

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

Senate Select Committee on the Administration of Indigenous Affairs

**Inquiry into ATSIC Bill and the administration of Indigenous
programs and services by mainstream departments**

7 July 2004

1) Introduction

The Aboriginal and Torres Strait Islander Social Justice Commissioner of the Human Rights and Equal Opportunity Commission (HREOC) welcomes the establishment of the Senate Select Committee on the Administration of Indigenous Affairs for the conduct of this inquiry.

The Social Justice Commissioner has functions to monitor the performance of governments in recognising and protecting the human rights of Aborigines and Torres Strait Islanders. In particular, the Social Justice Commissioner is required under section 46C(1) of the *Human Rights and Equal Opportunity Commission Act 1986* to report annually to the federal Parliament on the status of the exercise and enjoyment of human rights of Aborigines and Torres Strait Islanders (the *Social Justice Report*). This report is to include recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by Indigenous Australians.

Recent *Social Justice Reports* have considered matters relevant to the conduct of this inquiry. The *Social Justice Report 2003* was tabled in federal Parliament in March 2004 and contains analysis of:

- The Council of Australian Government's (COAG) whole-of-government community trials;
- The COAG Reconciliation Framework, including the national reporting framework for Indigenous disadvantage;
- Progress against key indicators of Indigenous disadvantage; and
- Proposals for restructuring the Aboriginal and Torres Strait Islander

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Commission (ATSIC).¹

The report contains twelve recommendations relating to data collection, the adequacy of COAG Ministerial Action Plans on reconciliation and the COAG whole of government community trials.² A copy of chapters 2 and 3 of the report are included with this submission.

The *Social Justice Report 2002*, tabled in federal Parliament in March 2003, also details a human rights approach for establishing benchmarks, targets and adequate performance monitoring processes at the federal level.³

This submission addresses each of the terms of reference for the inquiry, namely:

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

The submission is divided into the following sections:

- General comments on the purpose of the *ATSIC Bill 2004* and the proposed mainstreaming of Indigenous services and programs;
- Comments on the need for a national representative Indigenous body within government; and
- Comments on mainstreaming of government service delivery and performance monitoring processes.

2) Summary of submission and recommendations

The submission indicates that **the Social Justice Commissioner does not support the passage of the *ATSIC Bill 2004*.**

In summary, the Social Justice Commissioner is concerned that the *ATSIC Bill 2004* will operate to disempower Indigenous peoples and that the mainstreaming of Indigenous services and programs is not accompanied by adequate mechanisms for scrutiny of the government's performance on Indigenous issues.

The abolition of the nationally elected representative Indigenous body ensures that the government will only have to deal with Indigenous peoples on its own terms and without any reference to the stated aspirations and goals of Indigenous peoples.

The Social Justice Commissioner is concerned that the recognition of the status of

¹ See: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, HREOC Sydney 2004, www.humanrights.gov.au/social_justice/sjreport03/index.html (Herein, *Social Justice Report 2003*). See in particular, Chapters 2 and 3.

² See: www.humanrights.gov.au/social_justice/sjreport03/data/recommend.html.

³ See: Chapter 4, *Measuring Indigenous disadvantage*, in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC Sydney 2002, online at: www.humanrights.gov.au/social_justice/sjreport_02/chapter4.html ,(Herein *Social Justice Report 2002*).

Indigenous peoples as the first peoples of this land with distinct needs is at stake with the abolition of ATSIC. It is one thing to suggest that ATSIC could perform its obligations to Indigenous peoples better; it is another thing entirely to suggest that there should not be a national representative body through which Indigenous people can participate in government decision making.

The proposal to replace ATSIC with an appointed board of advisors will restrict dialogue with Indigenous peoples. It means that the government only has to talk to select Indigenous people when it chooses to and only on issues that it wishes to engage. Recent developments relating to the Aboriginal Coordinating Council, an advisory body to the Queensland government, illustrate this concern.

The *Social Justice Report 2003* identifies the current situation faced by Indigenous peoples as a crisis one. It reveals a government approach that is failing and identifies an effective agenda for change.

This agenda identifies increased Indigenous participation and control and independence from government services as central features of improved government service delivery. It also identifies the need to reform ATSIC to ensure that it is capable of interacting with governments while also being representative of and accountable back to Indigenous communities and people. The submission highlights key findings and recommendations of the *Social Justice Report 2003* in this regard.

Ultimately, the Social Justice Commissioner is concerned that abolishing ATSIC will simply silence Indigenous people at the national level while the deeply entrenched crisis in Indigenous communities continues unabated.

The submission contains 6 recommendations. These are explained at the relevant point throughout the submission and reproduced here for convenience.

Recommendations to Senate Select Committee on the Administration of Indigenous Affairs

- 1. That the Committee acknowledge the ongoing relevance of the matters addressed in the preamble and section 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989 (Cth)* and reaffirm the importance of these principles and objectives in any re-engineering of Indigenous service delivery.**
- 2. That the Committee recognise that the establishment and maintenance of a representative Indigenous organisation within government constitutes a special measure under the *Racial Discrimination Act 1975 (Cth)* and the International Convention on the Elimination of All Forms of Racial Discrimination.**
- 3. That the Committee recognise that any national Indigenous body must be:**

- **representative of Indigenous people and communities;**
 - **accountable back to Indigenous people and communities;**
 - **adequately resourced to facilitate the effective participation of Indigenous peoples in decision making processes;**
 - **equipped with legislative powers and functions that confer legitimacy on it to interact with government departments and agencies; and**
 - **able to reflect the aspirations and determine the priorities of Indigenous people and communities, rather than being constrained within the restrictions of government policy and programs.**
- 4. That the Committee oppose the *ATSIC Bill 2004* on the basis that it does not comply with these principles and may in breach of Australia's human rights obligations.**
- 5. That the Senate ensure that this Select Committee becomes a Standing Committee of the federal Parliament with ongoing responsibilities for monitoring the administration of Indigenous affairs by departments and agencies of Australian governments.**
- 6. That the Committee request the introduction of adequate and appropriate performance monitoring standards for mainstream government agencies and at the inter-governmental level as a central component of any re-engineering of government service delivery to Indigenous peoples. The findings and recommendations contained in Chapter 2 of the *Social Justice Report 2003* form an appropriate basis for the development of such standards.**

3) General comments on the purpose of the *ATSIC Bill 2004* and mainstreaming of Indigenous services and programs

In commenting on the provisions of the *ATSIC Bill 2004* and the proposed mainstreaming of Indigenous services and programs, the political impact of the treatment of ATSIC over the past eighteen months must be acknowledged. The Government has *de facto* abolished ATSIC through administrative action taken in recent months.

The Social Justice Commissioner considers that the approach of the government in putting into place arrangements to transfer programmatic responsibilities from ATSIC and to de-fund it from the beginning of the 2004-05 financial year, without the scrutiny of the Parliament, lacks transparency and accountability.

Furthermore, the justifications used for abolishing ATSIC are not substantiated. For example, numerous comments by members of the government have scape-goated ATSIC for failures in service delivery in areas over which ATSIC has no responsibility – such as Indigenous health and education. Similarly, the final report of the review of ATSIC in November 2003 does not support the abolition of ATSIC but instead strengthening and revitalising its mandate and functions.

The ATSