hannaford, made the following comment, which clearly questions the integrity of the Government's intent with the Review findings. Mr Hannaford addressed the Committee, saying:

---

4 Professor Dodson, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 41.

5 ATSIC, *Submission 202*, p. 17.

6 See for example: Ms Logan, *Submission 6*, p. 1; Pat Andruchow, *Submission 14*, p. 1; Ms Hines, *Submission 36*, p. 2; Uniting Aboriginal and Islander Christian Congress, *Submission 99*, p. 1.



---

Thank you very much for the opportunity to speak to you. This is the first opportunity I have had to speak to anyone in government about the report.<sup>7</sup>

1.21 The Chair later clarified this point with Mr Hannaford, asking whether, since handing the report to the Minister in November 2003, he had been given a chance to debrief the Minister; Mr Hannaford responded:

I have spoken to no-one since then.<sup>8</sup>

1.22 Rather than hold even perfunctory consultations with the Review Panel, the Government adopted what can only be described as a 'crash-through' approach to reform, using surprise and momentum to carry through changes it knew would be unpopular. Furthermore, in so doing, it ignored the major findings of the ATSIC Review – an exercise which, according to the Government's own admission has cost the taxpayer \$1.4 million.

1.23 Secondly, as indicated, the Committee is critical of the manner in which the Government acted immediately to give effect to its revised administrative arrangements well before the Parliament had actually abolished ATSIC. While the abolition of ATSIC was announced by the Minister on 15 April 2004, the majority of ATSIC/ATSIS programs and services were transferred to mainstream departments on 1 July 2004.<sup>9</sup> In addition, most of ATSIC's resources, including staff, budgets and travel entitlements were removed, leaving elected ATSIC officials with only the barest statutory entitlements.

1.24 The extent of this process is evidenced by the fact that both the Chairman and Deputy Chairman of ATSIC were even refused funding by the Minister to travel to Canberra to give evidence to this Committee. Mr Geoff Clarke was also refused permission to obtain legal advice under the terms of the ATSIC/ATSIS agreements.<sup>10</sup> In the view of this Committee, this was quite inappropriate. ATSIC officials were legitimately elected under an Act that is still in force, and should retain their full entitlements including staff – not just the bare minimum of pay and conditions – until the ATSIC Act is amended.

1.25 Instead, this hasty change was implemented arbitrarily, evicting duly elected Commissioners and Regional Councillors in the midst of their three-year term. These people were elected with the reasonable expectation of serving their constituents for the usual three year term, and being paid and supported to do so, as any elected official or parliamentarian would anticipate. They have been denied their expectation

---

7 Hon John Hannaford, Convenor, ATSIC Review Panel, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 22.

8 *ibid*, p. 36.

9 OIPC, *Submission* 128, p. 10.

10 For details of this difficulty, see Mr Clarke, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 2. See also documents tabled by Mr Clarke.

that any plans and aspirations they were in the midst of implementing would be allowed their natural course of time.

**1.26** Further, the decisions formally made by ATSIC since 1 July 2004, until ATSIC is actually abolished, must be recognised by the Government as legitimate and legally binding.

### **Recommendation 1.1**

**1.27** **The Committee accordingly recommends that the government affirms formally that ATSIC's powers remain in force until the date of proclamation of the relevant legislation, and that decisions taken in accordance with the law up to that date are recognised and implemented.**

1.28 The Secretary of the Department of the Prime Minister and Cabinet, Dr Shergold defended the Government's approach:

Do I think that commissioners should only be paid what is actually necessary to undertake their role? The answer, I have to say, is yes. And the role of commissioners now is extraordinarily limited compared with the role that they had in the past.<sup>11</sup>

1.29 It is certainly the case that the removal of the program delivery functions from ATSIC certainly reduced the role of the ATSIC Commissioners. However, at a time of such significant changes in Indigenous policy, and a time at which the Government itself had sought the advice of ATSIC in devising new representative organisations, the work of the full-time ATSIC Commissioners in their core role of consultation with their Indigenous communities has perhaps never been greater – especially given the limited capacity of the part-time Regional Councillors to perform this role. The changes have created major uncertainty and confusion in many communities, and instead of the Government treating the ATSIC Board as an obstruction, it would have been more appropriate to enlist their assistance in managing a constructive transition.

1.30 Thirdly, the Committee is strongly of the view that the actions of the Government have pre-empted Parliament's decision on the future of ATSIC. ATSIC was created through a lengthy and thorough debate in the Parliament. ATSIC is a creation of Parliament, and as such, it is for Parliament to decide what, if any, changes are to be made to it. As the Government pointed out, the immediate changes were administrative in nature and did not require legislative amendment by Parliament. However whilst legally accurate, this is disingenuous, since the Government's changes dismantled ATSIC in all but name.

1.31 Not content with these actions, the Minister repeatedly criticised the Senate for delays in passing the Government's Bill and the wastage of taxpayers' money

---

11 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 32.

---

associated with the salaries and entitlements of the ATSIC Board members.<sup>12</sup> Dr Shergold told the Committee:

It is certainly true that the government is understandably frustrated that there is continued significant payment for commissioners – money that could otherwise be directed to other programs.<sup>13</sup>

1.32 The Committee rejects this view, which is based on the agreement by the then Leader of the Opposition to the abolition of ATSIC. An important caveat to Mr Latham's agreement was that were ATSIC to be abolished, it should be replaced by a national Indigenous representative organisation of some form yet to be decided. On these grounds, ATSIC should not be dismantled until consideration of a replacement is decided. To do so is likely to risk the loss of much that has been achieved by ATSIC, and to complicate the creation of its successor.

### **Conduct of the inquiry**

1.33 During the life of the inquiry during both the 40<sup>th</sup> and 41<sup>st</sup> Parliaments, the Committee published over two hundred and forty submissions (a full list of submissions is at Appendix 1).

1.34 Prior to the Federal election, the Committee conducted public hearings in Alice Springs, Broome, Darwin, Gove, Thursday Island and Cairns and also received a briefing from the Department of Immigration, Multicultural and Indigenous Affairs, prior to tabling an Interim report on 31 August 2004.

1.35 After its reconstitution by the 41<sup>st</sup> Parliament, the Committee held further public hearings in Brisbane, Moree, Sydney and Canberra, full details of which are listed in Appendix 2.

1.36 The Committee is mindful that due to the tight reporting deadline, it has not been able to consult as widely as it might have wished. In particular, the Committee regrets that it had to cancel its planned hearing in Melbourne, and was unable to meet with communities in locations such as Adelaide, Perth, Geraldton, Kalgoorlie or Tasmania. The Committee regrets that the tight reporting timeframe has also allowed limited opportunity to discuss the new arrangements with the various State and Territory governments. This is especially regrettable in the light of the importance placed on 'whole of government' responses, and that changes to the Australia-wide consultative arrangements have considerable implications for these governments.

### **Structure of the report**

1.37 Chapter two of the report provides a brief background to the history of the administration of Aboriginal and Torres Strait Islander affairs in Australia, followed

---

12 See, for example, the Second Reading Speeches.

13 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 32.

by a description of the proposed amendments to the ATSIC Act. The chapter concludes with an examination of the effectiveness of ATSIC over its ten years of existence and whether it can be said to have 'failed'.

1.38 Chapter three deals with a number of administrative issues contained in the Bill, including the removal of statutory consultation mechanisms contained in a range of other Commonwealth legislation, as well as changes to the operation of the Indigenous Land Corporation and Indigenous Business Australia.

1.39 Chapter four discusses the issue of Indigenous representative mechanisms, including their role at local, regional, national and international level. In the context of this discussion, the chapter considers how these representational functions will operate under the Government's new arrangements. In particular, this discussion addresses the central questions of whether representative bodies should be legislated or funded by government.

1.40 Chapter five then examines the policy of 'mainstreaming' of Indigenous programs and services. It examines the theory of what the Government sees as a new style of 'mainstreaming' that focuses on whole of government integration of services, with mainstream departments delivering Indigenous specific programs.

### **Assistance with the inquiry**

1.41 In the course of the Inquiry, the Committee received a large number of submissions from a range of organisations and private individuals, often accompanied by supporting documentation. Others gave freely of their time in appearing before the Committee in public hearings, and in many cases undertook additional work to provide follow up information to the Committee in response to questions raised during the discussions. Officers from the Office of Indigenous Coordination were kept particularly busy with requests from the Committee, and their efforts are appreciated.

1.42 The Committee wishes to thank the Parliamentary Library, particularly Scott Bennett, Jennifer Norberry and Dr Angela Pratt, for providing advice and for allowing the Committee to draw extensively on Library publications relevant to ATSIC.

1.43 Finally, the Committee would like to thank the officers of the Secretariat team who administered the Inquiry, and assisted with the research and drafting of the report.

# 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.<sup>1</sup>

### 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*<sup>2</sup>

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"'.<sup>3</sup>

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.

<b>Program</b>	<b>Expenditure (\$000)</b>	<b>% of total expenditure</b>
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***

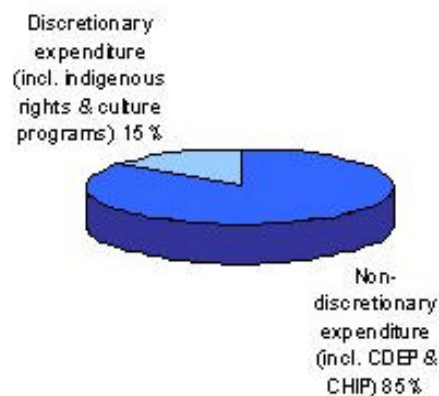
2.12 One of the particular misconceptions about ATSIC's funding is that it is responsible for all Commonwealth spending on Indigenous affairs, when this is not, and never really has been, the case. ATSIC has only ever administered around half of the Commonwealth's total identifiable expenditure on Indigenous 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

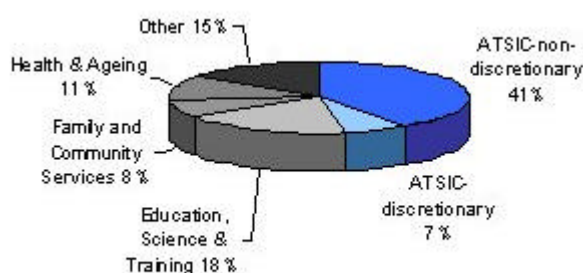


'discretionary' budget as a proportion of total identifiable Commonwealth Indigenous affairs expenditure is smaller still, as Figures 1 and 2 demonstrate.

*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'.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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'.<sup>7</sup> 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',<sup>8</sup> 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'<sup>9</sup>.

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.<sup>10</sup> As such it would 'allay the criticism that decision-making power over Aboriginal affairs had never been fully given to Aborigines'<sup>11</sup> – 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'.<sup>12</sup>

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.<sup>13</sup>

### ***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.<sup>14</sup>

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.<sup>15</sup>

#### *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.<sup>16</sup>

### *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.<sup>17</sup> 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.<sup>18</sup> 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'.<sup>19</sup>

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 report<sup>20</sup> 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.



- 
- 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 represents<sup>21</sup>

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'.<sup>22</sup> 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 ...'<sup>23</sup>. 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'<sup>24</sup>, 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.<sup>25</sup>

2.84 UTS explained that although the State Advisory Committees (SACs)<sup>26</sup> 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.<sup>27</sup>

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].<sup>28</sup>

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, it's 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.<sup>29</sup>

---

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 (40<sup>th</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

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.'<sup>35</sup> 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.'<sup>36</sup>

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.<sup>37</sup>

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).'<sup>38</sup>

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.<sup>39</sup>

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',<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup>

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'.<sup>47</sup> 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.<sup>48</sup>

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,<sup>49</sup> while some evidence provided to the Committee suggests that certain aspects of the CDEP program are poorly administered and not delivering the intended outcomes.<sup>50</sup>

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...<sup>51</sup>

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.<sup>52</sup>

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

... responsibilities for the portfolios of Health, Education and Employment reside with the Ministers ...<sup>53</sup>

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.<sup>54</sup>

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.<sup>55</sup>

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.<sup>56</sup>

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.'<sup>57</sup>

---

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.<sup>58</sup>

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.<sup>59</sup>

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.<sup>60</sup>

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.<sup>61</sup>

### ***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.

... ATSIIC'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.<sup>62</sup>

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

First, it is important to recognise ATSIIC'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.<sup>63</sup>

2.127 Dr Sanders reinforced these sentiments.

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

2.128 The ATSIIC 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.<sup>65</sup>

2.129 At the national level, ATSIIC 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.<sup>66</sup>

2.130 The UTS submission claims that ATSIIC 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.<sup>67</sup>

2.131 Similarly, ATSIIC 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.<sup>68</sup>

---

62 Mr Troy Austin, *ATSIIC's unique voice and record of achievement*, Media Release, ATSIIC 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 ATSIIC, *Submission 202*, p. 4.

66 *ibid.*

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

68 ATSIIC, *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*.<sup>69</sup>

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.<sup>70</sup>

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.<sup>71</sup>

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.<sup>72</sup>

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.<sup>73</sup>

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.<sup>74</sup>

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.<sup>75</sup>

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.<sup>76</sup>

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.<sup>77</sup>

## 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,<sup>78</sup> 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.<sup>79</sup>

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.<sup>80</sup>

---

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.'<sup>81</sup> 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 (40<sup>th</sup> Parliament), p. 1.



# CHAPTER 3

## The effects of the ATSIC Amendment Bill

### Introduction

3.1 In her second reading speech, the Minister indicated that:

The Bill does one thing. It abolishes ATSIC. The bulk of the Australian Government's reforms to Indigenous affairs are proceeding independently of this Bill.<sup>1</sup>

3.2 The Committee is concerned that this seriously over-simplifies the Bill's proposed effects. While most of the reforms have been independently implemented, there are changes in the Bill that affect more than just the Board of ATSIC, and this chapter analyses those changes.

### Transfer of ATSIC assets and intellectual property

3.3 The Government's approach to ATSIC's assets was explained by the then CEO of ATSI, Mr Gibbons:

The principle that has been followed in the drafting of the Bill is that real assets that were in the hands of Indigenous organisations remain in Indigenous custody through ILC or IBA. Assets that were acquired for the purposes of administering programs would return to the Commonwealth for that purpose where they have not already been returned to or taken over by the Commonwealth.<sup>2</sup>

3.4 Under Schedule 1, Item 192 of the Bill (item 191 in the Bill that was before the previous Parliament), ATSIC's assets and liabilities are transferred to the Commonwealth, to Indigenous Business Australia, or to the Indigenous Land Corporation. Broadly speaking, the assets are divided up as shown in the table below.<sup>3</sup>

*Table 3.1 – Transfer of ATSIC assets*

---

1 *Senate Hansard*, 1 December 2004, p. 1.

2 Mr Gibbons, *Committee Hansard*, Canberra, 29 June 2004, p. 26.

3 Note that Mr Vaughan, Office of Aboriginal and Torres Strait Islander Affairs, in his statements during a hearing mistakenly reverses which class of asset goes to which body: *Committee Hansard*, Canberra, 29 June 2004, p. 9.

<b>Movement of asset</b>	<b>Type of asset involved</b>
Transferred to IBA – 'Class A exempted assets'	Regional Land Fund money
Transferred to ILC – 'Class B exempted assets'	Housing Fund money  ATSIC housing loans and business loans (if declared by the minister to be a class B exempted asset)
Transferred to the Commonwealth	Other ATSIC assets not declared by the minister to be either class A or B.

3.5 Any other ATSIC asset may be declared by the Minister to be either a class A or class B exempted asset. In these cases, which body acquires ATSIC's liabilities (IBA, ILC or the Commonwealth) is entirely at the discretion of the Minister. Assets of the Regional Councils are vested in the Commonwealth once they are abolished.<sup>4</sup>

3.6 Item 192(4) of the Bill specifies that, if an asset was held by ATSIC on trust, then the body to which the asset is transferred will hold it on trust 'subject to the terms of the trust' under which it was held by ATSIC.

3.7 ATSIC does hold assets other than the various Fund moneys and pastoral stations. It holds shares in Yipirinya (Yeperenye) and Imparja Television.<sup>5</sup> ATSIC also holds other assets, including artworks and artefacts valued at \$1.76 million.<sup>6</sup> AIATSIS pointed out that:

With the abolition of ATSIC, there is an immediate risk of disbursement of material of long term historical significance to Indigenous peoples and the Australian community in general. AIATSIS is well placed to fulfil the responsibilities of a central repository of cultural and other material of relevance to Indigenous peoples held by ATSIC/ATSIS, including the library, art, media and ephemera.<sup>7</sup>

3.8 The Government indicated it planned for these assets to be transferred to the Commonwealth rather than IBA or the ILC.<sup>8</sup> This would effectively mean they would pass out of the hands of Indigenous-controlled organisations. More recent evidence

---

4 ATSIC Amendment Bill, Schedule 3, Item 48.

5 Mr Gibbons, *Committee Hansard*, Canberra, 29 June 2004, p. 23; see also DIMIA and OIPC *Submission* 128A, pp. 2-3. Although decisions have been made to divest these shares to other Indigenous organisations, the Committee understands implementation is being delayed by taxation issues.

6 OIPC, *Submission* 128B, Q.3.

7 *Submission* 144, p. 11.

8 OIPC, *Submission* 128B, Q.3.



---

was given suggesting there would be discussions between AIATSIS, OIPC and the National Gallery of Australia about how the collection would be preserved.<sup>9</sup> The Committee supports the maintenance of the collection as a coherent entity, and also that Indigenous people should formally have custody of Indigenous artworks and artefacts.

3.9 The principles that should underlie any decision about the future ownership and location of the artworks and artefacts currently in the possession of ATSIC include:

- That the collection be maintained as a single, coherent entity;
- That Indigenous people and organisations be closely involved in, and approve, the location of the collection; and
- That the collection remains in public hands.

3.10 Because the ATSIC art collection emphasises desert and Northern Australian art, a location in the Northern Territory or possibly another part of Northern Australia might be favoured.

### **Recommendation 3.1**

**3.11 The Committee recommends that all assets controlled by ATSIC continue to be applied to the benefit of Indigenous Australians, and that Indigenous people retain custody of Indigenous artworks and artefacts.**

### **Changes to the Office of Evaluation and Audit**

3.12 Under the original Act, the Office of Evaluation and Audit (OEA) was established within ATSIC. OEA has never had the same degree of independence as the Auditor-General. Its director was appointed by the Minister after consultation with the Commission. It could conduct audits within its terms of reference at its own initiative, or, in particular situations, when requested by the Minister, the Commission, the TSRA, Aboriginal Hostels Limited, the ILC or IBA.<sup>10</sup>

3.13 Under the new arrangements, OEA will be established within DIMIA, and its agenda will be set to a large degree by the Minister.<sup>11</sup>

3.14 The Bill proposes to change the role of OEA. Currently OEA examines the activities of Indigenous organisations such as the Commission. Under the proposed

---

9 Mr Larkin, AIATSIS, *Proof Committee Hansard*, Canberra, 3 February 2005, pp.28–9; Senate Legal and Constitutional Committee, *Estimates Hansard*, 27 May 2004, pp. 60–1.

10 *ATSIC Act 1989*, S.76.

11 ATSIC Amendment Bill, Schedule 2, Item 1; Mr Vaughan, *Committee Hansard*, Canberra, 29 June 2004, p. 38.

Bill, OEA will be able to evaluate any 'relevant program' administered by an Australian Government body, and to audit organisations and individuals who receive funding under relevant programs. A relevant program is:

A program, or a program component, under which money is provided, including on loan, or a guarantee is given, or an interest in land or other property is transferred, for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders.<sup>12</sup>

3.15 Even prior to the administrative changes implemented by the Government in the first half of 2004, ATSIC was not responsible for all federal Indigenous programs, so this change in definition of what OEA can audit broadens the scope of OEA's scrutiny. The Committee notes that this change is consistent with the recommendation of the ATSIC Review, that:

The role of the Office of Evaluation and Audit be expanded to enable it to evaluate and performance audit the programs and services of all service providers including all agencies of government where the Australian Government has provided resources for the provision of services for Aboriginal and Torres Strait Islander people.<sup>13</sup>

3.16 In its submission, the National Aboriginal Community Controlled Health Organisation (NACCHO), expressed concern that this would not go far enough:

Currently, there is no explicit mechanism whereby Departments can be held accountable for mainstream health program expenditure and whether these programs reach target populations such as Aboriginal peoples and Torres Strait Islanders as is required under the Australian Governments Charter of Public Services in a Culturally Diverse Society (1996). If enhanced Departmental accountability only pertains to a restricted set of health programs, NACCHO cannot see that this process will contribute to address the current lack of accountability.<sup>14</sup>

3.17 NACCHO's doubts are partly based on its experience in the area of health, where mainstream health services were inadequate.<sup>15</sup> The Commonwealth Grants Commission report also identifies this issue, indicating that Indigenous people may not be accessing mainstream programs to the same extent as non-Indigenous people.<sup>16</sup> Even under the proposed new, expanded mandate, OEA will not be able to examine this type of problem.

---

12 ATSIC Amendment Bill, Schedule 2, Item 1.

13 *'In the Hands of the Regions'*, Recommendation 54.

14 *Submission 179a*, p. 15, footnotes in original omitted.

15 *Submission 179a*, p. 8.

16 Commonwealth Grants Commission, *Report of the Indigenous Funding Inquiry*, Vol. 1, pp. 59–61.

3.18 Concern was expressed that the change could bring more bureaucracy rather than more transparency:

...there is such an increasing array of auditing processes and possibilities that there needs to be a clean look at who should be auditing Aboriginal organisations and for what purpose, to make it more streamlined and appropriate. Certainly, it looks to us after our initial trawl through the bill that this is only going to make it a yet more complex and difficult process rather than an easier one to work through, particularly for organisations like the land council, where the transparency and scrutiny is already extremely high in terms of annual reports and the ANAO.<sup>17</sup>

3.19 There is also the question of whether the audit function is being broadened without resources to match. There are already areas that OEA has the power to examine, but which it has not explored.<sup>18</sup> It is not clear whether there is a plan to increase OEA's budget to allow its operations to significantly expand.<sup>19</sup> Whether this broadening of OEA's remit is going to enhance the scrutiny and performance of Indigenous programs will depend on OEA having adequate resources.

3.20 The mainstreaming of ATSIC functions and Indigenous programs generally creates a more onerous task for the Parliament in overseeing and monitoring the Government's overall performance. In the case of each program, there is a good chance that, under the new arrangements, failures or shortcomings in its performance might well be less apparent, and even overlooked. There is a sound argument, therefore, for a new structure or process to be established, so that adequate public scrutiny can be ensured.

### **Changes affecting the Indigenous Land Corporation and Indigenous Business Australia**

3.21 The ILC is required to prepare an Indigenous land use strategy to guide it in the performance of its functions.<sup>20</sup> Under the current Act, the ILC 'must have regard to the desirability of consulting the Commission' when preparing the strategy.<sup>21</sup> The Bill in its current form does not propose to require any other consultations with Indigenous organisations to replace the reference to ATSIC, leaving the clause to read:

---

17 Ms Weepers, *Committee Hansard*, Darwin, 24 August 2004, p. 36.

18 See, for example, comments regarding Native Title Representative Bodies: Mr Vaughan, *Committee Hansard*, Canberra, 29 June 2004, p. 37.

19 OIPC *Submission* 128B, Q16, provides some budget data, but it is not able to be used for comparisons of the old and proposed new arrangements for OEA.

20 ATSIC Act S.191Q.

21 ATSIC Act S.191N; See also Mr Vaughan, *Committee Hansard*, Canberra, 29 June 2004, p.7.

In performing functions under this section, the Indigenous Land Corporation Board may consult such other persons and bodies as the Board considers appropriate.<sup>22</sup>

3.22 The Committee notes that retaining the word 'other' no longer makes sense, as its use was a consequence of the provision also containing the provision requiring particular regard to be had to the views of ATSIC.<sup>23</sup>

3.23 The Bill will for the first time empower the ILC to give money to IBA for projects.<sup>24</sup> It is likely that the ILC will acquire properties that were previously owned by ATSIC.<sup>25</sup> In evidence, the ILC's general manager, Mr Galvin, indicated it did not think the acquisition of 19 properties from ATSIC would be an issue:

I do not think that will bring too much of a burden upon us. We have already purchased 172 properties and we have 108 under a remediation strategy which looks at properties, their condition, the people who are there and the aspirations for those properties and provides funds and property management plans. We will just incorporate them into our normal regime.<sup>26</sup>

3.24 The Committee is nevertheless concerned about the capacity for the ILC to manage the expanded portfolio of properties. As Mr Galvin noted, the ILC is already starting to expend considerable resources on management of properties already in its portfolio:

Land management expenditure has been escalating because now we are looking at Indigenous held land that needs what we call our remediation strategy. Back in 2000-01 we looked into 156 properties that we had purchased, and found that probably 85 per cent of them were not generating the benefits that people thought they were going to. Primarily, the reason for that was that they were purchased without a great deal of scrutiny or effort. It was more that land equalled benefit.

We have developed a remediation program where we go back to those properties and the landholders. We have got about 108 of those 152 properties in our remediation program, where we are developing property management plans. We are fixing up infrastructure.<sup>27</sup>

3.25 The ILC is thus already having to spread its resources across acquisition, property maintenance and remediation, and is now going to acquire a diverse range of

---

22 ATSIC Amendment Bill, Schedule 1, Item 136.

23 In a related manner, the Committee notes that the retention of the phrase ', as the case may be,' in subsection 42(3) of the AIATSIS Act will make no sense if the Bill proceeds in its current form.

24 ATSIC Amendment Bill, Schedule 1, Item 133.

25 Mr Vaughan, *Committee Hansard*, Canberra, 29 June 2004, p. 27.

26 *Proof Committee Hansard*, Brisbane, 31 January 2005, p.37. See also ILC, *Submission 228*, p. 1.

27 *Proof Committee Hansard*, Brisbane, 31 January 2005, p.42.

properties from ATSIC. These new acquisitions will be imposed on the ILC effectively regardless of whether they would have been consistent with the ILC's acquisition policies and strategies.

3.26 While the Committee notes the ILC's assurances of its capacity to manage this expanded portfolio of properties, the Committee nevertheless considers that the issue should be monitored by the Parliamentary Joint Committee on Native Title as part of its statutory scrutiny role of the ILC.

### **Recommendation 3.2**

**3.27 The Committee recommends that ILC's capacity to manage its portfolio of properties be monitored by the Parliamentary Joint Committee on Native Title as part of its statutory scrutiny role of the ILC. In the event that ATSIC and its regional councils are abolished, the ordinary members of the ILC Board include an Indigenous representative nominated by a relevant Indigenous organisation**

3.28 The Committee also notes assurances by Mr Galvin, CEO of the ILC, that the changes will not have any effect on the number of Indigenous people on the seven member ILC Board, notwithstanding that once the Bill is passed and ATSIC is no longer in existence the two ATSIC representatives cease to be members of the board.

3.29 As Mr Galvin explained:

[T]here will still have to be five Indigenous members of the board and two other members who have certain skills and who can be Indigenous or not.

It would be up to the minister to appoint two other Indigenous members, so there is no reduction in the number of Indigenous members.<sup>28</sup>

3.30 The Committee notes that if the Parliament were to abolish ATSIC but retain the Regional Councils, there would be an opportunity to require that one of the ordinary members of the ILC Board be a Regional Council member, just as the Act currently requires one of them to be a Commissioner.<sup>29</sup>

3.31 The changes affecting IBA are different. Currently, the Act sets out principles under which IBA should operate.<sup>30</sup> The ATSIC Act also currently indicates that:

Except as expressly provided in this Act or the Commonwealth Authorities and Companies Act 1997, the Minister is not empowered to direct Indigenous Business Australia in relation to any of its activities.<sup>31</sup>

---

28 Mr Galvin, *Proof Committee Hansard*, Brisbane, 31 January 2005, p. 45.

29 One Board member is required to be a Commissioner under the *ATSIC Act 1989*, s.191X(5). This subsection is proposed to be repealed under the Bill.

30 *ATSIC Act 1989*, S.148.

31 *ibid*, S.151.

3.32 These 'expressly provided' powers given to the Minister are currently quite limited: the Minister can ask IBA to change its Corporate Plan (but not demand that it do so),<sup>32</sup> and can request information.<sup>33</sup> In addition, the Treasurer can limit the total loans for which IBA can provide guarantees.<sup>34</sup> As the IBA submission points out, 'IBA is therefore not a conventional government agency and operates at arms-length from the Commonwealth'.<sup>35</sup>

3.33 The Bill proposes to alter this arrangement, saying instead that:

Indigenous Business Australia must perform its functions and exercise its powers in accordance with any general written directions given to it by the Minister.<sup>36</sup>

3.34 Asked about the justification for this revision of the Minister's capacity to direct IBA, Mr Vaughan said:

at the moment the Minister has such powers in respect of the housing fund and the business loan programs administered by ATSIIC; given that it is planned that those two functions be transferred to IBA, it is appropriate that the minister's powers to give general directions about them should also be imported into the IBA provisions of the act.<sup>37</sup>

3.35 Section 12 of the current ATSIIC Act sets out the powers of general direction in regard to ATSIIC:

The Commission shall perform its functions and exercise its powers in accordance with such general directions as are given to it by the Minister in writing.<sup>38</sup>

3.36 In addition, the ATSIIC Act currently states that 'Money in the Housing Fund shall not be spent otherwise than in accordance with budget estimates approved by the Minister'.<sup>39</sup>

3.37 The amendment proposed in the Bill to provisions governing IBA will apply to *all* of IBA's functions. This represents a significant change to the capacity of IBA to control its own operations. In its submission, IBA indicated that it supports changes to the Act.<sup>40</sup> However, it also indicated that it supported legislation 'framed in a way

---

32 *ibid*, S.150.

33 *ibid*, S.154.

34 *ibid*, S.153.

35 *Submission* 130, p. 7.

36 ATSIIC Amendment Bill, Schedule 1, Item 112.

37 *Committee Hansard*, Canberra, 29 June 2004, p. 27.

38 *ATSIIC Act 1989*, S.12(1)

39 *ibid*, S.67(5).

40 *Submission* 130, p.10.

---

which limits Commonwealth control and therefore any perception that the Commonwealth has any flow-on responsibilities for IBA's actions'.<sup>41</sup> Given that the changes appear to extend ministerial control of IBA's activities, the Committee was not able to clarify how these two positions are reconciled.

3.38 The Committee also sees potential conflict between the reforms to IBA and the recommendations of the Government's recent review of the governance of statutory authorities. That review recommended that 'governance boards should be utilised in statutory authorities only where they can be given the full power to act'.<sup>42</sup> This change to IBA's functions appears to be moving in the opposite direction.

3.39 The Committee emphasises that IBA has a good track record in the financing of Indigenous business enterprises. The new arrangements will radically shift the focus of the agency, in particular by requiring it to move into the housing loan market, which operates on different principles and has different goals. The generalised financial constraints now to be placed on IBA have the potential to undermine the integrity and success of this organisation, and they certainly reduce its autonomy in financial decision-making. The Committee expresses strong reservations about the changes to IBA's functions and autonomy and urges the Government to agree to a review into their effects on the organisation, to take place within three years of the new arrangements' taking effect.

3.40 The new requirement being imposed on IBA regarding ministerial directions is not being applied to the ILC. The ILC's clause restricting ministerial involvement (Section 191L) is substantively unchanged (except temporarily in regard to the ILC's administration of Regional Land Fund moneys).<sup>43</sup>

3.41 Finally, the current ATSIIC Amendment Bill 2004 repeals the existing paragraphs 196(1)(a)-(c) which provide for appeals to the Administrative Appeals Tribunal where IBA refuses a business loan. While the Bill provides for such appeals when housing loans are refused by IBA, it neglects the issue of business loan refusals: this avenue of appeal is to be cut off. The Committee regards this omission as unfortunate and believes that such a provision should be restored.

### **Recommendation 3.3**

**3.42 The Committee recommends that the Bill be amended to provide appeals to the Administrative Appeals Tribunal in cases where IBA refuses a business loan. The Committee also recommends that the Government examine all new requirements that the Bill and related administrative changes impose on the IBA to ensure that these do not have a negative impact on its operation.**

---

41 *Submission* 130, p.7.

42 John Uhrig, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, June 2003, p. 12,

[www.finance.gov.au/governancestructures/docs/The\\_Uhrig\\_Report\\_July\\_2003.pdf](http://www.finance.gov.au/governancestructures/docs/The_Uhrig_Report_July_2003.pdf)

43 ATSIIC Amendment Bill, Schedule 1, Items 135.

## **Implications for Native Title Representative Bodies**

3.43 The Bill has implications for Native Title Representative Bodies. In response to a question on notice, OIPC summarised the changes:

Representative bodies will no longer apply for grants from ATSIC, but for the provision of funds from the Secretary of the Department which has administrative responsibility for Part 11 of the Act. This is presently the Department of Immigration and Multicultural and Indigenous Affairs...

The Secretary of the relevant Department, rather than ATSIC, will have a role in overseeing the performance of representative bodies. Section 203F will be amended to require the Secretary (rather than ATSIC) to inform the Minister of matters relating to the performance of representative bodies. Section 203FB will be amended to provide that review of assistance decisions made by a representative body will be undertaken by the Secretary of the relevant Department, rather than ATSIC.

The operations of representative bodies will no longer be evaluated under s76 of the ATSIC Act but under the new s193X.

A new s203FI is being added to allow delegation of certain of the Secretary's powers to an officer of the Australian Public Service who is a member of the Senior Executive Service or has equivalent rank.<sup>44</sup>

3.44 In addition, the language of the Bill has been changed, so that Representative Bodies apply for 'provision of funding' instead of a 'grant of money'. The Government has stated that this is 'to ensure greater accountability for outcomes for funds provided to bodies which provide services to Indigenous people'.<sup>45</sup> The change in language will allow the Government to provide funds through contracts for services.

3.45 The Committee is concerned about these changes. Native Title Representative Bodies provide assistance to native title holders or persons who may hold native title to prepare, lodge and progress claims. This process necessarily has the potential for litigation against the Commonwealth. Until now, the allocation of funds through ATSIC kept them at arms length from Commonwealth agencies. Now that adversary is saying it wants 'to ensure greater accountability' for funds. In practice, this could create the temptation on the part of the Commonwealth to exploit the Representative Bodies' dependency on the Government for funds. There is a clear potential for a conflict of interest to develop, whereby the Commonwealth might direct funding away from organisations it perceives as likely to take it to court in a native title claim.

### **Recommendation 3.4**

**3.46 The Committee recommends that the Parliamentary Joint Committee on Native Title carefully examine the issue of conflict of interest in the funding of**

---

44 OIPC *Submission* 128B, Q.18.

45 OIPC, *Submission* 128B, Q.19.



---

## **Native Title Representative Bodies as part of its current inquiry into Native Title Representative Bodies.**

### **Consulting with Indigenous Australians**

3.47 The existence of ATSIC gave opportunities for Indigenous Australians to have a national, representative voice. One important way in which this voice was heard was through government bodies being required to consult with ATSIC, or to have ATSIC members as representatives on their boards. As Professor Scott stated:

I have prepared in the documents an analysis of what the Bill actually does. It goes through 11 or 12 bits of other legislation and removes the voice of Indigenous people from any of those forums. Nothing has been contemplated to take its place.<sup>46</sup>

3.48 Because ATSIC is to be abolished under this Bill, Indigenous Australians potentially lose control of these opportunities for consultation and participation. These changes include:

- The loss of consultation with ATSIC by the Minister when considering new Directors for either Indigenous Business Australia or the Indigenous Land Corporation, without anything taking the place of that consultation;<sup>47</sup>
- The loss of input, through the Torres Strait Islander Advisory Board, into the selection of a Torres Strait Islander to the Council of the Australian Institute for Aboriginal and Torres Strait Islander Studies;<sup>48</sup>
- Removal of a requirement that the Minister for the Environment consult with ATSIC in some circumstances;<sup>49</sup>
- Removal of a requirement that the Aboriginal and Torres Strait Islander Social Justice Commission *must* consult with any Indigenous organisation,<sup>50</sup> and
- Loss of ATSIC control over the nomination of a member of the National Health and Medical Research Council (NHMRC).<sup>51</sup>

3.49 Under the Bill, Indigenous people also lose some influence over other bodies designed to advance Indigenous welfare. For example, the abolition of ATSIC means that there is no longer an organisation, chosen and controlled by Indigenous people,

---

46 *Proof Committee Hansard*, Sydney, 2 February 2005, p.102.

47 ATSIC Amendment Bill, Schedule 1, Items 121, 140.

48 ATSIC Amendment Bill, Schedule 4, Item 17.

49 ATSIC Amendment Bill, Schedule 4, Item 23.

50 ATSIC Amendment Bill, Schedule 4, Item 24. The Human Rights and Equal Opportunity Commission Act retains provisions that the Commissioner *may* conduct consultations with Indigenous community organisations etc.

51 ATSIC Amendment Bill, Schedule 4, Item 26.

which can delegate functions to IBA.<sup>52</sup> Now IBA and its Minister solely determine what IBA will do.

3.50 The Committee believes that, in the absence of ATSIC, Indigenous people should be able to have confidence that their representatives and organisations will be listened to, including by organisations like ILC and IBA. One element of ensuring this could be consultation processes that require engagement with Indigenous organisations.

3.51 The Committee notes that the reforms to OEA will create a definition of programs that OEA will be able to evaluate. They are defined as 'relevant programs' (for the Office of Evaluation and Audit – see the Bill, Schedule 2, Item 1).

3.52 The Committee encourages the Government to consider whether consultation clauses in Acts affecting Indigenous people could make reference to a requirement that 'relevant organisations' being consulted. These could be defined in a manner analogous to the clause above governing the programs that OEA can evaluate. Alternatively, there could be provision made for determinations from time to time as to what are relevant organisations to be consulted for the purposes of particular Acts, or particular proposals. This could take account of the future emergence of national Indigenous representative organisations.

### **Recommendation 3.5**

**3.53 The Committee recommends that consultation clauses in the Acts modified by the ATSIC Amendment Bill be amended to insert a requirement to consult relevant Indigenous organisations.**

3.54 As well as the direct effects of the Bill, the abolition of ATSIC may have other, indirect effects on Indigenous representation. NACCHO gave an example in the health area:

The abolition of ATSIC removes an Aboriginal representative voice from the Aboriginal Health Framework Agreements forums at the state level of operations... These meetings previously brought together NACCHO Affiliates, ATSIC, with state government representatives from the State Department of Health and Commonwealth representatives from the Office of Aboriginal and Torres Strait Islander Health. As a consequence, the introduction of the Bill, places Aboriginal representative bodies in a minority position at the Framework Agreement table with potentially significant consequences.<sup>53</sup>

3.55 There are some suggestions about *ad hoc* ways in which other Indigenous organisations could fill the gaps created by the proposals in the Bill. NACCHO suggested that it could take over from ATSIC the role of nominating an Indigenous

---

52 ATSIC Amendment Bill, Schedule 1, Item 108.

53 NACCHO *Submission* 179a, p. 9.

---

person to the NHMRC.<sup>54</sup> The Committee outlined above possible modifications to the legislation to require consultation with Indigenous organisations in some circumstances. However, the fundamental problem not addressed by the Bill is how Indigenous people will be assured of an effective voice at the regional, national or international level. It is to this problem that the report now turns.

### **Implications for Regional Councils**

3.56 The Committee received a substantial amount of evidence on the effects of the Bill on the regional structures currently existing under the aegis of ATSIC. There is widespread concern that these by and large successful bodies will not be adequately replaced, let alone funded. This matter is discussed at length in chapter 4.

---

54 NACCHO, *Submission 179a*, p. 5.



# 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

4.6 The Torres Strait Regional Authority will be retained as the Government believes it is delivering services effectively.<sup>7</sup> 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'.<sup>8</sup> It argued that ATSIC had failed to be shaped by Aboriginal and Torres Strait Islander people at the regional level,<sup>9</sup> and lacked effective relationships with the main service providers to Indigenous people, the state and territory governments.<sup>10</sup> 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.<sup>11</sup>

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'.<sup>12</sup>

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...<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup>

---

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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

[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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup>

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'.<sup>30</sup>

---

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:<sup>31</sup>

- 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.<sup>32</sup> 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'.<sup>33</sup>

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,<sup>34</sup> the Congress of Aboriginal Peoples,<sup>35</sup> and Inuit Tapiriit Kanatami.<sup>36</sup> In the United States they include the National Congress of American Indians.<sup>37</sup>

4.31 In some Scandinavian countries, bodies designed to represent the Indigenous Sámi people have been legislated, but remain controversial amongst Indigenous people.<sup>38</sup> 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](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.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup> 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.<sup>46</sup> 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](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.<sup>47</sup>

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.<sup>48</sup>

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.<sup>49</sup>

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.<sup>50</sup>

4.50 Other Regional Councils presented similar cases.<sup>51</sup>

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.<sup>52</sup>

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.<sup>53</sup>

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.<sup>54</sup>

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.<sup>55</sup>

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.<sup>56</sup>

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.<sup>57</sup>

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.<sup>58</sup>

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.<sup>59</sup>

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.<sup>60</sup>

### 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.<sup>61</sup>

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.<sup>62</sup>

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.<sup>63</sup>

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.<sup>64</sup>

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.<sup>65</sup>

---

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.<sup>66</sup>

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 ATSI, 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.<sup>67</sup>

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.

## CHAPTER 5

### Mainstreaming of service delivery

#### Introduction

5.1 In April 2004, the Australian Government announced the transfer of Indigenous programs from ATSIC/ATSI to existing mainstream Australian Government departments and agencies. On 1 July 2004, this policy was put into effect with the transfer of the programs and some 1,300 ATSI staff to the various line agencies:

These include the CDEP; municipal services; the housing program; smaller programs associated with community participation, capacity development and return of remains; funding for arts centres, the sports program and the broadcasting program. They all go from 1 July to mainstream agencies.<sup>1</sup>

5.2 The Government has also stated that despite the new arrangements, all Indigenous specific programs and services will continue, as will all 'agreed funding for Indigenous service-delivery organisations in 2004-05.'<sup>2</sup> In addition, all departments in receipt of previous ATSIC/ATSI funding 'are required to quarantine and track funds transferred ... to ensure that funding levels for Indigenous-specific initiatives are maintained.'<sup>3</sup>

5.3 It was claimed that these new arrangements would usher in:

... a fundamentally different approach across the Australian Government ... a collaborative model across agencies ... to ensure that things are done very differently, the necessity for flexibility to recognise the diversity of circumstances in which Indigenous Australians live, and the sort of services that will be most effective for them.<sup>4</sup>

5.4 The 'mainstreaming' policy was widely criticised by many submissions to this inquiry. Considering that mainstreaming was a retrograde step in Indigenous affairs, one witness considered that:

... splitting up ATSIC and sending the different matters that ATSIC used to handle into the mainstream... is very detrimental to the Indigenous population. ... We see the splitting up and mainstreaming of the various different programs as a huge step backwards.<sup>5</sup>

---

1 Mr Gibbons, *Committee Hansard*, Canberra, 29 June 2004, pp. 28-29.

2 [http://www.oipc.gov.au/About\\_OIPC/new\\_arrangements/TransferringPrograms.asp](http://www.oipc.gov.au/About_OIPC/new_arrangements/TransferringPrograms.asp), accessed 28 February 2005.

3 *ibid.*

4 Mr Yates, *Committee Hansard*, Canberra, 29 June 2004, p. 2.

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

5.5 One witness explained the need for 'separate' service delivery:

We want to be different not because we would get different service provision but because it means bottom of the pack in service delivery. That is what it means, and turning up in an advisory capacity is just that: you are just advising people. There is no impetus for them to take your advice and go with it. It is nothing more than that. Once you are caught in that political nexus with governance models you are never in control of self-determining and self-managing.<sup>6</sup>

5.6 This chapter explores the new service delivery policy of 'mainstreaming', and analyses some strengths and weaknesses.

### **Old problems – the need for a new approach**

5.7 As chapter 2 concluded, while there were problems with ATSIC and its program delivery, ATSIC cannot be held solely responsible for the results of programs – often delivered from the outset by mainstream agencies – that have failed to improve the levels of Indigenous disadvantage over the past 30 years.

5.8 Australia's past approaches have simply not been making acceptable headway. The fact that Indigenous Australians have a lower standard of living to that of non-Indigenous Australians is well documented.<sup>7</sup> This has been further acknowledged by the Council of Australian Governments by its formation of the *Key Indicators to Overcoming Indigenous Disadvantage*.<sup>8</sup> In areas as diverse as school retention, life expectancy, imprisonment rates, home ownership and labour force participation, Indigenous Australians are at a distinct disadvantage to non-Indigenous Australians, and often dramatically so.<sup>9</sup>

5.9 The lack of accessible, effective and comprehensive service delivery to Indigenous Australians both compounds the problems and renders their solution more difficult, as cycles of poverty and disconnectedness become entrenched over time and generations. These problems were acknowledged and enumerated by the 2003 ATSIC Review,<sup>10</sup> which in its analysis of the Commonwealth Grants Commission *Report on Indigenous Funding 2001*,<sup>11</sup> considered that:

---

6 Mr Fry, *Committee Hansard*, Darwin, 24 August 2004, p. 74.

7 See, for example, Commonwealth Grants Commission, *Report on Indigenous Funding 2001*; Productivity Commission, *Overcoming Indigenous Disadvantage – Key Indicators 2003*, Canberra.

8 Productivity Commission, *Overcoming Indigenous Disadvantage-Key Indicators 2003*, Canberra.

9 *ibid.*, pp. 1-17. See, for example, p. 17, where Indigenous Australians are reported to be 17 times more likely to be incarcerated than non-Indigenous Australians as at June 2002.

10 *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.

11 Commonwealth Grants Commission, *Report on Indigenous Funding*, 2001.



- 
- Aboriginal and Torres Strait Islander Australians in all regions and across all function areas experience entrenched levels of disadvantage compared to other Australians.
  - Needs are greater in remote areas.
  - Supplementary funds provided through ATSIC and other agencies are forced to do too much work, due to barriers to access to mainstream programs.
  - Australia's federal system obscures responsibilities between various levels of government and creates opportunities for cost shifting, both between governments and between agencies at the same level of government.
  - The Australian Government has a limited capacity to direct the States and Territories in the use of funds notionally supplied for Aboriginal and Torres Strait Islander advancement.
  - The Australian Government's funding is generally not allocated on the basis of need, except in the area of housing and infrastructure.
  - The link between funding and outcomes is not necessarily a direct one, but hedged around by many complexities.

5.10 The ATSIC Review panel went on to list the key areas for action devised by the Commonwealth Grants Commission in addressing the problems in service delivery. These included:

- The full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery.
- A focus on outcomes.
- Ensuring a long term perspective to the design and implementation of programs and services, thus providing a secure context for setting goals.
- Ensuring genuine collaborative processes with the involvement of government and non-government funders and service deliverers, to maximise opportunities for pooling of funds, as well as multi-jurisdictional and cross-functional approaches to service delivery.
- Recognition of the crucial importance of effective access to mainstream programs and services, and clear actions to identify and address barriers to access.
- Improving the collection and availability of data to support informed decision making, monitoring of achievements and program evaluation.
- Recognising the importance of capacity building within Indigenous communities.<sup>12</sup>

---

12 *"In the Hands of the Regions"*, p. 21.

5.11 Others expressed the problem in terms of a lack of effective partnership between jurisdictions and service providers. NACCHO said that:

Throughout our sector, we have a lot of valuable experience that we feel is not going to be heard at the national level. There is no national partnership. We do not have a partnership with the Commonwealth, as there are in the states and territories. Partnership arrangements are very important to us, because at the table you can plan for broad resource allocation. If you are not doing that, the resources do not hit the ground, so we need to get the resources to the service delivery sector.<sup>13</sup>

### ***The Productivity Commission Report 2003***

5.12 Commissioned by COAG from the Productivity Commission, the report *Overcoming Indigenous Disadvantage – Key Indicators 2003 Summary*, is an attempt to identify and document the root causes of Indigenous disadvantage. The first report provides policy makers with a broad snapshot and benchmark of the state of Indigenous disadvantage in 2003.

5.13 The report identified three interlinked, priority outcomes for Indigenous people:

- safe, healthy and supportive family environments with strong communities and cultural identity;
- positive child development and prevention of violence, crime and self-harm; and
- improved wealth creation and economic sustainability for individuals, families and communities.

### ***Headline Indicators***

5.14 The report sets out a series of indicators of Indigenous disadvantage, measuring the main social and economic factors to be targeted:

- life expectancy at birth
- rates of disability and/or core activity restriction
- Years 10 and 12 retention and attainment
- post-secondary education participation and attainment
- labour force participation and unemployment
- household and individual income
- home ownership
- suicide and self-harm

---

13 Ms Delaney-Thiele, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 69.

- 
- substantiated child protection notifications
  - deaths from homicide and hospitalisations for assault
  - victim rates for crime
  - imprisonment and juvenile detention rates

5.15 These are the end result of a chain of other factors, some long-standing, and are not amenable to direct policy intervention. A series of areas for policy strategy and intervention is therefore identified.

#### *Strategic Areas for Action*

5.16 Seven areas were identified as having the potential to have significant and lasting effect:

- early childhood development and growth (prenatal to age 3)
- early school engagement and performance (preschool to year 3)
- positive childhood and transition to adulthood
- substance use and misuse
- functional and resilient families and communities
- effective environmental health systems
- economic participation and development

#### *Data issues*

5.17 The report was compiled from census, survey and administrative data. The report also identified deficiencies in the data available; there are limitations in this data due to the differences in the ways 'Indigenous' is defined. This was elaborated on at the public hearing for the benefit of the Committee:

...in some places they will ask people to fill in a box ... In some cases they do it by self-identification ... that is by the person recording the data looking at the person and saying, 'I think that you are Aboriginal,' and ticking a box. Those sorts of identification systems tend to give rise to questions about the reliability of the data.<sup>14</sup>

5.18 From the data, 'key messages' were concluded under each Headline Indicator. For example, under 'Life expectancy at birth', the key message was that life expectancy for Indigenous people is 20 years lower than that of the general Australian population.

5.19 Several priorities for improvement in the collection and development of data for Indigenous people were identified as required for future reports.

---

14 Dr Robyn Sheen, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 6.

## 'New' mainstreaming

5.20 In explaining the new direction for service delivery, and the meaning of mainstreaming, government officials stressed the difference between 'old' and 'new' mainstreaming. The bulk of respondents based their comments on an interpretation of mainstreaming based on departments delivering the same undifferentiated services to all consumers, regardless of differences in locality, ethnicity or levels of disadvantage.

5.21 Dr Shergold, the Secretary of the Department of the Prime Minister and Cabinet, described this approach as 'an enormous failure'.<sup>15</sup> 'Old' mainstreaming was characterised by four main ingredients:

The first is that you do not have indigenous specific programs. The second is that each department 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.<sup>16</sup>

5.22 Dr Shergold distinguishes this with the current proposal which he claimed is completely at odds with each of those four criteria.<sup>17</sup> The new arrangements are part of a whole of government approach across the Australian Public Service, as outlined in the *Connecting Government – whole of government responses to Australia's priority challenges* policy document. The report defines whole of government in the APS as:

public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, program management and service delivery.<sup>18</sup>

5.23 The approach recognises that most complex social issues cannot be tackled from any one perspective, since success in rectifying one problem will often be undermined by failure in another. As Dr Shergold told the Committee:

I learnt when I was secretary of the education department that I could not improve the standard of education in schools if I was not also dealing with the hearing problems that the kids suffered. I knew that I could not get good results in schools if, when children returned home at night, they were subject to family violence. In other words, we have to link the whole together ...<sup>19</sup>

---

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

16 *ibid.*

17 *ibid.*

18 Department of Prime Minister and Cabinet, Management Advisory Committee, *Connecting Government: Whole of Government Responses to Australia's Priority Challenges*, Canberra, p. 1.

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

---

### *Five principles of new approach*

5.24 According to the Office of Indigenous Policy Coordination (OIPC), the whole of government approach within Indigenous affairs incorporates five basic principles:

- **collaboration:** All key government agencies are required to work together within a framework of cooperative structures – from the Ministerial Taskforce and Secretaries Group in Canberra, to the network of regional offices.
- **regional need:** Indigenous Coordination Centres (ICCs) 'will work with regional networks of representative Indigenous organisations to ensure that local needs and priorities are understood. ATSIC Regional Councils will [until 1 July 2005] be consulted and, over time, ICCs will work in partnership with a cross-section of representative structures that local Indigenous people decide to put in place.'<sup>20</sup>
- **flexibility:** Previously rigid program guidelines will give way to a more flexible approach, eventually enabling funds to be 'moved between agencies and programs, to support good local strategies and whole-of-government objectives.'<sup>21</sup> Ministers will be advised by regional Indigenous networks and the National Indigenous Council (NIC) in formulating a single Budget submission for Indigenous-specific funding, which will supplement the delivery of mainstream programs.
- **accountability:** 'Improved accountability, performance monitoring and reporting are built into the new arrangements. ... OIPC will have a strong performance monitoring and evaluation role relating to the new whole-of-government arrangements.'<sup>22</sup>
- **leadership:** All stakeholders recognise that 'strong leadership is required to make the new arrangements work, both within government and from the regional networks of representative Indigenous organisations. ... Where leadership capacity needs to be strengthened, the Australian Government will provide support'.<sup>23</sup>

### *COAG Trials*

5.25 An important model for the mainstreaming of Indigenous service delivery are the COAG trial sites. These are ten sites across Australia where the Government is trialling working together with state and territory governments and Indigenous

---

20 [http://www.oipc.gov.au/About\\_OIPC/new\\_arrangements/FivePrinciples.asp](http://www.oipc.gov.au/About_OIPC/new_arrangements/FivePrinciples.asp), accessed 28 February 2005.

21 *ibid.*

22 [http://www.oipc.gov.au/About\\_OIPC/new\\_arrangements/FivePrinciples.asp](http://www.oipc.gov.au/About_OIPC/new_arrangements/FivePrinciples.asp), accessed 28 February, 2005.

23 *ibid.*

communities to provide more flexible programs and services based on priorities agreed with those communities.

5.26 These arose out of a November 2000 decision of the Council of Australian Governments (COAG) that 'all governments would work together to improve the social and economic well being of Indigenous people and communities.'<sup>24</sup> This was in recognition that greater coordination of Commonwealth and state/territory governments' commitment to Indigenous issues would result in better outcomes.

5.27 In April 2002, COAG agreed to trials implementing more flexible programs and services based on local community needs. Communities in ten areas were selected as pilot sites:

- Australian Capital Territory
- New South Wales – Murdi Paaki
- Victoria – Greater Shepparton
- Queensland – Cape York
- South Australia – the Anangu Pitjantjara (AP) Lands
- Northern Territory – Wadeye/Thamarrurr
- Western Australia – the Tjurabalan region

5.28 In the same month, COAG also developed a set of key indicators of Indigenous disadvantage against which to measure outcomes, commissioning a regular report against these indicators.

5.29 In November 2003, the Productivity Commission's released its first report against these key indicators; *Overcoming Indigenous Disadvantage – Key indicators 2003*. This report provided a means 'not only to tackle the root causes of Indigenous disadvantage, but also monitor the outcomes in a cross jurisdictional and portfolio boundaries.'<sup>25</sup> Noting that fragmented 'silo' approaches to address Indigenous disadvantage had not worked in the past, Mr Gary Banks, Chairman of the Productivity Commission, stated that:

... more coordination is needed. The COAG trials are an important attempt to achieve more coordinated action. It is essential that we learn from and build on this national initiative.<sup>26</sup>

5.30 In June 2004, COAG agreed to a National Framework of Principles for Government Service Delivery to Indigenous Australians. These principles recognise

---

24 [http://www.icc.gov.au/coag\\_initiative](http://www.icc.gov.au/coag_initiative)

25 *Overcoming Indigenous Disadvantage – Key Indicators 2003*, p. i.

26 Mr Banks, speech to the conference *Pursuing Opportunity and Prosperity*, Melbourne Institute of Applied Economics and Social Reform/The Australian, Melbourne, 13 November 2003, p. 12.

---

the need for services to be flexible during negotiation and consultation with local communities.

### **Government policy for the new administrative arrangements**

5.31 To implement the new policy, the Government has created a number of new structural elements that will collaborate to provide the whole of government approach.

#### ***Leadership***

5.32 A centrepiece of the new program is an emphasis on high-level leadership and responsibility to drive the process. A Ministerial Task Force has been established which will be responsible for driving the delivery of improved services and outcomes for Indigenous Australians, will coordinate the Government's Indigenous policies and report to cabinet on directions and priorities.

5.33 The Task Force will be supported by a Secretaries Group chaired by the Secretary of the Department of Prime Minister and Cabinet. The group will issue a public report annually. The Task Force will be advised by the National Indigenous Council (NIC), an appointed body of Indigenous experts.

#### ***Office of Indigenous Policy Coordination***

5.34 The Office of Indigenous Policy Coordination (OIPC) has been established by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) as the primary advisory body to the Minister on Indigenous issues. Its role is to drive and coordinate the whole of government approach to Indigenous policy development and consequential service delivery. It is also expected to monitor and report on the performance of government programs and services.

5.35 OIPC's work will be supported through the national network of Indigenous Coordination Centres.

#### ***Indigenous Coordination Centres***

5.36 An integral part of the new whole of government arrangements are the Indigenous Coordination Centres (ICCs), which replace ATSIC offices nationally. Following concerns expressed by the ATSIC Yilli Rreung Regional Council, among others,<sup>27</sup> the number of ICCs was increased from twenty-two to thirty, with the inclusion of a centre for Darwin.

5.37 The ICC managers will have staff from multiple federal and state/territory agencies; their role will be to engage with stakeholders and coordinate dealings between all agencies and their clients on a whole of government basis. However, the ICCs are not intended to be direct service delivery shopfronts. ICCs will coordinate

---

27 ATSIC Yilli Rreung Regional Council, *Submission 152*, p. 8.

the design and delivery of services with local Indigenous communities, utilising lessons learned from this approach during the COAG trials, details of which appear later in this chapter.

### ***Regional Partnership Agreements***

5.38 In the process of designing services to meet local needs, Regional Partnership Agreements (RPAs) will be negotiated with local Indigenous communities. These agreements will guide future planning, monitoring the funding going into the region, while also providing a mechanism for resolving conflicting priorities for the region. Evidence presented to the Committee has not clarified how these agreements will be negotiated, nor with whom. A pre-requisite for this process will be the existence of legitimate representative bodies with which the Government can negotiate – a matter which was dealt with in Chapter 4. Perhaps unsurprisingly in the circumstances, the regional agreements have been given a lower priority by the Government.<sup>28</sup>

### ***Shared Responsibility Agreements***

5.39 In contrast to the RPAs, Shared Responsibility Agreements (SRAs) will be negotiated with individual communities and family groups. SRAs will guide responsibilities at this level and services to be delivered by agencies from the Australian Government and State/Territory governments, within the community served by the ICC. Dr Shergold considered that 'the shared responsibility agreement expresses the negotiated will of the community.'<sup>29</sup>

5.40 The Government has given priority to establishing between fifty and sixty SRAs by June 2005.

### **Rationale for mainstreaming**

5.41 Departments were optimistic that the new mainstreaming arrangements would improve their capacity to deliver results, through better coordination, more flexible programs, and improved accountability.

5.42 The Attorney-General's Department sees some significant advantages in the transfer of this new responsibility:

Shifting responsibilities for Indigenous programs to mainstream agencies will remove duplication and reduce expenditure on bureaucracy and structures in the management and implementation of government programs and services. Access for Indigenous Australians to non-Indigenous specific programs will be enhanced with a concomitant greater awareness of other options for Indigenous people.<sup>30</sup>

---

28 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 24.

29 *ibid*, p. 3.

30 DIMIA, Submission 128, p. 24.



5.43 The Department of Employment and Workplace Relations (DEWR) referred back to the COAG Trials:

The practical potential for utilising mainstream services alongside Indigenous specific services and working in collaboration in a whole-of-government framework to maximise linkages and outcomes, is clearly demonstrated in the development of solution brokerage capabilities within the Department, and DEWR's role in the COAG whole-of-government trials.<sup>31</sup>

5.44 DEWR was optimistic of the opportunities for cooperation that the new arrangements offered:

DEWR see much advantage in the new formal collaboration mechanisms being put into place, including ICCs, and believes they will have an important role to play in promoting strong and sustainable co-ordination and collaboration arrangements between agencies. They should foster flexible and innovative approaches to meet community needs.<sup>32</sup>

5.45 Similarly, the Department of Communications, Information Technology and the Arts (DCITA) stated that:

... For the first time, there will be DCITA staff on the ground in regional Australia – building the department's capacity to establish working relationships with communities and to advise on effective responses to specific priorities and emerging needs.<sup>33</sup>

5.46 OIPC took the view that, because ATSIC provided services on a limited scale, to effect a collaborative approach, mainstream departments would be best placed to deliver all services to Indigenous people. Their submission pointed out the difficulties ATSIC faced as a small service provider:

ATSIC was responsible for less than half of the Australian Government's spending on Indigenous programmes, with other programmes being delivered by mainstream agencies. There was a tendency for ATSIC and other agencies to operate as individual service providers without necessary collaboration to achieve positive change with Indigenous communities. The focus on individual agency programmes also meant that there was a lack of strategic attention to the role of State and Territory Governments which predominantly deliver essential basic services such as health and education.<sup>34</sup>

---

31 *ibid*, p. 46.

32 *ibid*, p. 46.

33 *ibid*, pp. 30-31.

34 *ibid*, p. 2.

### ***Improved accountability***

5.47 Departments also emphasised the importance placed on effective and improved accountability mechanisms, in relation to their delivery of services. The Department of Education, Science and Training (DEST) were typical in this regard:

DEST is committed to robust performance monitoring to gauge the effect of its programs ... [T]he Department has a culture of evaluation, recognising the importance to the Australian public that the policies and programs deliver important social outcomes.<sup>35</sup>

5.48 Departments including the Department of Family and Community Services (FaCS) and DEWR further reported that they are working with the Productivity Commission to better develop measures of effectiveness. FaCS will use the Key Indicators generated for the COAG trial as the basis upon which their programs are assessed.<sup>36</sup>

5.49 The principles of leadership accountability have been enforced by including in the performance agreements of Senior Executive Service staff in relevant Departments, provisions related to Indigenous outcomes. Dr Shergold stated that:

In terms of the relevant secretaries, who are the secretaries who serve on the secretaries group, part of the performance criteria that now exists by which their performance is assessed includes the extent to which a secretary works in a collegiate fashion to deliver services to Indigenous communities in a coordinated and flexible way. That is built into the range of measures against which performance is assessed.<sup>37</sup>

### ***Flexibility to tailor services***

5.50 The Government argues that mainstreamed services will foster more flexibility, and will actually help to ensure that appropriate services are delivered to regions based on their individual needs.

5.51 DEST submitted that:

DEST is supportive of the concept of flexible funding arrangements to meet emerging needs and priorities and to achieve cross-portfolio objectives.<sup>38</sup>

5.52 However, DEST went on to admit that achieving the true flexibility offered by pooled funding would have its problems:

There are some challenges associated with improving flexibility and the transportability of funding between agencies and possibly tiers of

---

35 DIMIA, *Submission 128*, p. 40.

36 DIMIA, *Submission 128*, pp. 52 & 64.

37 Dr Shergold, *Proof Committee Hansard*, Canberra, February 8 2005, p. 30.

38 DIMIA, *Submission 128*, p. 31.

---

government. ... The management and accountability complexities arising from the need to be more flexible are being explored and will take time to work through in the context of shared responsibility agreements.<sup>39</sup>

5.53 A number of departments, including DCITA, were able to point to specific initiatives in individual communities and regions which exemplified the development of capacity to tailor responses to individual needs.<sup>40</sup> FaCS was the most expansive in this regard, and elaborated on a number of multi-faceted trials operating in Flinders Island, Cape York, and Shepparton. In each case, arrangements have been tailored to suit local needs and requirements, and inter-jurisdictional liaison and support mechanisms were established.<sup>41</sup>

### **Issues with mainstreaming**

5.54 Notwithstanding the above assertions, the Committee has not been presented with any actual evidence to show that mainstreaming will bring about improvements in service delivery. However, the Committee is mindful of the Government's distinction between the traditional concept of mainstreaming, and what it claims are fundamental differences in the 'new' system. The negative experiences many witnesses had with traditional mainstreaming, combined with the lack of experience with the new system, leaves the Committee with little persuasive evidence in support of the new arrangements.

5.55 However, damningly, the Committee received evidence from a number of witnesses going directly to the recent failure of mainstreamed programs to deliver adequate services. A select few examples follow. Chairperson Ella-Duncan, of the Sydney Regional Council, spoke of a mainstream Department which required an exceedingly high rate of rent collection before it would carry out maintenance on housing:

About six weeks ago the Department of Family and Community Services, which holds National Aboriginal Health Strategy funding, wrote to the community and said that in order to receive this funding [to carry out repairs] they had to achieve 100 per cent rent collection – the industry standard is 80 per cent; that they had to outsource the housing management, although community control and self-determination is one of the key principles that we have all agreed to adhere to; and that unless they met the conditions they would not get funding. They said there would be no staged roll-out and they had six months to achieve it. It was absolutely impossible, and totally outside the agreed framework. It was through the community's approach to me that I was able to highlight the issues to the ICC coordinator, who immediately began negotiations with Family and Community Services ... [T]hat is a community in crisis. There is raw

---

39 *ibid*, pp. 39-40.

40 DIMIA, *Submission* 128, see for example, pp 31, 36, 45, 47 & 62.

41 *ibid*.

sewage going into people's homes. And this is happening in Sydney, the capital city of New South Wales! There is raw sewage going into homes. The homes are built with asbestos materials and they have not been repaired or repainted since they were built, which would have been about 30 years ago. There are serious problems with pest control. Because La Perouse is right on the beach, some of the homes are sinking into the sand. It really is a critical situation.<sup>42</sup>

5.56 NACCHO highlighted the plight of Indigenous Australians in relation to hearing loss, and the treatment they receive under mainstreamed systems:

A key example is the failure of accountability for the provision of hearing services to Indigenous Australians under the Commonwealth Hearing Services Program. A recent review found that only 100 Indigenous Australians were accessing the \$132 million/annum Voucher scheme despite having higher rates of hearing loss than other Australians. Despite this report, concerns raised through Senate Estimates and a recent national Hearing Seminar, no reforms to the Voucher scheme have been announced.<sup>43</sup>

5.57 The Manager of CDEP for the Laramba community in the Northern Territory told that Committee that:

...[T]he way the government has gone about dismantling ATSI to begin with has left communities not knowing where they are. It has left the management of the communities not knowing where they are. We have had some correspondence from DEWR regarding CDEP and how that is going to be run, but there has been very little communication from any of the other departments taking up the other areas that affect the community – such as sport and rec [and] community management and all these other issues. I think not informing the community is not the correct way to go about business. It is their community.<sup>44</sup>

5.58 The Committee heard corroborating evidence from a Commonwealth agency that indicated implementing the new arrangements was going to be a challenge:

Until 1 July 2004, DCITA was a relatively small Canberra-based policy department without a regional presence. While DCITA managed some important programmes, the primary focus was the provision of advice to ministers ... As a result of the new administrative arrangements, DCITA has now assumed responsibility for programme budgets amounting to approximately \$42 million per annum and is integrating approximately 100 new staff into the Department. Most of these staff will be located in regional areas, and, consistent with the whole-of-government approach, will

---

42 Chairperson Ella-Duncan, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 90. Please note that in subsequent correspondence to the Committee, the rent collection requirement was listed as being 90%.

43 NACCHO, *Submission 179*, p. 14.

44 Mr Monaghan, *Proof Committee Hansard*, Alice Springs, 20 July 2004, p. 2.

---

work in newly-established Indigenous Coordination Centres. This will be a challenge, particularly given the lack of an existing departmental state or regional network and the relatively junior profile of the staff mapped to DCITA.<sup>45</sup>

5.59 It is in the context of these 'on the ground' examples that the Committee now explores a number of issues which need to be addressed if mainstreaming is to improve the situation, let alone overcome the formidable levels of disadvantage outlined earlier in this chapter.

### ***The premature adoption of the COAG trials***

5.60 The Government made it clear that the COAG trials have formed the basis for the new policy on service provision:

Lessons emerging from the COAG trials have shaped the new arrangements. The trials are demonstrating the need for effective implementation of shared responsibility principles; the importance of building capacity and effective governance in communities; the need to strike a balance between driving change and allowing change to happen at its own pace; and that sustainable change takes time.<sup>46</sup>

5.61 The Committee is concerned that the COAG trials are being used as a model for wider service delivery arrangements before there is any clear idea of whether these trial sites have succeeded or not. In point of fact, the COAG trials are yet to be assessed in any authoritative manner; until such time as that occurs, the likelihood of success of the new arrangements is difficult to gauge, and as such, represents a risk in terms of public policy.

5.62 Early signs look positive. The ACTU noted in its submission some of the positive steps taken in establishing the trials to date:

These new arrangements have enabled a platform for priority setting, negotiation, resource allocation and the embedding of accountabilities into the performance agreements of Departmental Heads.<sup>47</sup>

5.63 Dr Shergold commented that one of the most 'pleasing aspects' of the COAG trials was the level of cooperation and goodwill exhibited in negotiations between state and territory governments.<sup>48</sup> The Convenor of the ATSIC Review Panel gave evidence that the review panel acknowledged that:

---

45 DIMIA *Submission* 128A, p. 28.

46 [http://www.oipc.gov.au/About\\_OIPC/indigenousservicechanges.doc](http://www.oipc.gov.au/About_OIPC/indigenousservicechanges.doc)

47 ACTU *Submission* 158, p. 15.

48 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 27.

... things that were happening at COAG and at the coordination level were certainly having success.<sup>49</sup>

5.64 However, a number of witnesses questioned the wisdom of widespread implementation of the model used in the COAG trials, given that claims of early successes from the trials were unsubstantiated. In their submission, the ACTU commented that:

As the trials are in their early inception, it is difficult to measure their successes or otherwise.<sup>50</sup>

5.65 Professor Altman reported to the Committee that:

I am not aware of any evaluation that has been done of the seven or eight trial sites by government or indeed independently. I should say that CAEPR [Centre for Aboriginal Economic Policy Research] is certainly involved in a fair bit of research [at Wadeye] ... But most of our research has really focussed on ... getting some baseline data on where these communities or regions were at the time the COAG trials started.<sup>51</sup>

5.66 This concern was expressed by Reconciliation Australia:

Politics has determined the timing of the current re-shaping of Indigenous affairs at national level. This being the case, there is great danger in applying as a model for universal change approaches such as the COAG trials, which are still highly experimental and have not yielded any quantifiable outcomes, let alone positive outcomes.<sup>52</sup>

5.67 Other concerns exist, too. There was a view that the extent of dedicated support that the COAG trials were currently receiving to ensure their success was unsustainable. Mr Hannaford elaborated on this:

We [the ATSIC Review Panel] as a committee could not accept ... that in the long term a COAG concept of coordination of services was going to be able to be sustained right across the country in all areas where coordination is needed.<sup>53</sup>

5.68 Although the shared responsibility and cooperation principles underpinning the COAG trials have received broad bi-partisan and cross-jurisdictional support, some Commonwealth/State/Territory cross-jurisdictional issues have emerged as the trials have rolled out, which have caused some delays to signing of agreements and

---

49 Hon. John Hannaford, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 23.

50 ACTU, *Submission* 158, p. 15.

51 Professor Altman, *Proof Committee Hansard*, Canberra, 3 February 2005, pp. 7-8.

52 Reconciliation Australia, *Submission* 225, p. 4.

53 Hon. John Hannaford, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 23.

---

subsequent programs. However this new collaborative approach has been generally welcomed as a positive step forward by participating communities.<sup>54</sup>

### *Evaluating results*

5.69 Effective evaluation of results is critical, especially where new or modified approaches are being used to tackle entrenched problems. This was a key recommendation of the ATSIC Review, which stated:

Performance evaluations should be undertaken of all organisations that are expending Australian Government funding for Indigenous purposes.<sup>55</sup>

5.70 In the Committee's view, two issues arise in relation to evaluating results.

5.71 The first is the issue of methodology: collecting the right information to accurately measure progress (or lack of) and to compare results. There is wide agreement that there is a lack of statistics and consistent benchmarking relating to the measurement of Indigenous disadvantage, making comparison studies following the implementation of COAG trials difficult and unreliable.

5.72 As noted above, the first of a government-commissioned report series, *Overcoming Indigenous Disadvantage – Key Indicators 2003*, identified the key outcomes to measure improvement in Indigenous disadvantage, and outlined key areas for action and strategic change indicators. It has provided a benchmark against which future reports can be measured, plus a reporting framework relevant to government and Indigenous stakeholders. This will allow individual agencies at every level of government to determine their capacity to address the areas of Indigenous disadvantage within their control. The second report is due to be released in May 2005.

5.73 However, the ACTU submission expressed concern regarding the Terms of Reference to the Commonwealth Grants Commission (2001) *Indigenous Funding Inquiry*.

... the area of relativities (outlined in the Government's Terms of Reference to the Commonwealth Grants Commission) to determine [Indigenous] disadvantage and those to determine outcomes are not equivalent. How can the Government measure Indigenous disadvantage by comparing Indigenous region to Indigenous region, and yet measure outcomes by the closing of the 'gap' between Indigenous and mainstream Australia?<sup>56</sup>

5.74 The Committee applauds the inter-jurisdictional evaluation framework that the *Overcoming Indigenous Disadvantage* report provides, and recognises the

---

54 ACTU, *Submission 158*, p. 15.

55 *In the Hands of the Regions*, p. 7.

56 ACTU, *Submission 158*, p. 16.

important role that the evaluation of the trials will play in the evaluation of the Government's new arrangements.

5.75 The Committee urges a thorough and impartial assessment of the mainstreaming arrangements as they are implemented, with a full public release of the results.

### **Recommendation 5.1**

**5.76 The Committee recommends that the Government immediately establishes a mechanism to thoroughly and impartially assess the new mainstreaming arrangements as they are implemented, including those already in place. The Committee also recommends that the resultant report is made public.**

5.77 The second issue in evaluating results is 'who'. As discussed above, both line departments and specialist agencies such as the Office of Evaluation and Audit and the Productivity Commission will assess program delivery. However, both the PC and OEA are tasked by the Government, and the results of their inquiries may or may not be published, and the Committee received a powerful message from Indigenous people pushing for agency programs to be accountable to the communities they serve.

5.78 In their submission the Whitehorse Friends for Reconciliation argued this point when they stated that:

Governments, mainstream departments and agencies must be publicly accountable for the provision of services to Indigenous people and such accountability should include rigorous monitoring frameworks and the ability of Indigenous people to exercise such accountability.<sup>57</sup>

5.79 A stronger view point was expressed by the recommendation within the submission from the ATSIC Board of Commissioners, which requested:

The retention of an Indigenous specific agency with powers similar to that of a Senate Estimates Committee to ensure an independent evaluation of the implementation of the new administrative arrangements and that mainstream agencies are accountable for improved outcomes for Indigenous people.<sup>58</sup>

5.80 Commissioner Williams in Brisbane spoke about his frustration with obtaining effective service delivery, and argued for an Indigenous body that could function like a Senate estimates committee.<sup>59</sup>

5.81 The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) is well positioned to play such a role. Professor Dodson stated that:

---

57 Whitehorse Friends for Reconciliation, *Submission 55*, p. 4.

58 ATSIC Board of Commissioners, *Submission 202*, p. 6.

59 Commissioner Williams, *Proof Committee Hansard*, Brisbane, 31 January 2005, p. 4.



---

...[I]n relation to research, we argue that the Institute has a key role to play in the proposed whole of government coordinated approach to service delivery, particularly in our capacity to provide research and policy advice on the development of governance structures and the design and delivery of services by mainstream agencies, including, we argue, a role for longitudinal and independent evaluation.<sup>60</sup>

5.82 The Committee strongly agrees that Indigenous feedback must form an integral part of the evaluation of services and outcomes reported on, regardless of the evaluation mechanism. This will add to a sense of ownership and control by Indigenous people over their own services, and help to ensure relevant and appropriate services are delivered.

5.83 The argument for independent, objective, ongoing evaluation was also taken up in a submission by the Acting-CEO of the New South Wales Aboriginal Land Corporation. He noted that although there is 'potential for some positive outcomes', there must be a mechanism to ensure there is evaluation of any changes. He comments that:

... [W]e are all responsible for monitoring the progress of these measures [SRAs] and the changes they will bring, I would suggest a Standing Committee on Indigenous Affairs will be the only objective and credible process by which such scrutiny could be effectively brought to bear once the Howard Government assume control of the Senate in August this year [2005].<sup>61</sup>

5.84 These thoughts were echoed quite separately in evidence given before the Committee in Sydney by Mr Calma. The Social Justice Commissioner was commenting on the fact that his role was in 'monitoring' rather than a 'programmatic' role and as such the Commission has no influence over government action on their recommendations.

It relates back to our concerns that reports ... appear and the recommendations are not readily picked up. ... unless there is a champion body within parliament to be able to push through some of those issues then they are not going to be picked up.<sup>62</sup>

5.85 It was a concern to the Social Justice Commission that, even in the new government arrangements, there was no mechanism to ensure that issues, identified in reports commissioned by the Government, were actually addressed by government departments. Mr Calma suggested a possible remedy to this concern:

I would particularly like to see this committee become a standing committee to continually monitor what is happening in Indigenous affairs as a bipartisan committee and report back to the Senate and to government.

---

60 Professor Dodson, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 15.

61 Mr Geoff Scott, *Submission 233*, pp. 15-16.

62 Mr Calma, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 15.

At this stage, unless the [Senate Select] committee's recommendations are picked up by the secretaries group or the ministerial council, there is no guarantee that they will be addressed by government at all. ...<sup>63</sup>

5.86 Mr Calma believed that a Standing Committee would be seen by Indigenous and non-Indigenous people as a mechanism with the required impartiality and ongoing accountability that the new arrangements require, and which would facilitate government action on those issues.

I see the role of this committee [would be to] look objectively [with] some independence in being able to feed back to government precisely what Indigenous people have to say. So it is about the credibility that the standing committee brings within the parliamentary forum.<sup>64</sup>

### *The operation of the ICCs*

5.87 The Committee's concerns in relation to ICCs cover two main areas. First, the considerable challenges involved in managing the complexities of ICC's internally, and second, the extent of an ICC's authority to operate autonomously at the local level.

### *Breaking down the silos*

5.88 Given the Government's undertakings on the whole of government policy, it might seem self-evident that government agencies will need to work together effectively to achieve outcomes. Dr Shergold clearly stated the Government's intentions in this regard.<sup>65</sup>

5.89 However, such effective cooperation requires time to develop and should not be assumed. Traditionally, government agencies have not worked well together in the delivery of services, yet in the ICCs, staff from multiple Commonwealth agencies with different pay and conditions and responsible for different programs and under different criteria, will have to work together. It is possible that they will be joined by staff from state or territory agencies, or even non-government organisations.<sup>66</sup>

5.90 Ideally, this policy will see the emergence of innovative and flexible centres around the country, operating like a business 'enterprise hub', and limited only by the imagination of their managers.<sup>67</sup>

5.91 In practice, this may be somewhat difficult to achieve.

---

63 *ibid*, pp. 11-12.

64 *ibid*, pp. 17-18.

65 See for example, Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 2.

66 Mr Trevena, *Proof Committee Hansard*, Broome, 22 July 2004, p. 16.

67 *ibid*.

5.92 It is clear that succeeding will require great effort on the part of agencies, not to mention the will of the relevant Ministers at both State/Territory, and Commonwealth level. Dr Will Sanders elaborated on the issue of staff from different departments working together, and the coordination which was necessary to make that work. He spoke of his impressions of an ICC he had recently visited:

[I]t actually felt quite different in the sense that it was quite clear that there were a number of organisations operating in that space. They were just coming to grips with some issues about who needed to be there and whether they could all be there. For some of the organisations ... Indigenous issues ... are among their largest issues, but they also have non-Indigenous issues to deal with. So there was a question about ... who would work in that office space ...<sup>68</sup>

### *Delegations*

5.93 The second area of concern with respect to the ICCs is the level and nature of delegations which are held by the staff who run them. If the ICCs are to be outcome-focussed and effective in coordinating the delivery of services to their clients in a timely manner, staff in the relevant offices must have the authority to make appropriate decisions without having to consult multiple senior managers in departmental headquarters in Canberra or elsewhere. The most obvious example of the need for a degree of autonomy by ICC staff is in relation to the negotiation of SRAs and RPAs.

5.94 In this respect, the Committee is not encouraged by the responses of the OIPC to Questions on Notice. When asked to detail the financial and other delegations each manager in the ICCs would hold, the Committee was informed that managers would 'have all delegations necessary to manage their office [for example] to approve leave for their staff, and to approve expenditure on items required to run the ICC'.<sup>69</sup>

5.95 At the public hearing in Moree, the Committee heard evidence supporting this concern from the Kamillaroi Regional Council, who reported:

What we have found, though, since the funding has left ATSIC and gone to DEWR is that our field officers have not been able to come out and visit. We have found in the Kamillaroi region that what used to be the ATSI office in Tamworth - it is now the ICC - has lost its delegate and does not have the ability to make decisions with respect to variations in funding that have been applied for. Now we are talking to someone in Orange or Sydney - the state delegate. We are not confident that that person is aware of what the needs of the people here in Moree are.<sup>70</sup>

---

68 Dr Sanders, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 9.

69 Response to Question on Notice 4(c), received 22 February 2005.

70 Mr Hannan, *Proof Committee Hansard*, Moree, 1 February 2005, pp. 72-73.

5.96 This response goes only to the internal administration of the ICC, and does not provide any information on delegations pertaining to the actual role and purpose of the ICC; that is, to provide a 'one-stop-shop', whole of government response to clients. As a result, it remains unclear to the Committee exactly what decisions will and can be made by ICC staff on the ground, in relation to matters as critical as the formation of an SRA or an RPA. The Committee considers the issue of appropriate program-related delegations to be pivotal to the success of this model of service coordination.

### **Recommendation 5.2**

**5.97 The Committee recommends that ICC Managers have the delegated authority necessary to make direct funding decisions, within their agreed budget, on local Indigenous programs.**

#### *Implementation of SRAs*

5.98 There are similar question marks over aspects of the implementation of the Shared Responsibility Agreements (SRA) process. Four issues are particularly significant:

- The focus on SRAs ahead of regional agreements.
- The operation of the SRA approach.
- Power relationships in the SRA partnership.
- Consideration of community capacity in negotiating SRAs.

#### *SRAs in a regional structure*

5.99 Firstly, according to the OIPC,<sup>71</sup> SRAs will be negotiated between family or community groups, and will set out the respective responsibilities of the family/group and the Government, and outline the community's undertakings in exchange for 'discretionary benefits' to the community.

5.100 In contrast, Regional Partnership Agreements will be negotiated between regional representative groups and government to provide a mechanism to map both the nature and extent of funding going into the region. RPAs will outline the strategies for stakeholder engagement, guiding priorities for the region to be addressed by the SRAs. As noted though, the Government's priority is the negotiation of between fifty and sixty SRAs by June 2005.<sup>72</sup> The regional agreements will necessarily take the backseat.

---

71 See *New arrangements in Indigenous Affairs*, Australian Government, November 2004, p. 18.

72 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 24.

---

5.101 The difficulties in establishing representative groups in regions across Australia, and ensuring they have a true mandate from the people they claim to represent, were discussed in the previous chapter.

5.102 The Committee's more immediate concern though, is that the process is running in the wrong order. In prior reports such as the ATSIIC Review, it was concluded that to gain maximum effectiveness from government spending, individual programs need to be set within a structure of integrated regional planning. Thus, the RPAs should be established first to enable prioritising of regional needs and advise the Ministerial Taskforce on regional funding requirements. Only then should the SRAs be negotiated with communities and families.

5.103 The Committee believes that to focus on the SRAs before the RPAs may see a return to ad-hoc funding, with all the inefficiencies and duplications that this has led to in the past. It also has the markings of grant-based funding, which these administrative arrangements are claiming to remove.

5.104 There is the further concern that a program of rolling SRA-based projects must not result in a loss of focus on the need for longer term funding arrangements.

5.105 In Cairns, the Committee heard from Dr Paul Ryan, who argued that funding timelines, such as three year funding agreements, are often unsuitable for achieving outcomes in Indigenous communities. Worse still was funding on an annual basis that did not allow for processes such as capacity building within communities. His experience is worth quoting at length.

One program that we have at the moment from FaCS runs for nearly three years and it is sufficiently funded, we hope, to allow us to do some sustainable work within the communities. But that is rare. That is probably the experience of a lot of organisations other than ours – that you get funded for 12-month or two-year programs. Sometimes it takes you two years to get things going. Then all of a sudden the money stops and you say to the people, 'See you later.' – We work on a different timescale than Canberra, Brisbane or even Cairns. We work in a different cultural context, so we have to allow people to build their own capacity, to own things and to understand things within that culture. One-year programs virtually never allow you to do that. A two-year program gets you a little bit further. With a three-year program, you are still not really there.<sup>73</sup>

5.106 The fact that there are no RPAs in place, coupled with the haste with which the first fifty to sixty SRAs will be developed, also raises the question of whether this is just a case of the Government wanting to demonstrate some 'quick wins' to 'prove' and justify their new approach.

---

73 Dr Ryan, *Committee Hansard*, Cairns, 27 August 2004, pp. 29-30. See also Northern Land Council, *Submission 193*, p. 7.

5.107 The Committee suggests that, at the least, attention needs to be given to developing RPAs in parallel to – if not ahead of – the negotiation of individual SRAs.

*The operation of the SRA approach*

5.108 A third issue arose in relation how elements of 'shared responsibility' will be applied in practice.

5.109 As described above, SRAs will reflect a type of contract between members of a community to carry out certain agreed actions in return for an additional government benefit. Thus, 'shared responsibility' is the community level version of the policy of 'mutual obligation' that is now applied to many aspects of government support. Thus for example, under 'Newstart', the Government was obliged to pay benefits to a person who was mutually obliged to look for work.<sup>74</sup> Dr Shergold agreed that the two concepts are closely related, and explained that shared responsibility:

embraces the notion of mutual obligation, [but] shared responsibility in Indigenous affairs means it is an agreement negotiated between government and community for the purpose of provision of discretionary benefits.<sup>75</sup>

5.110 SRAs therefore represent a 'carrot and stick' approach to improve outcomes in areas of Indigenous disadvantage. Dr Shergold reluctantly agreed with the analogy, explaining that:

The carrot would be the discretionary benefit. The stick would be a requirement to meet those obligations, with further benefit flowing on that basis.<sup>76</sup>

5.111 Dr Shergold further explained that 'further benefits' would result if the mutual obligation was fulfilled by the community.

5.112 This policy has obvious advantages, but the devil is always in the detail, and in this respect, the Committee has failed to find any evidence of how mutual obligations are to be measured to determine that they have been fulfilled.

5.113 What happens, for example, if either party fail to meet their obligation? Who would determine whether a failure has occurred and what penalty, if any, will apply? Indeed, who should be held responsible for an SRA with a community for the failure – the entire community, which will include penalising those who did meet the obligation, or just the person who signed the SRA? What if the Government and its agencies fail to meet their obligations – how does a remote Indigenous community penalise the Government?

---

74 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 14.

75 *ibid.*

76 *ibid.*, p. 15.

5.114 The Committee is concerned that these scenarios are readily foreseeable, and could lead to significant inequities, yet it is apparent that the Government has yet to turn its mind to even beginning to resolve them.

*Balance of power and basic rights*

5.115 This raises the third concern, relating to the extent of the power inequality between the negotiating parties. Professor Altman explained that:

if one party holds the purse strings and the other party has to sign off to get what would be regarded ... as a fairly basic facility, ... then I can see the Commonwealth signing off on a fairly small cheque on their responsibilities.<sup>77</sup>

5.116 Dr Shergold agreed that maintaining a partnership arrangement between government and Indigenous people will not be easy, stating that 'it is one of the great challenges.' He continued with the rather remarkable statement that 'in any relationship there is an unequal power relationship.'<sup>78</sup>

5.117 Where this unequal power balance becomes critical is in remote communities, whose level of disadvantage is such that they have little real choice but to agree. The Committee is concerned that in some cases, what government regards as 'discretionary benefits' are basic infrastructure items that are lacking in many remote communities. These remote communities hence may be more inclined than an *urban* Indigenous community, to negotiate their rights for basic needs.

5.118 Government officials strongly denied that this could occur,<sup>79</sup> distinguishing between the entitlements that members of an Aboriginal community receive by law, and discretionary, additional benefits that the Government can attach conditions to. For example, when asked by the Committee whether discretionary benefits would ever involve payment of benefits, Dr Shergold went on to say that shared agreements are in terms of the additional benefits. The SRA:

... is not a requirement in order to access the benefits that are available to all Australians. ... Each community decides what discretionary benefit they want ...<sup>80</sup>

5.119 Dr Shergold further explained the distinction the Government makes between discretionary benefits and entitlements, referring to the routine repairs on Aboriginal housing:

It depends how that housing repair is done. If there is an existing program to do it, then it probably is not appropriate [as a discretionary benefit]. But

---

77 Professor Altman, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 10.

78 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 14.

79 *ibid*, pp. 3 & 18.

80 *ibid*, p. 3.

if a community says, 'We want to have a program provided for us ... to train our people to be able to do house repairs; we would require additional money to do this and if you provide it for us we will be able to fix the doors and windows,' that would be entirely appropriate for a shared responsibility agreement.<sup>81</sup>

5.120 This distinction between entitlements and additional discretionary benefits works well enough in relation to individuals whose rights are clearly defined. However, it tends to become a little murky when related to a community level. How are the 'entitlements' of a community distinguished from 'discretionary benefits'? To what extent is core infrastructure like health centres, schools, or medical equipment, such as dialysis machines, entitlements or benefits?

5.121 The issue was raised by ANTaR, who suggested that SRAs:

introduce coercive and inappropriate elements to the provision of services by:

- placing indigenous communities in a position where they must bargain for certain rights to which they are entitled as of right both as citizens and as Indigenous peoples, and;
- pitting under-resourced and effectively powerless local communities against the Federal Government via mainstream agencies.<sup>82</sup>

5.122 In commenting on the Mulan agreement,<sup>83</sup> ANTaR said that a number of their concerns had been realised:

A major criticism of the [Mulan] agreement is that it breaches human rights obligations in making government responsibilities for the provision of health measures conditional. Criticism also points to the inappropriateness of linking petrol bowsers with child health. A further discriminatory impact is that the agreement focuses attention on Indigenous behaviour as 'the problem' ... and deflects scrutiny from government neglect and policy failure.<sup>84</sup>

5.123 The Committee is not entirely convinced that clear distinction has been made between what is a fundamental right and a discretionary benefit. It remains a nebulous issue, subject very much to individual government officer/agency judgements, and with the subsequent potential for variance in interpretations.

---

81 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 15.

82 Australians for Native Title and Reconciliation, *Submission 181a*, p 7.

83 This was an agreement reached with the community, whereby the community 'agreed' to ensure children washed their faces twice a day, in order to reduce the prevalence of trachoma in the community. In return, the government would install for the community two petrol bowsers.

84 Australians for Native Title and Reconciliation, *Submission 181a*, pp 7-8.



5.124 The Committee believes this issue will need to be monitored closely as part of ongoing evaluation of SRAs.

*Consideration of community capacity in negotiating SRAs*

5.125 The final matter stems from the difficulties of negotiating SRAs with individual groups in an equitable way.

5.126 The Committee has seen first hand the differences in the capacity of various communities to organise themselves and effectively negotiate with departments and organisations. There is a clear danger in the proposed arrangements that communities who are the best organised and most vocal will tend to be the most successful in gaining the attention and resources of the local ICC's. Conversely, communities with less capacity, and who are by definition often those suffering the greatest levels of disadvantage, may be overlooked.

*Indigenous employment and corporate knowledge*

5.127 The Committee is greatly concerned at reports of the number of Indigenous staff choosing not to make the transition to mainstream agencies and ceasing employment in the Indigenous affairs sector. Such a prospect augers very poorly for the retention of corporate knowledge and cultural awareness, both of which are critical to the successful delivery of services to Indigenous Australians. The Committee heard a range of evidence in relation to this issue, and noted that the empirical data appears to confirm a downward trend in Indigenous employment in the APS.

5.128 In Cairns, the Committee heard evidence from the Principle Legal Officer with the North Queensland Land Council regarding the loss of staff since 1 July 2004; Mr Dore expressed the concerns of many about the whole way the change was implemented, noting that: 'a lot of the previous ATSIC staff either have taken redundancies and are looking for work elsewhere or are being shifted to Canberra.'

... in relation to mainstreaming the programs, ... you will quickly lose a pool of expertise and people who understand the difficulties faced by our Indigenous colleagues, and they will slowly but surely be replaced by well-meaning bureaucrats who have no understanding of the unique difficulties facing our clients.<sup>85</sup>

5.129 At the Darwin hearing, Mr Hunter from the Yilli Rreung Regional Council commented on how the poor implementation of the 1 July 2004 change has had a detrimental flow-on effect, which was felt throughout the ATSI workforce.

The reality is that there are very committed people in ATSIC, and the sad thing is that the morale has taken a bit of a battering and that commitment to ensuring that they deliver services is no longer there.<sup>86</sup>

---

85 Mr Dore, *Committee Hansard*, Cairns, 27 August 2004, pp. 21-23.

86 Mr Hunter, *Committee Hansard*, Darwin, 24 August 2004, p. 60.

5.130 Other members of the Yilli Rreung Regional Council compared how staff were operating before and after the change on 1 July 2004:

... with the divvying up of staff of the previous ATSI/ATSIC office, where staff have now gone to some seven program areas, we have staff currently sitting around twiddling their thumbs. Their linkages to their departments appear very flimsy. ... it is causing a lot of stress.

...[before the change] they were pretty flat out doing lots of things and that has now dried up. They probably have a very minor role.<sup>87</sup>

5.131 In addition to it being 'unworkable and cumbersome', the ATSIC NSW Eastern Zone Commissioner and Chairpersons observed that the 'one stop shop' model would encourage split loyalties within single (ICC) offices, and would encourage the loss of Indigenous staff and corporate knowledge.<sup>88</sup>

5.132 In Canberra, Professor Dodson considered that:

...[T]here are certain things happening as a result of these new arrangements that I think are potentially disastrous – for example, the massive loss of Indigenous corporate knowledge from the Australian Public Service. The reasons escape me why any organisation would not want to keep that knowledge.<sup>89</sup>

5.133 The Committee examined the number of Indigenous employees within the APS in some detail and notes the concerns expressed by the Public Service Commissioner in the latest *State of the Service* report:

The decrease in Indigenous employment in both absolute and proportional terms in 2003-04 is of concern. Falls in recruitment of trainees in 2003-04 have added to the ongoing problems of declining low-level job opportunities and higher than average separation rates. A declining trend in Indigenous employment is now emerging since the peak in 1998-99 and the need for targeted recruitment and retention strategies is clear, particularly given the transfer of many Indigenous employees from ATSI to mainstream agencies at the beginning of 2004-05.<sup>90</sup>

5.134 However, Dr Shergold took a different view of the facts, arguing that over the past decade, the proportion of Indigenous public servants has been relatively stable, but that the overall decline percentage reflects the changing nature of the public service and the decline in the number of APS Level 1-2s: 'Therefore, we have seen a very significant decrease in the number of Indigenous people at APS1 and APS2.'<sup>91</sup>

---

87 Mr Hunter, *Committee Hansard*, Darwin, 24 August 2004, p. 59.

88 ATSIC NSW Eastern Zone, *Submission* 142, pp.12-13.

89 Professor Dodson, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 36.

90 Australian Public Service Commission, *State of the Service Report 2003-2004*, Chapter 8.

91 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 13.

5.135 Notwithstanding Dr Shergold's argument, a decrease has occurred in both number and proportion. Such observations are deeply concerning to the Committee, as the ramifications for quality of service delivery are profound. The Committee notes and applauds the initiatives being undertaken by the Public Service Commission in relation to arresting this trend,<sup>92</sup> and strongly believes that ongoing scrutiny of these figures is important in the long term.

5.136 Commenting on another aspect of the decline in Indigenous employment within the APS, ANTaR drew attention to the rate at which Indigenous people are leaving the APS:

Disturbingly, the percentage of people leaving the APS who are Indigenous is ... at 4.9% indicating a worsening trend. Worse still, the report covers the period up to June 30 2004 and so does not take into the account changes as a result of the transfer of staff from ATSIC and ATSI to mainstream government departments.<sup>93</sup>

5.137 In a separate observation, Mr Hunter also criticised the manner in which some Indigenous staff were being treated in their new departments.

People have been asked to question their values. They have a history of considering Indigenous views and issues involved in the delivery of service. They have been told that they need to rethink their values and that they need to fit into [ the department's] tracks ... [O]r leave. ...

ATSI-ATSIC was a major employer of Indigenous people across the country. That corporate value, that corporate knowledge and all that have certainly been filtered onto a lot of other agencies and it is of concern. I guess it is all about the capacity of the agency to retain those Indigenous people. ... it could have been done a hell of a lot better than it has been.<sup>94</sup>

5.138 Commissioner Hill had this to say:

I understand that some people have gone to a particular department and lost up to \$15,000 in entitlements. I am concerned about the staff. Those people not only supported me, gave me a lot of information, did my papers and so forth but they are ordinary people who want to make a difference in Aboriginal affairs. From talking to a lot of them here in the Northern Territory, I know that they are disheartened by what has happened.<sup>95</sup>

---

92 For details, please consult the Public Service Commission website - <http://www.apsc.gov.au/stateoftheservice/0304/index.html>

93 ANTaR, *Submission* 181a, p. 5.

94 Mr Hunter, *Committee Hansard*, Darwin, 24 August 2004, pp. 59-60.

95 Commissioner Hill, *Committee Hansard*, Darwin, 24 August 2004, p. 11.

---

***Will 'new' mainstreaming fix the problems of the 'old'?***

5.139 Earlier in this chapter, the problems of the old mainstreaming were examined. The Committee raises two further factors that will need to be watched closely if the new policy is to be ultimately successful.

5.140 Firstly, and to repeat a fact raised in earlier chapters, policy planners should not lose sight of the fact that for many indigenous communities, the threshold issue is one of adequacy of funding. In many key areas, such as health, education and housing, individuals are not accessing – or able to access – services at the same rates as their urban non-Indigenous counterparts. So shuffling around program arrangements and policies are unlikely to solve problems if they do not succeed in increasing the *per capita* resources on the ground.

5.141 Several submissions referred to the Commonwealth Grants Commission Report which pointed to the greater need and lesser access to services by Indigenous Australians.<sup>96</sup>

Mainstream services are intended to support access by all Australians to a wide range of services. Given the entrenched levels of disadvantage experienced by Indigenous people in all functional areas addressed by our Inquiry, it should be expected that their use of mainstream services would be at levels greater than those of non-Indigenous Australians. This is not the case. Indigenous Australians in all regions access mainstream services at very much lower rates than non-Indigenous people.<sup>97</sup>

5.142 The ATSIC Board elaborated on this, saying:

The mainstream [comprising the dominant ideas and practices of a society which are accepted the norm, even though [they] may discriminate against a section of that society] has generally failed Indigenous people. Decision-making institutions and systems – government agencies at all levels – have not been sufficiently sensitive to Indigenous needs, concerns and experiences ... Indigenous needs, concerns and experiences differ from the mainstream.<sup>98</sup>

5.143 The Central Land Council (CLC) echoed this sentiment when discussing their concerns regarding mainstreaming in relation to the outstation movement, which represents the aspirations of Aboriginal people to live on their land:

A key example of the failure of mainstream service providers to meet the needs of remote Aboriginal people is the lack of funding available to outstations (otherwise termed homelands). Many Aboriginal people attempt

---

96 Commonwealth Grants Commission, *Report on Indigenous Funding* (2001). See, for example, Central Land Council, *Submission 194*; ATSIC Board of Commissioners, *Submission 202*.

97 Commonwealth Grants Commission, *Report on Indigenous Funding*, 2001, Vol. 1, p. 59.

98 ATSIC Board of Commissioners, *Submission 202*, p. 21.

---

to live on outstations that have little infrastructure and no essential services.<sup>99</sup>

*Flexibility in the mainstream?*

5.144 The second question mark relates to whether, notwithstanding the Government rhetoric, mainstream agencies are actually capable of the degree of flexibility required to meet the regional and cultural diversity necessary to deliver individualised Indigenous programs.

5.145 The Government has recognised the limitations of the 'one size fits all' approach, and Minister Vanstone has stated that:

In a nutshell, we will produce better results by stripping away the layers of bureaucracy, by listening to local communities, responding to their requirements and sharing responsibility for outcomes with them.<sup>100</sup>

5.146 These are accurate and laudable policies. However, many witnesses were sceptical about the likelihood that mainstreamed services would be genuinely and effectively flexible. Reconciliation Australia argued that:

Just as it is dangerous to make assumptions about lack of capacity within Indigenous communities, it is potentially even more dangerous to assume capacity within government agencies to deliver this level of change. It appears that government policy is well ahead of government agencies' capacity to manage implementation or deal with its consequences.<sup>101</sup>

5.147 Mr Fry, of the Northern Land Council pointed out that:

Mainstream departments and agencies are inexperienced in dealing with Aboriginal people and have only limited understanding of aspects of Aboriginal history and culture. Their staff are unfamiliar with the dynamics of Aboriginal communities and rarely have much local knowledge. ... The plethora of Aboriginal agencies and organisations ... have all come about because of the failure of mainstream services for the very reasons highlighted and brought out by the Commonwealth Grants Commission's own report. It is a historical, systemic problem in mainstream governance models in Australia.<sup>102</sup>

5.148 Reconciliation Australia went on to suggest that:

---

99 Central Land Council, *Submission* 194, p. 14.

100 Senator Amanda Vanstone, *Deeds more important than words*, 9 July 2004, accessed at <http://www.atsia.gov.au/media/index.htm> on 16 February 2005.

101 Reconciliation Australia, *Submission* 225, p. 5.

102 Mr Fry, *Committee Hansard*, Darwin, 24 August 2004, p. 71. See also Northern Land Council *Submission* 193, p. 9; Victorian Aboriginal Legal Service, *Submission* 185, p. 9; ATSIC NSW Eastern Zone, *Submission* 142, p. 12.

- The natural tendency of mainstream agencies is to cater for the mainstream [and that] without strong and consistent political and administrative leadership, agencies generally fail indigenous communities;
- Mainstream service delivery which is not delivered in culturally appropriate ways is unlikely to succeed; and
- Indigenous organisations which are culturally appropriate and have authority in the community are essential to obtaining engagement of those communities.<sup>103</sup>

5.149 Even acknowledging the best intentions of government agencies, the reality is the problem is exacerbated by the fact that many Indigenous people are not comfortable interacting with bureaucracy and will avoid accessing services because of this. Centralising services away from Indigenous people would further isolate them from those services. The Principal Lawyer with Katherine Regional Aboriginal Legal Aid Service stated:

There is evidence which suggests that Aboriginal people do not access mainstream services as easily or as readily as they might access dedicated [Indigenous] services.<sup>104</sup>

5.150 Professor Altman drew the Committee's attention to the very basic issue of whether Aboriginal people felt comfortable liaising with an ICC comprised of bureaucrats from a number of government departments:

Under the new mainstreaming and the new whole of government approach, for many Indigenous community organisations even working through an ICC and a number of officers at an ICC is probably more difficult than was working through an ATSIC regional office. [Previous funding] was coming from a common cultural base ... now those organisations are going to have to deal with three different departments.<sup>105</sup>

5.151 It is also that there can be intra-cultural sensitivities. Giving evidence in Cairns, Mr Pilot elaborated on examples of Torres Strait Islander people, living both in the Torres Strait and elsewhere:

We speak with all the members of our organisation across Australia and with Torres Strait Islander people across Australia as well. They are all struggling in terms of providing services to their communities. It all comes back to providing culturally appropriate services to Torres Strait Islanders. Aboriginal people cannot deliver services to Torres Strait Islanders ... [W]e certainly have distinct cultures and we want to try and maintain that.<sup>106</sup>

---

103 *ibid.*

104 Mr O'Brien, *Committee Hansard*, Darwin, 24 August 2004, p. 45.

105 Professor Altman, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 8.

106 Mr Pilot, *Committee Hansard*, Cairns, 27 August 2004, p. 10.

5.152 Mr Monaghan gave evidence that mainstream departments, such as Health, failed to grasp the barriers, which living in a remote community created, to undertake what urban communities took for granted. He explained that:

[Health] are saying to us that we need to transport people to town for hospitalisation or treatment. The community does not have the money to do that. We do not have the resources to do that. We do not have the money to maintain the vehicles to do that.<sup>107</sup>

5.153 At the Darwin hearing, Commissioner Hill was able to provide an example of the disconnectedness and lack of efficiency which is part of the mainstreaming process:

My biggest concern at the moment ... is the lack of understanding, especially from Canberra. We have got a couple of officers, I understand, who have been transferred to AG's, and one officer at Nhulunbuy has been transferred to Heritage and the Environment. Canberra did not know that there was an airstrip at Nhulunbuy – to my surprise. Then again I am not surprised at all.<sup>108</sup>

5.154 These sentiments were perhaps best expressed by Hon. John Hannaford:

The concept of centralisation of control, centralisation of direction – whilst it may be bureaucratically efficient and effective and provide appropriate levels of publicly accountable governance – does not necessarily meet the aspirations of the people that we are meant to serve, certainly is not going to provide the levels of respect ... and is not going to result in long-term effective change. ...

We [the ATSI Review Panel] felt that by sustaining the approach of a centrally directed delivery of services, no matter how well-meaning it may be in the initial phase, it is only as good as the will of the minister, the will of the government or, more importantly, the will of the bureaucrats at the time who are administering discretionary programs.<sup>109</sup>

### ***The focus on remote areas***

5.155 The obverse observation on the inequity with respect to service provision is the concentration on remote areas at the expense of urban and rural localities. The Committee in no way denigrates the specialised needs that remote living creates. However, given that the majority of Indigenous people now live in urban Australia, it is uncertain whether the new arrangements will adequately cater for the very different needs of urban Indigenous communities.

---

107 Mr Monaghan, *Committee Hansard*, Alice Springs, 20 July 2004, p. 5. On the practical difficulties faced by ICC managers, see also Commissioner Hill, *Committee Hansard*, Darwin, 24 August 2004, p. 11; Mr Yeatman, *Committee Hansard*, Cairns, 27 August 2004, p. 49.

108 Commissioner Hill, *Committee Hansard*, Darwin, 24 August 2005, p. 11.

109 Hon John Hannaford, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 23.

5.156 The Sydney Regional Council noted that:

the majority of Aboriginal people live in metropolitan settings, making up 2/3s of the population base. And from a Sydney Region perspective, 10% of the total Indigenous population of Australia live within the [Sydney] Regional Council boundary.<sup>110</sup>

5.157 Professor Behrendt expressed a similar view:

It has certainly been the case with funding arrangements now that there is a focus on remote and rural areas. Nobody would argue against the need in those communities, but it is being done at the expense of some very important organisations within the urban areas ... [T]hat is a huge concern for us, particularly here in Sydney in our Redfern and Mount Druitt communities. We see enormous socioeconomic problems within our communities, enormous issues that are of concern in every other community across the country in terms of service delivery, the health and wellbeing of our children, substance abuse, cyclical poverty, sexual abuse.<sup>111</sup>

5.158 A different view was put by Mr Howsen, who cited the Productivity Commission's 2004 report, which found that as remoteness increased, so did the degree of disadvantage, demonstrating that the funding differential is justified with reference to relative need.<sup>112</sup>

## **Conclusion and recommendation**

5.159 The Government's move to shift all delivery of services for Indigenous Australians to the mainstream departments is a momentous one. It comes at a time of great change in the broader political situation for Indigenous Australians, but has greater potential to affect the everyday lives of a greater number of people than any other single Indigenous-related policy. If the Government promptly and effectively addresses the critical issues discussed in this chapter, the Committee believes that mainstreaming has the potential to improve the delivery of services to Indigenous people.

5.160 Realising this potential depends on whether the policy of 'new' mainstreaming lives up to its rhetoric and really amounts to a major change in the way things are done. 'Old' mainstreaming has already been shown to fail and the Government's own review of ATSIC in 2003 explicitly rejected mainstreaming as an option.<sup>113</sup> 'New' mainstreaming has great potential to be different, with its focus on bringing the expertise and resources of line agencies to bear on the problem through flexible,

---

110 Sydney Regional Council, *Submission* 204, p. 3.

111 Professor Behrendt, *Proof Committee Hansard*, Sydney, 2 February 2005, p. 27.

112 Hon. Mr Howsen, *Submission* 235, p. 1.

113 *In the Hands of the Regions*, p. 80.



---

coordinated and differentiated programs that respond to the needs of individual communities.

5.161 These possibilities were recognised by some respondents to the inquiry. In his submission, Commissioner Hill said that:

There are aspects of the changes that are welcomed, such as the whole of government approach to service delivery and emphasis on partnership approaches with Indigenous communities.<sup>114</sup>

5.162 The changes also offer a promising method to link government and communities in partnership – a task that Mr Yates from ATSIIS, sees as a fundamental principle.<sup>115</sup>

5.163 But the problems of the 'old' mainstreaming still lurk, and as the discussion above demonstrates, the success of line agencies overcoming these problems and transitioning to this new and quite different way of doing things is far from a foregone conclusion. There are a great many details still to be sorted out before any real judgements can be made on the policy, including, the functioning of the new ICC's, how the Shared Responsibility Agreements will work in practice, and the ways of evaluating the results. In addition, there is much work yet to be done to achieve effective cooperation and collaboration between Commonwealth, state/territory and local government to prevent duplication, build partnerships and ensure the continual improvement results.

5.164 From the Committee's perspective, the inquiry has raised as many questions as it has answered. For this reason, the Committee is a little wary of the Government's somewhat triumphalist rhetoric, which papers over a wealth of unresolved detail. The Committee considers there is potential in the new arrangements, but there remains the need to independently monitor how the policy is put into practice.

5.165 It has already been noted in discussion earlier in this chapter that the "new" mainstreaming arrangements for programs for Indigenous people will present a serious challenge for the Parliament in monitoring and evaluation of the Government's performance. Transparency is potentially reduced and, with it, public accountability. For this reason alone, new arrangements to enable public scrutiny to be effective need to be considered. There is no Senate Committee charged specifically with examining policy and administration in Indigenous Affairs.

5.166 Further, the existing Parliamentary Joint Committee on Native Title has a sunset clause imposed by the *Native Title Act 1993*; Section 207 provides that Part 12 of the Act ceases to be in force after 23 March 2003, effectively ceasing the operation of the Native Title Joint Committee. This Committee, in any case is charged with

---

114 ATSIIS NT North Zone Commissioner Hill, *Submission* 100, p. 10. See also Mr Des Rogers, *Submission* 57, p. 1.

115 Mr Yates, *Committee Hansard*, Canberra, 29 June 2004, p. 2.

dealing with only one aspect of Indigenous Affairs policy - native title. While there exists in the House of Representatives the Committee on Aboriginal and Torres Strait Islander Affairs, this Committee, like all those established in the House, can only take up issues with the approval of the relevant minister. For these reasons, the Committee considers that a new, specialist Senate Standing Committee, with powers of a references committee, should be established.

### **Recommendation 5.3**

**5.167 The Committee recommends the establishment of a Senate Standing Committee on Indigenous Affairs, tasked with examination of:**

- **the implementation of the mainstreaming policy;**
- **the coordination of Commonwealth, state and territory agencies;**
- **the formation of representative arrangements; and**
- **the equity of Shared Responsibility Agreements.**

Senator Claire Moore

Chair

# Australian Democrats supplementary comments

## Introduction

The Australian Democrats support the majority findings of the report. Nevertheless, we are of the opinion that the findings and comments of the majority regarding the government's treatment of Indigenous Affairs and Indigenous Australians, require stronger recommendations. We therefore make the following comments and recommendations in addition to those contained within the majority report.

## Comments on the government's assimilation policy

The Australian Democrats are appalled at the Howard government's treatment of Indigenous people since 1996. The majority report does address this general topic and we are fully supportive of the majority findings, particularly the preface and chapter two. We wish to emphasise the disingenuous nature of government rhetoric in Indigenous affairs: the claim that 'equality' is delivered through the 'same treatment' of all Australians is fundamentally racist and has been proven to deliver extremely poor results for Indigenous people. No matter how cleverly the current policy is phrased, this government is committed to assimilation and is opposed to self-determination, as it has unashamedly stated on many occasions.<sup>1</sup> Cloaking this policy in the language of self-determination, for example describing it as a 'bottom up approach', as Dr Peter Shergold repeated in his evidence, and as Senator Vanstone has also repeatedly stated, cannot change the fact that decisions pertaining to mainstream Indigenous services are being made with *no prior consultation*. This is in fact the epitome of a paternalistic 'top down' approach. The fact that the government knows well enough to misrepresent their ideological agenda as a policy in which decision-making is in the hands of Indigenous people indicates that they well know it is the wrong direction in which to take Indigenous Affairs.

## Shared Responsibility Agreements ('SRAs')

The government's lynch pin of 'mutual obligation' – SRAs – only highlights the disarray of the current mainstreaming policy. From its beginnings as 'policy on the run', to the modelling of SRAs on unevaluated Council of Australian Government (COAG) trials, the government's mainstreaming policy is incomprehensibly poorly thought through. The Democrats conclude from evidence given to the committee that this government and its departments do not know how SRAs are going to function. No Minister or public servant has yet been able to give a clear outline of what SRAs actually are; it is clear from the evidence presented from many departments and from Ministerial statements that SRAs are *ad hoc* agreements to be applied in an *ad hoc* way. This bodes very badly for accountability and transparency of negotiations and outcomes and for the achievement of national benchmarks across all levels of government.

There are significant legal questions relating to SRAs which remain unanswered: Who is bound to an SRA as a contract? How will they be enforced so as not to disadvantage people who have not been a party to failed SRAs? Do they in fact breach international law?

---

<sup>1</sup> See The Aboriginal and Torres Strait Islander Social Justice Commissioner, HREOC, Social Justice Report 2002, pp30-47.

Additionally, the Democrats believe the SRAs are self-serving for the government. The government is recognising some Indigenous representatives for the purpose of the government's own agreements (and hence for ensuring the blame for failure can be squarely laid on individuals and organisations) but they will not recognise Indigenous governance structures for purposes advocated by Indigenous people.

### **The abolition of ATSIC**

The Australian Democrats believe that the overwhelming body of evidence presented to the Committee is in favour of, and presents a strong case for, the continued existence of a national, elected, Indigenous representative body. In addition to the evidence presented to the Committee, we note that the Government commissioned ATSIC review report by Huggins, Collins and Hannaford, *In the Hands of the Regions – a New ATSIC* (2003) ("ATSIC Review Report") found, after significant consultations, that an elected Indigenous representative body at the national level is essential for self-determination and subsequent improvements in living standards and life opportunities.

In addition to what the Democrats see as the indisputable need for an elected national body, we are of the opinion that ATSIC is capable of being reformed along the lines recommended by the ATSIC Review Report. The litany of discarded Indigenous Affairs structures over the last thirty to forty years<sup>2</sup> is a pattern which must cease. If the body responsible for representing Indigenous peoples' interests is changed every ten or fifteen years it is inevitable that no body taking that role will ever be fully respected and understood by Indigenous people and will be less than fully effective in delivering outcomes as a result. Although we recognise that the government has already effectively disbanded ATSIC prior to the legal abolition of the ATSIC Board and that it is therefore highly unlikely that there will be any change in government direction, we are still of the opinion that ATSIC should be retained and reformed.

#### Recommendation 1

Therefore, the Democrats recommend that the ATSIC Bill as it stands be rejected and a new Bill be drafted which reflects the changes recommended by the ATSIC Review Report. The Democrats do not expect the government to accept this recommendation and so make further recommendations in the alternative and endorse those of the majority report.

### **Indigenous artwork and artefacts**

The Democrats are of the opinion that the Committee's recommendation 3.1 does not go far enough. Recommendation 3.1 and the preceding paragraphs (notably paras 3.8 and 3.9) do not clearly state the position of the committee regarding the assets of ATSIC.

The Democrats believe there is a potential conflict and certainly a lack of clarity in paras 3.8 and 3.9. Para 3.8 states that "[t]he Committee supports...that Indigenous people should formally have custody of Indigenous artworks and artefacts", while para 3.9 states that "the principles that should underlie any decision about the future ownership and location of the artworks and artefacts currently in the possession of ATSIC include...that Indigenous people and organisations be closely involved in, and approve, the location of the collection; and that the collection remains in public hands." If "public hands" means merely that the collection should be accessible to all Indigenous and non-Indigenous Australians in a public institution

---

<sup>2</sup> See Committee Report, chapter 2, pp.6-11.

(such as the National Gallery of Australian or AIATSIS) as opposed to a private organisation, then this may be reasonable, depending on the level of control Indigenous people retain over the collection. However, if it means that ownership will pass from Indigenous people to the Commonwealth and be maintained by the Commonwealth then this contradicts the previous paragraph and is not acceptable.

Additionally, the principle that “Indigenous people and organisations [should] approve of the location” for the collection will be difficult because the government has effectively destroyed the representative structure of ATSIC, including the withdrawal of Regional Council resources and staff, which would be capable of conducting the necessary consultations required for legitimate “approval”.

### Recommendation 2

The Democrats believe that the ‘underlying principles’ in para 3.8 should read:

- That the collection be maintained as a single coherent entity;
- That Indigenous people and organisations be closely involved in, and approve, the location of the collection;
- That the collection remains both formally and practically in Indigenous custody and control; and
- That the collection remains in public hands (meaning it is not to be given to a private organisation and is publicly accessible).

### Recommendation 3

The Democrats recommend that a working group be established, headed by the Australia Council Aboriginal and Torres Strait Islander Arts Board and with representatives from the National Gallery of Australia and AIATSIS, to consider and recommend the best way of protecting, preserving and displaying the artworks and artefacts, including the preferred location, in line with the above underlying principles. The government should provide adequate resources for this to be completed.

### **Other ATSIC assets**

Recommendation 3.1 is also unclear when it states “all assets controlled by ATSIC [should] continue to be applied to the benefit of Indigenous Australians...” This recommendation would apply to a range of ATSIC-held properties, including some which the Committee heard evidence about.<sup>3</sup> The Democrats believe that in addition to being “applied to the benefit of Indigenous Australians”, properties held by ATSIC must remain under the decision-making control of Indigenous people.

The Democrats believe that the government should recognise and publicly affirm that legitimate decisions made by ATSIC regarding assets which ATSIC owned or had an interest in are valid and will be honoured by the relevant government departments. Applications to ATSIC regarding property that were initiated prior to the distribution of ATSIC’s programs to government departments and agencies, should be continued with the same criteria. Properties purchased by ATSIC for particular purposes, or for a particular group of Indigenous people, should be transferred as soon as is practicable to a representative organisation of that group.

---

<sup>3</sup> For example the Bowraville property which MiiMi Mothers Aboriginal Corporation had been granted ATSIC approval to acquire.

Property which was purchased for ATSIC/ATSIS to deliver programs, such as staff houses, should be quarantined for Indigenous service delivery and only divested to Indigenous organisations or people, at no cost. The government should not be looking to recoup costs at the expense of Indigenous people's asset and resource base.

#### Case study – Mii Mi Mothers Aboriginal Corporation

The Democrats believe it is important to spell out exactly what is happening in communities as a result of the government renegeing on decisions already made by ATSIC regarding the use of assets. The following is just one of numerous examples discussed in the Committee hearings, and one of many more for which request of assistance have been received by Committee Member Democrat Senator Aden Ridgeway.

MiiMi Mothers Aboriginal Corporation ("MiiMi Mothers") is an Indigenous community organisation in Bowraville – a community in northern NSW with significant poverty and social problems – which runs a variety of programs, including youth leadership and family violence support programs. They have had great success in recent years but have been restricted by a lack of independence as they are based in council premises. The property which they wish to move into (the "Bowraville property") was purchased by Aboriginal Housing Corporation with ATSIC funds for the purpose of Aboriginal housing. The premises are derelict and require \$100,000 worth of renovations to make it habitable. MiiMi Mothers have secured a commitment for the funding from the Department of Transport and Regional Services (DOTARS).

The Aboriginal Housing Corporation Board voted in early 2004 to divest the property to MiiMi Mothers. MiiMi Mothers then undertook a very lengthy process of application to ATSIC to have the caveat (administered by ATSIC) which requires that the premises be used for Aboriginal housing, lifted for MiiMi Mothers to acquire the property. ATSIC had taken the decision to lift the caveat (prior to any recent political debate concerning ATSIC assets) and allow MiiMi Mothers to acquire the property but had not finalised the process before ATSIC and ATSIS functions were dispersed to government departments. The Department of Family and Community Services (FACS) became responsible for the Indigenous Housing programs and assumed responsibility for the MiiMi Mothers' application. They renegeed on the decision to lift the caveat, telling MiiMi Mothers over the phone, but never in writing, that they will not be getting the premises because it is needed for Indigenous housing.

Committee Member Democrat Senator Aden Ridgeway questioned FACS in Committee hearings, and has requested an explanation from Department of Prime Minister and Cabinet and from OPIC. Despite receiving an assurance that the government will reconsider their decision to ignore a previous legitimate ATSIC decision, the official response from FACS to the questioning was that they have rejected MiiMi Mothers' application and that 'FACS would be supportive of recommending disposal of the property if MMAC is able to purchase it at current market value...' Responses received by local National MP Luke Hartsuyker (8 February 2005) and the Disability business service located next door to the Bowraville property (dated 31 December 2004, received 10 February 2004) state respectively: 'only the CEO of the ATSIS can approve the disposal...[FACS] has agreed to provide a recommendation to an authorised person in ATSIS'; and 'negotiations are currently continuing with the AHC in relation to its request to dispose of the property.' As far as MiiMi Mothers are aware, negotiations with AHC are not continuing as they had already decided to divest the property. MiiMi Mothers also know nothing about the claim by FACS that 'FACS

is endeavouring to assist MMAC in brokering additional funds to be able to purchase this or another property.<sup>14</sup>

The Democrats are of the opinion that this experience by MiiMi Mothers epitomises the hypocrisy of the government's approach. On the one hand, the Prime Minister and Minister Vanstone and all the senior departmental officers are describing the 'new' arrangements as facilitating greater control of communities over their service provision. The government uses family violence as an example of why they need implement these 'new arrangements'. Yet on the other hand, it is clear from the experiences of community organisations and service providers that the opposite is in fact true: Indigenous communities are being disempowered and family violence is only a priority for the government when it suits.

#### Recommendation 4

Further to the Committee's Recommendations 1.1 and 3.1, the Democrats recommend:

- That all assets controlled by ATSIC continue to be applied to the benefit of Indigenous Australians (existing recommendation);
- That all property purchased by ATSIC or ATSIC's predecessors for Indigenous people stay the property of Indigenous people and be controlled by Indigenous organisations such as Indigenous Business Australia or Indigenous Land Corporation;
- That any decisions made by ATSIC or ATSIIS regarding the transferral of title to such a property, including decisions to lift any conditions, restrictions, caveats, etc. be respected and enforced by the controlling agencies;
- That any applications made according to ATSIC/ATSIIS criteria and/or convention be furthered in accordance with the same criteria and/or convention;
- That all property and assets controlled by ATSIC and purchased for the purpose of delivering Indigenous services, such as staff housing and office equipment, be quarantined for the delivery of Indigenous services and any divestment should only occur for the benefit of Indigenous people, to Indigenous organisations, at no cost to Indigenous people.

#### **Native Title**

The Democrats are extremely concerned with the government's plans for the funding of Native Title Representative Bodies. We do not believe that the government has demonstrated in any way that it can function as funding body for both opposing parties in a native title claim and not disadvantage the claimant.

#### Recommendation 5

The Democrats recommend that the funding of Native Title Representative Bodies, previously administered by ATSIC, be administered by a statutory body no less independent from the government than ATSIC was. Consideration should be given by government for transfer of these responsibilities to the Indigenous Land Corporation.

---

<sup>4</sup> FACS, answer to questions on notice, 4 February 2005.

## **Indigenous Business Australia (IBA)**

The Democrats note the majority report's findings that IBA will have its independence from the Minister further limited now that they are obliged to follow general Ministerial directions in relation to their entire business conduct.<sup>5</sup> The Democrats agree with the majority report that this has the very real potential to damage the effectiveness of such a successful organisation.

In addition, the evidence presented to the hearing regarding the new impositions of Ministerial power indicates that there has been little if any consideration to the liability of the Minister as a pseudo-Director. Given that the Directors of IBA are personally liable like any other company Directors, the Democrats are of the opinion that Ministerial directions which could, and presumably will, impact the way IBA does business should be at least considered from this perspective. The Committee has not been privy to any advice which indicates that this issue has been explored.

### Recommendation 6

The Democrats recommend that Ministerial directions be limited to the new functions which IBA has or will acquire from ATSIC, to the degree that such Ministerial directions were allowed to be applied to the functions when they were with ATSIC, and specifically that it not extend to IBA's whole operations.

## **Conclusion**

The Australian Democrats support the findings and the recommendations of the majority report. However, in our opinion, the findings of the Committee require stronger comments and recommendations in the areas of representation, asset retention and program administrative arrangements, as described. It would be a far more appropriate course for the government to take to accept the work of the ATSIC Review Report in pursuing a reformed Indigenous representative body with greater regional participation and control in a context of respect and recognition of Indigenous Australians. At the very least, the Australian Democrats would strongly support the retention of regional councils in a renewed form, as discussed in the ATSIC Review Report.

Government statements that this process of mainstreaming is a 'bottom up' approach reflect only that the right rhetoric is being disseminated to hide the lack of substance in the plans. This lack of substance is clear from the utter chaos which reigns in the area of Shared Responsibility Agreements.

It is unconscionable that yet again, the least resourced groups in our society are being called upon to subsidise government neglect. The Regional Councils are still performing heroically to cushion the impact of mainstreaming as best they can with no recognition of the role they play. Indeed, it was a poignant moment when, at the Sydney hearing, Sydney Regional Council Chairperson, Marcia Ella-Duncan, described a conversation with a senior bureaucrat in OIPC. Ms Ella-Duncan said '[t]he chairs wanted to know where the resources were to allow them to continue to do their jobs. The response from a senior bureaucrat was, "What do you do?"'

---

<sup>5</sup> See paras 3.20 to 3.38.



---

The abolition of ATSIC will happen; it already effectively has. The government has shown characteristic contempt of both Indigenous people and the Parliament in implementing the abolition to the full degree possible without either Senate approval or the confidence of Indigenous Australia. This policy direction must be strongly opposed from all sides for the sake of the history books, if nothing else.

Senator Aden Ridgeway  
Democrat Senator for NSW



# **Australian Greens – additional comments**

## **Introduction**

The Australian Greens support the comments and recommendations in the committee chairperson's report. However, we wish to make additional comments and recommendation on several matters.

## **The Aboriginal and Torres Strait Islander Amendment Bill 2004 [2005]**

The Greens do not support the government's proposed abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC). The government has failed to genuinely consult those people affected by the proposal, Indigenous Australians. The government has failed to propose a suitable alternative to ATSIC. We acknowledge that there are varying views among Indigenous communities about ATSIC but there is widespread support throughout Indigenous Australia for a national representative body chosen by Indigenous communities. The government has failed to address this issue.

The government also has failed to adequately explain how its new model involving consultation at local and regional level will operate once the ATSIC regional councils are abolished, as provided for in the bill. Nor has the government committed to fund new representative bodies at regional and community level.

The government will deny Indigenous input to important forums and processes, such as the National Health and Medical Research Council, the Environment Protection and Biodiversity Conservation Act, the Human Rights and Equal Opportunity Commission, and international forums, in particular those that seek to advance the rights of Indigenous peoples.

Further, the government has set up a most undesirable potential conflict of interest by transferring ATSIC's authority to determine which bodies to fund for advancing native title claims to a federal government department.

A government selected advisory panel is no substitute for the representative voice of Indigenous people and their direct participation in the affairs of government that affect them. Effectively muted, particularly at a national level, Indigenous Australians will be relegated to the sidelines of decision-making about their lives and future.

The deeply-rooted disadvantage that Indigenous Australians endure and the rightness, both morally and in international law, of redressing this disadvantage and ensuring the survival and flourishing of Indigenous culture demands a genuine commitment to self-determination. The government's proposals on representation and 'mainstreaming' of service delivery run counter to what is required.

For all these reasons, the Australian Greens reject the abolition of Indigenous Australia's national representative body.

**Recommendation 1: That the Senate not pass the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 [2005].**

---

## National representative body

A robust and well funded national representative Indigenous body is critical to self-determination and efforts to redress Indigenous disadvantage. The government has failed to propose a replacement representative body for ATSIC. The Greens believe that the government must facilitate the establishment of a national representative Indigenous body which it will respect as an authoritative voice.

One of the important roles that ATSIC undertakes is to advance the rights of Australia's Indigenous peoples in international forums. The abolition of ATSIC and the absence of an alternative national representative Indigenous body means this vital role will cease. The main report recommends (recommendation 4.2) government support and funding for a national representative Indigenous body but does not mention a role for the body in international forums. The Australian Greens consider it essential that a new national representative Indigenous body play a role in international forums to advance the interests of Indigenous peoples.

**Recommendation 2: The government commit to acknowledging a new national representative Indigenous body as the appropriate body to represent the views of Indigenous Australians at international forums.**

## Regional Partnership Agreements

Regional Partnership Agreements (RPAs) are to be negotiated with local communities about services for those communities. The main report notes (paragraph 5.38) that the government has failed, however, to explain exactly with whom it will negotiate these agreements. There can be no genuine participation for Indigenous people in this process without adequate representation. It is critical, therefore, that regional representative Indigenous bodies be involved in these negotiations. Given the relative disadvantage of Indigenous communities, that requires a government commitment to fund such regional representative bodies. This is one reason for continuing the regional councils and guaranteeing them public funding to undertake this task.

These bodies may or may not be legislated but they must be backed with Commonwealth funding. One potential funding source is the appropriations no longer allocated to ATSIC and not required for IBA and the ILC.

**Recommendation 3: The government retain the ATSIC regional councils and guarantee them funding that is adequate to undertake their tasks. These regional councils should be involved in negotiating Regional Partnership Agreements. In the event that local communities seek to replace their regional councils with another representative model, the government facilitate the establishment of local and/or regional representative bodies which are to be funded by the Commonwealth. The functions of these bodies shall include negotiating Regional Partnership Agreements.**

## Shared Responsibility Agreements

The main report (paragraphs 5.98 -5.126) deals with a number of problems about Shared Responsibility Agreements (SRA) and the evidence of several witnesses who raised concerns about them. While the committee says the distinction between fundamental rights and discretionary benefits is nebulous and must be monitored, the Australian Greens are deeply

---

concerned about the concept of these agreements, what they might entail, and the consequences for communities and individuals of entering into them.

We note the statement by the Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma in November 2004 in which he said:

'It would be unacceptable for Indigenous peoples to be denied basic citizenship services that all other Australians take for granted.'

He added that the proposed introduction of coercive measures to achieve creation of sustainable improvements in the circumstances of Indigenous peoples will not work and may, in fact, exacerbate the extent of poverty, marginalisation and powerlessness.

Given the entrenched disadvantage of Indigenous people, and their extreme material poverty compared to other Australians, it is extremely difficult to imagine how agreements of this nature might be negotiated by two equal parties.

We have already witnessed an agreement which linked two essential requirements that have nothing to do with each other. The much publicised Mulan agreement ties essential health services and parental behaviour to fuel for transportation, which is not a luxury in a remote area.

There is no doubt that redressing Indigenous disadvantage while respecting the right of Indigenous people and communities to self-determination is an enormous challenge. It is made particularly challenging by the remoteness in which some communities live. Regardless of these difficulties, the Australian Greens are of the view that these kinds of agreements are not the answer. They have about them a tenor of paternalism which has no place in the management of Indigenous affairs in this nation. However, recognising that the SRAs are being negotiated, the Australian Greens making the following recommendation about them.

**Recommendation 4:**

- a) **Shared Responsibility Agreements must not contain any coercive requirements;**
- b) **Shared Responsibility Agreements must not relate to the provision of essential and other services which are provided by government to non-Indigenous Australians;**
- c) **Shared Responsibility Agreements must not place unrealistic expectations on Indigenous communities to redress past failures of governments or service delivery agencies;**
- d) **Every Shared Responsibility Agreement must be in conformity with the provisions of the *Racial Discrimination Act 1975*;**
- e) **Guidelines for developing Shared Responsibility Agreements are to be developed and reviewed in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Race Discrimination Commissioner and a new national representative Indigenous organisation;**
- f) **The Minister must table in the parliament guidelines for developing Shared Responsibility Agreements;**
- g) **The roles of the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Race Discrimination Commissioner be expanded to cover oversight of Shared Responsibility Agreements, with additional funding provided to enable this.**

---

## The ongoing failure of mainstreaming

The Greens are not as positive about mainstreaming as the government or the bulk of comments in the main report. We acknowledge the distinction between 'old' and 'new' mainstreaming that the government is seeking to make but believe that it is clear from the evidence received that both the problems of 'old' mainstreaming continue to exist and a new set of problems around the co-ordination of 'new' mainstreaming must now be confronted.

The 2003 Review of ATSIC rejected mainstreaming as an option and international experience shows that the best outcomes for Indigenous people occur when they exercise control over those decisions in culturally appropriate institutions. (Mr Glendenning, Australians for Native Title and Reconciliation, Proof Committee Hansard, 2 February 2005, p60.) These problems of 'old' mainstreaming will continue to exist in the government's new model.

The new problems of the government's model of 'new' mainstreaming centre on the difficulties of co-ordination, and central to this appears to be the role of the Indigenous Coordination Centres. The committee heard evidence about the difficulties for ICCs in creating a cohesive, common vision because each lead agency has a different purpose and function. These difficulties are exacerbated by staff from different departments being paid different wages, working under different conditions and answering to different ministers and performance requirements.

Witnesses spoke about the difficulties that the new managers of ICCs were having in learning about both the communities they were now to advocate for and work with as well as learning to find their way through a maze of government departments and Indigenous specific or other relevant programs. South-East Queensland zone ATSIC Commissioner Robbie Williams told the committee:

The OIPC manager Shane Williams, who is the state representative, has just come over from education to the old ATSIC. Shane is trying to come to terms with how it works, and he has to negotiate with all these other government departments. He is virtually walking from the pot into the fire, and he is trying to restructure all this stuff and negotiate and work with all these other government departments – and he comes from an educational background. You virtually need a community development background now to be able to develop those skills, especially when working with diverse groups like those in Queensland. In south-east Queensland alone you might have forty traditional clan groups, and Queensland has one of the strongest, most vocal black communities in Australia. (Committee Hansard, Brisbane, January 31, 2005, p15.)

Another difficulty for the operation of ICCs is the level of delegated authority that ICC managers are given. This issue is discussed in the main report.

There appears to be a lack of clarity in the role of ICCs. The government contends that ICCs are not to be direct service delivery shopfronts. Clearly a different impression has been given to the committee as on seven occasions during the public hearings and in the main report Senators, predominantly government Senators, have referred to ICCs as one-stop shops. If the government Senators on the committee inquiring into the government's new arrangements are left with a different impression from the government about the central role of ICCs then how

---

can Indigenous community members be expected to comprehend the government's intentions?

The committee has not heard evidence to suggest that the government is sufficiently prepared to deal with these and other potential difficulties.

The Greens believe that the government needs to acknowledge the failure of mainstreaming in Australia and overseas, and commit to a genuine process of self-determination where Indigenous Australians are the primary decision-makers in the decisions that affect their lives, especially the delivery of services.

Senator Kerry Nettle  
Australian Greens Senator for NSW





# **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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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 ...<sup>4</sup>

---

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.<sup>5</sup>

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?<sup>6</sup>

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.<sup>7</sup>

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



# **APPENDIX 1**

## **Submissions Received**

1	Mr Ronald Gannon
2	Mr Philip McLaren
3	Aboriginal and Torres Strait Islander Social Justice Commissioner
4	Mr Martin Wyness
5	Ms Valerie Macauley
6	Ms Anna Logan
7	Ms Keren Lavelle
8	Ms Gabrielle Russell
9	Ms Melissa McMullen
10	Ms Anne Lanyon
11	Dr Dianne Johnson
12	Ms Kay Adlem
13	Mr Noel Downs
14	Pat Andruchow
15 /15A	Mr David Allen
16	Ms Anny Druett
17	Ms Rosie Wagstaff
18	Reverend Bill Harris
19	Ms Petrina Slaytor J.P.
20	Ms Susan Ambler
21	Jungai Interchurch Aboriginal Awareness Group

- 22 Mr Bruce and Ms Elva Kemp
- 23 Torres Strait Regional Authority
- 24 Ms Margaret McLellan
- 25 Ms Catherine Murphy
- 26 Mr Peter Taylor
- 27 The Commissioner South East Queensland Region
- 28 National Assembly of the Uniting Church and The Uniting Aboriginal  
Christian Congress
- 29 Mr Bruce Reyburn
- 30 Ms Mary Waterford
- 31 Mr Paul Desmond
- 32 Mr Steven Aubrey
- 33 Mr Steven Hall
- 34 Mr Ian and Ms Jeanette Thiering
- 35 Mungindi Kids Aboriginal Corporation also know as The Mungindi  
Kids Crime Stoppers
- 36 Newcastle Family Support Services
- 37 Professor Susan Sheridan
- 38 Ms Ruth Hoadley
- 39 Mr Les Bunn, OAM
- 40 Mr Barry Patton
- 41 Ms Anna Crossley
- 42 Mr Michael Beuchat
- 43 Ms Bev Harwood
- 44 Healthhabitat
- 45 Ms Janice Howard

---

46	Mr Hans Jurgen Boesewinkel
47	Ms Marjon Martin
48	Ms Anne Parnis
49	Dr Nona Harvey
50	Holdfast Bay Reconciliation Group
51	The Combined Aboriginal Organisations - Alice Springs
52	Central Remote Regional Council
53	Dr John Tomlinson
54	Rev. Kathleen Baldini
55	Whitehorse Friends for Reconciliation
56	Mrs N.L. Eggins
57	Mr Des Rogers
58	Dr Jennifer Tannoch-Bland
59 / 59A	Moreland City Council
60	Many Rivers Regional Forum
61	V and A Attwater
62	Ms Christine Stucley
63	Australians for Native Title and Reconciliation (VIC) Inc. Manningham Branch
64 / 64A	Humanist Society of Victoria Inc.
65	Ms Grace Nelligan
66	Anne and Bill Byrne
67	Ms Sadie Ursula Stevens
68	Ms Jane Wilson
69	Mr Jeff McKinnon
70	Ms D. Beryl Phillips

71	Mr Joseph Castley
72	National Sorry Day Committee
73 / 73A	Mr C. J. van der Weegen
74	Mountains Outreach Community Services (MOCS)
75	Michael Davis Consultants
76	Mr Noel O'Brien
77	Ms Rachel Prest
78	Mr Sid Spindler
79	Mr Walter Johnson
80 / 80A	R.a.T.S. of Warranambool
81	Christian Brothers St Francis Xavier Province
82	Inverloch Uniting Church Letter
83	Shirley and John Gunson
84	Ms Marie Gammon
85	South Australian Community Health Association
86	Laramba Community
87 / 87A	Yamatji Marpla Barna Baba Maaja Aboriginal Community
88	Ms Libby Gott
89	Mr John Telford
90	Victorian Coalition of Acquired Brain Injury Disorders (VCASP)
91	Ms Barbara Taylor
92	Mr Shane Duffy
93	Kombumerri Aboriginal Corporation for Culture
94	Ms Debra Gibson
95 / 95A	Tangentyere Council Inc

---

96	The Australian Jewish Democratic Society
97	Ms Sophie Rudolph
98	Mr Bruce Ernest Williams
99	Uniting Aboriginal and Islander Christian Congress (SA)
100	ATSIC NT North Zone
101	Northern Metropolitan Community Health Service
102	Students Association of the University of Adelaide
103	Rollo Manning Public Relations/Pharmacy Consultant
104	The Sisters of Mercy International Justice Network (Asia Pacific)
105	Hunter Economic Zone
106	Mrs Judith Enoch
107 / 107A	Wunan Regional Council
108	Mr Hugh Southon
109	Elsa Story
110	Catholics in Coalition for Justice and Peace
111	Ms Diana Collier
112	Mr Phillip Barressi, MHR and Mrs Roslyn Bull
113	Blair Dixon
114	Jessie Peart
115	Ingkerreke Outstations Resource Services
116	Geoffrey and Gwynth Buchanan
117	Confidential
118	Ms Patricia Horsely
119	M C Rafferty
120	Mr Santi Reeves

- 121 Uniting Church Coburg Congregations, Social Issues Committee
- 122 Mr Walter Johnson
- 123 Ms Dorothy Sutherland
- 124 Australian Federation of University Women Inc.
- 125 Reserved
- 126 Villamanta Legal
- 127 Tharpuntoo Cape York Legal Service Aboriginal Corporation
- 128 / 128A /  
128B / 128C /  
128D / 128E Department of Immigration and Multicultural and Indigenous Affairs  
and Office of Indigenous Policy Coordination
- 129 Progressive Labour Party (PLP)
- 130 Australian Government Indigenous Business Australia
- 131 C J Le Messurier
- 132 fka Children's Services
- 133 Ms Dawn Hosking
- 134 Ms Jean Crouch and Mr Ross Attwater
- 135 / 135A Aboriginal Legal Rights Movement Inc
- 136 Ms Sue Collins
- 137 Australians for Native Title (Victoria)
- 138 Rachel and Alan Hardie
- 139 Secretariat of National Aboriginal and Islander Child Care (SNAICC)
- 140 Bumma Bippera Media
- 141 Murdi Paaki Regional Council
- 142 ATSIC New South Wales Eastern Zone
- 143 Emily's List Australia Letter
- 144 / 144A Australian Institute of Aboriginal and Torres Strait Islander Studies  
(AIATSIS)

- 
- 145 Victorian Council of Social Service
- 146 ACT Council of Social Services Inc (ACTCOSS)
- 147 Tasmanian Government
- 148 Guri Wa Ngundagar
- 149 Youth Affairs Council of Victoria Inc.
- 150 Oxfam Community Aid Abroad
- 151 The National Aboriginal and Torres Strait Catholic Council  
(NATSICC)
- 152 ATSIC Yilli Reeung Regional Council
- 153 Australian Catholic Social Justice Council
- 154 Mr Brad Davidson
- 155 Ms Georgia Babatsikos MPH, CHES
- 156 Uniting Church in Australia, Synod of Victoria and Tasmania, Justice  
and International Mission Unit
- 157 Australian Council of Social Services (ACOSS)
- 158 Australian Council of Trade Unions
- 159 ATSIC North West Regional Governing Council
- 160 Mr Bruce Taylor
- 161 Mr Jim Castro
- 162 Mr William Johnstone
- 163 ATSIC Garrak-Jarru Regional Council
- 164 Ms Lenore Dembski
- 165 Reconciliation Victoria
- 166 Mr Stuart Hills
- 167 Mr Roderick Bennell-Pearce
- 168 Mr Howard Tankey

169	ACT Government
170	Kirrae Health Service
171	The Lutheran Church of Australia
172	Australians for Native Title and Reconciliation (South Australia) Inc.
173	Melbourne Catholic Commission for Justice, Development and Peace (MCCJDP)
174	Melbourne Citymission
175	Southwest Aboriginal Land & Sea Council
176	Australian Education Unit
177	Queensland Aboriginal & Islander Health Forum
178	ATSIC Queanbeyan Regional Council
179 / 179A	National Aboriginal Community Controlled Health Organisation (NACCHO)
180	Victorian Aboriginal Community Controlled Health Organisation
181 / 181A / 181B	Australians for Native Title and Reconciliation (ANTaR)
182	Mr Geoff Clark
183	(Reverend) K.E. Khani Hawthorne
184	Bunjil Warrin Ngarrap Biik Habitat Creation
185	Victorian Aboriginal Legal Service Co-operative Ltd
186	North Yarra Community Health
187	James and Claire Belling
188	Mudgee District Environment Group Inc
189	J.L. Hill
190	Tasmanian Aboriginal Centre Inc.
191	Jumbunna Indigenous House of Learning, University of Technology, Sydney



---

192	Northern Territory Government
193	Northern Land Council Letter
194	Central Land Council
195	Social Justice Committee Conference of Leaders of Religious Institutes (NSW)
196	Women's International League for Peace and Freedom
197	Ngoonbi Co0operative Society Ltd
198	Dr Will Sanders
199	Reserved
200	Mr Don Stokes
201 / 201A	Australian Government Registrar of Aboriginal Corporations
202 / 202A	Aboriginal and Torres Strait Islander Commission (ATSIC)
203	Mrs Lisa Smith
204	Sydney Regional Council Submission
205	The Association of Neighbourhood House and Learning Centre
206	Professor Jon Altman
207	Mr Joel Wright
208	Reserved
209	Mr Mark Francis Maddox
210	Newcastle Aboriginal Support Group
211	Confidential
212	Australian Council for the Arts
213	Binaal Billa Regional Council
214 / 214A	Apunipima Cape York Health Council
215	Kaiwalagal Aboriginal Corporation
216	Mr Kevin Savage

217	ATSIC Cairns and District Regional Councils
218	Victorian Government
219	Mr Geoffrey Angeles
220	Regional Councils of South Australia, Nulla Wimila Kutju Regional Council, Patpa Warra Yunti Regional Council, Wangka Wilurra Regional Council
221	Aboriginal Health and Medical Research Council of NSW
222	Yarra City Council
223	Leith Gordon Australia
224	Northern Territory Minister for Indigenous Affairs
225 / 225A	Reconciliation Australia
226	NSW Reconciliation Council
227	Ms Moksha
228 / 228A	Indigenous Land Corporation
229	Hon Terry Roberts MLC, Minister for Aboriginal Affairs and Reconciliation
230	Northern Tablelands Aboriginal Communities Planning Forum
231	Office of Indigenous Policy, Northern Territory of Australia
232	Ms Helen Rodriguez
233	New South Wales Aboriginal Land Council
234	Confidential Submission
235	Hon Peter Howson CMG
236	Department of Employment and Workplace Relations, Indigenous Policy Branch
237	Department of Education, Science and Training
238	Law Council of Australia

- 239 Department of Family and Community Services
- 240 Productivity Commission
- 241 Department of Communications, Information Technology and the Arts
- 242 Foundation for Aboriginal and Islander Research Action
- 243 Ms Jackie Huggins
- 244 Hon J P Hannaford
- 245 Mr Cecil Fisher
- 246 Department of the Prime Minister and Cabinet
- 247 Cr Richard Prendergast



## **APPENDIX 2**

### **Witnesses who have appeared before the Committee at public hearings**

*Canberra, Tuesday 29 June 2004*

#### **Aboriginal and Torres Strait Islander Services**

Mr Wayne Gibbons

Ms Roslyn Kenway

Mr Pat Watson

Mr Bernard Yates

#### **Department of Immigration and Multicultural and Indigenous Affairs**

Ms Dianne Hawgood

#### **Office of Aboriginal and Torres Strait Islander Affairs**

Mr John Van Beurden

Mr Peter Vaughan

*Alice Springs, Tuesday 20 July 2004*

#### **Aboriginal and Torres Strait Islander Commission**

Ms Alison Anderson

#### **Central Australian Aboriginal Congress**

Ms Stephanie Bell

#### **Yuendumu Women's Centre**

Mrs Belle Dickson

Ms Rosie Fleming

Ms Maureen Groth

Miss Gracie Johnson

Miss Barbara Wilson

Ms Georgina Wilson

**Lhere Artepe**

Ms Patricia Dodds

**Combined Aboriginal Organisations of Alice Springs**

Mr Michael Griffin

Ms Eileen Hoosan

**Anglicare Northern Territory**

Ms Delia Guy

Ms Patricia Skinner

**Indigenous Coordination Centre Alice Springs**

Ms Vicki-Lee Knowles

Ms Rhonda Loades

**Laramba Community Inc.**

Mr Ronnie McNamara

Mr Michael Monaghan

Mr Peter Stafford

**Central Australian Aboriginal Congress**

Mr Clive Rosewarne

**Tangentyere Remote Area Night Patrol**

Ms Jennifer Walker

**Mr Desmond Rogers**

**Mr Turner**

*Broome, Thursday 22 July 2004*

**Kullarri Indigenous Women's Aboriginal Corporation**

Mrs Katrina Badal

Ms Adeline Chong

Ms Kathleen Cox

Ms Heather Hansen

Mrs Pauline Murphy

**Kullarri Regional Council**

Mr Kevin George

Mr Frederick Murphy

Mr Martin Sibosado

**Bidyadanga Aboriginal Community**

Mr Walter Nardi

Mr James Yanawana

**Office of Indigenous Policy Coordination**

Mr Richard Trevena

*Darwin, Tuesday 24 August 2004*

**Northern Land Council**

Mr John Berto

Mr John Daly

Mr Norman Fry

Mr Ron Levy

Mr John Sheldon

Mr Leigh Tilmouth

**Aboriginal and Torres Strait Islander Commission**

Mr Michael Berto

Mr Ankariyuwu Hill

**Central Land Council**

Mr William Brown

Ms Siobhan McDonnell

Mr Harry Nelson

Mr David Ross

Ms Jayne Weepers

**Katherine Regional Aboriginal Legal Aid Service**

Mr Graham Campbell

Mr Peter O'Brien

**Yilli Rreung Regional Council**

Ms Barbara Cummings

Mr Kimberley Hunter

Ms Joan Mullins

**Northern Territory Government**

Mr Michael Dillon

Mr Neil Westbury

**Aboriginal Development Foundation**

Mr Bernard Valadian

**Mr Eddie Cubillo**

**Mrs Lenore Dembski**

**Dr Margaret Valadian**



*Gove, Wednesday 25 August 2004*

**Miwatj Provincial Governing Council**

Councillor Tony Binalany

Councillor Matjarra Garrawurra

Councillor Betty Herbert

Councillor Jack Munyarrir

Councillor Don Mundhiribila

Councillor Banambi Wunungmurra

Councillor Tony Wurramarrba

**Miwatj Health Aboriginal Corporation**

Mr Clinton Hoffman

Mr Mungurrapin Maymuru

**Laynhapuy Homelands Association**

Mr Banambi Wunungmurra

Mr Wali Wunungmurra

*Thursday Island, Thursday 26 August 2004*

**Torres Strait Islander Media Association**

Mr John Abednego

**Greater Autonomy Steering Committee**

Mr Gabriel Bani

Mrs Florence Kennedy

Mr Getano Lui

Mr Phillip Mills

Mrs Bertha Natanielu

Mr Napau Stephen

**Torres Strait Regional Authority**

Mr Donald Banu

Mr Ted Billy

Mr Ron Day

Mr Joseph Elu

Mr Mike Fordham

Mr Fred Gela

Mrs Louisa Guise

Mr John Kris

Mr Walter Mackie

Mrs Margaret Mau

Mr Donald Mosby

Mr Phillemon Mosby

Mr Maluwap Nona

Mr Jesse Sagaukaz

Mr Robert Sagigi

Mr Saila Savage

Mr Bill Shibasaki

Mr Rocky Stephen

Mr Terry Waia

**Kaiwalagal Aboriginal Corporation**

Mr Alan Keeling

Mr Elizah Wasaga

Reverend Doctor Roney Wasaga

**Torres Shire Council**

Mr Getano Lui

Mr Phillip Mills

Mr Napau Stephen

**Veteran Island Councillors Elders Group**

Mr George Mye

**Island Coordination Council**

Mr Robert Sagigi

**Mr Michael Guise**

**Mr Kevin Savage**

*Cairns, Friday 27 August 2004*

**North Queensland Land Council**

Mr Martin Dore

Mr Audy Geiszler

Mr Jacob Pilot

**Tharpuntoo Cape York Legal Service Aboriginal Corporation**

Mr Thomas Corrie

**North Queensland Land Council**

Mr Martin Dore

**Gurang Land Council**

Mr Tony Johnson

**Yarrabah Community Council**

Mayor Vincent Mundraby

Ms Carolyn Sinclair

Mr Leon Yeatman

**Bama Ngappi Ngappi Aboriginal Corporation**

Mr Percy Neal

Mr Gerard Ygosse

**Aboriginal and Torres Strait Islander Commissioner Regional Council**

Mr Terence O'Shane

**Balkanu Cape York Development Corporation**

Mr Gerhardt Pearson

**Aboriginal and Torres Strait Islander Commission**

Mr Lionel Quartermaine

**Bumma Bippera Media**

Mr Gregory Reid

**Queensland Indigenous Working Group**

Mr Trevor Robinson

Mr Edward Smallwood

**Apunipima Cape York Health Council**

Dr Paul Ryan

Mr Bernard Singleton

**Aboriginal and Torres Strait Islander Commissioner Council**

Mr Robbie Salee

**National Secretariat of Torres Strait Islander Organisations Ltd**

Mr Francis Tapim

**Aboriginal and Torres Strait Islander Commissioner Peninsula Regional Council**

Mr Edwin Woodley

*Brisbane, Monday 31 January 2005*

**Balonne Indigenous Progress Group and South West Queensland Traditional Owners Natural Resource and Cultural Heritage Management Association Incorporated**

Dr Dianne Connolly

**Indigenous Land Corporation**

Mr David Galvin

**South West Queensland Traditional Owners Natural Resource and Cultural Heritage Management Association Incorporated**

Mr Chris Hubbert

Mr Wayne Wharton

Ms Kym Wiseman

**Foundation for Aboriginal and Islander Research Action**

Mr Robert Malezer

**Mr Lance Manton**

**Gumurrii Centre, Griffith University**

Associate Professor Boni Robertson

**Dr John Tomlinson**

**Balonne Indigenous Progress Group**

Mr Ronald Waters

**Sacred Treaties Group**

Mr Sam Watson

**South-East Queensland Zone, Aboriginal and Torres Strait Islander Commission**

Commissioner Robbie Williams

*Moree, Tuesday 1 February 2005*

**Aboriginal Employment Strategy**

Mrs Catherine Allan

Mrs Cathy Duncan

Mr Richard Estens

**Miyay Birray Youth Service**

Ms Jennifer Bennett

**Many Rivers Aboriginal and Torres Strait Islander Commission Regional Council**

Mr Stephen Blunden

**Native Title Services, Aboriginal and Torres Strait Islander Commission**

Mr Edward Briggs

**Ms Jacqueline Cain**

**Mr Ken Copeland**

**Mr Eric Craigie**

**Aboriginal and Torres Strait Islander Commission**

Ms Val Dahlstrom

**Mr Albert Dennison**

**Mr Anthony Dennison**

**Mr Paul Duncan**

**PIUS-X Aboriginal Corporation**

Mrs Shirley-Patricia Duncan

Mrs Elizabeth Taylor

**Murdi Paaki Regional Council**

Mr Ted Fernando

Mr Richard Weston

Mr William Jeffries

Mr James Menham

**Moree Aboriginal Men's Group**

Mr Harold French

Mr Godfrey Swan

Mr Lloyd Munro

**East Zone New South Wales, Aboriginal and Torres Strait Islander Commission**

Mr Rick Griffiths

**Nindethana Aboriginal Corporation**

Mr Mathew Hannan

**Kamilaroi Regional Council, Aboriginal and Torres Strait Islander Commission**

Mr Lyall Munro

**Mr William Munro**

**Grannyators**

Mrs Carmine Munro

Mrs Maureen Newman

**Ms Gloria Priestley**

**Miyay Birray Youth Service**

Ms Ros Sampson

**Murdi Paaki Aboriginal and Torres Strait Islander Commission Regional Council and Murdi Paaki Regional Assembly**

Mr Michael Stewart

*Sydney, Wednesday 2 February 2005*

**Aboriginal Health and Medical Research Council of New South Wales**

Ms Sandra Bailey

Mr Frank Vincent

Mr John Williams

**Jumbunna Indigenous House of Learning, University of Technology, Sydney**

Professor Larissa Behrendt

Mr Jason Field

**Human Rights and Equal Opportunity Commission**

Mr Tom Calma

Mr Darren Dick

**Australians for Native Title and Reconciliation**

Dr David Cooper

Mr Phillip Glendenning

**Sydney Regional Council, Aboriginal and Torres Strait Islander Commission**

Ms Marcia Ella-Duncan

**Ms Pamela Greer**

**Australian Council of Social Service**

Mr Andrew Johnson

Mr Andrew McCallum



**Ms Melva Kennedy**

**New South Wales Aboriginal Land Council and Professor, University of Technology, Sydney**

Professor Geoffrey Scott

*Canberra, Thursday 3 February 2005*

**Centre for Aboriginal Economic Policy Research, Australian National University**

Professor Jon Altman

Dr William Sanders

**Australian Medical Association**

Dr Margaret Chirgwin

Dr William Glasson

Dr Mukesh Haikerwal

Mr Jonathan Kruger

**National Aboriginal Community Controlled Health Organisation**

Miss Louise Cooke

Ms Dea Delany-Thiele

Mr Tony McCartney

**Yamatji Marpla Barna Baba Maaja Aboriginal Corporation**

Mr Anthony Dann

Mr Simon Hawkins

Mr Neil Finlay

Mr David Ritter

**Australian Institute of Aboriginal and Torres Strait Islander Studies and  
National Indigenous Leaders Meeting**

Professor Michael Dodson

**National Indigenous Leaders Meeting**

Mr Jason Glanville

Ms Jodie Ryan

Mr Mark Yettica-Paulson

**Australian Institute of Aboriginal and Torres Strait Islander Studies**

Mr Steven Larkin

**Indigenous Business Australia**

Mr Ronald Morony

Mr Ian Myers

**Mr Clemens Van der Weegen**

*Canberra, Friday 4 February 2005*

**Department of Communications, Information Technology and the Arts**

Ms Lynn Bean

Mr Rohan Buettel

Mr Frank Nicholas

**Department of Family and Community Services**

Ms Glenys Beauchamp

Mr Stephen Hunter

Ms Gwenda Prince

Mr Peter Taylor

**Department of Employment and Workplace Relations**

Mr Graham Carters

Mr Robert Correll

Mr Robert Harvey

**Aboriginal and Torres Strait Islander Commission**

Mr Geoffrey Clark

Mr Clifford Foley

**Office of Indigenous Policy Coordination**

Mr Wayne Gibbons

Ms Dianne Hawgood

Mr John Van Beurden

Mr Peter Vaughan

Mr Ralph Yates

**Department of Education, Science and Training**

Mr Anthony Greer

Ms Susan Smith

**Chief Minister and Minister for Arts, Heritage and Indigenous Affairs,  
Australian Capital Territory**

Mr Jon Stanhope

**Aboriginal and Torres Strait Islander Services**

Mr Patrick Watson

*Canberra, Tuesday 8 February 2005*

**Department of the Prime Minister and Cabinet**

Dr Peter Shergold

Ms Michelle Patterson

*Canberra, Friday 18 February 2005*

**Productivity Commission**

Mr Gary Banks

Dr Robyn Sheen

**Aboriginal and Torres Strait Islander Commission Review Panel**

Hon John Hannaford

# **APPENDIX 3**

## **Tabled Documents**

### ***Brisbane, Monday 31 January 2005***

Mr Sam Watson, Sacred Treaties Group: press releases from Mr Brad Foster dated 31 January 2005 re 'Missing Video During Death in Custody'.

Dr J Tomlinson, "Must be the grog can't be the Government: Relationships between Government and Indigenous people in Australia"

### ***Moree, Tuesday 1 February 2005***

Ms Jenny Bennett and Ms Ros Sampson, Miyay Birray Youth Service: brochure issued by the Miyay Birray Youth Service Inc titled 'Serving the youth of Moree'.

Mr Stephen Blunden, Many Rivers Regional Council: three documents titled 'Aboriginal and Torres Strait Islander Representation in the Many Rivers Region', 'Many Rivers Regional Council Annual Report 2003-2004' and 'Many Rivers Regional Council, Many Rivers Regional Plan 2003-03'.

### ***Sydney, Wednesday 2 February 2005***

Professor Larissa Behrendt, Director, Jumbunna Indigenous House of Learning, University of Technology Sydney: 'Presentation to the Senate Select Committee on the Administration of Indigenous Affairs, Jumbunna Indigenous House of Learning, University of Technology, Sydney'.

### ***Canberra, Thursday 3 February 2005***

Professor Jon Altman, Director, Centre for Aboriginal Economic Policy Research, Australian National University: 'ATSIC and Beyond: Anthropology, Advocacy and Bureaucracy', published in the *Australian Journal of Anthropology* in December 2004, and 'Indigenous Socioeconomic Change 1971-2001: A Historical Perspective' Discussion Paper No. 266/2004, Centre for Aboriginal Economic Policy Research, Australian National University.

Mr Tony McCartney, Chairperson, National Aboriginal Community Controlled Health Organisation (NACCHO): information kit on NACCHO.

***Canberra, Friday 4 February 2005***

Mr Geoffrey Clark, Aboriginal and Torres Strait Islander Commission (ATSIC): correspondence and information in relation to his chairmanship of ATSIC.

Mr Clemens van der Weegen: correspondence and information.

***Canberra, Tuesday 8 February 2005***

Dr Peter Shergold, Secretary, Department of Prime Minister and Cabinet: information on 'Identifiable Commonwealth Indigenous Expenditure'.

***Tabled Document***

Ms Lyla Coorey tabled a paper "Child Sexual Abuse in Rural and Remote Australian Indigenous Communities – A preliminary investigation.", compiled by Lyla Coorey.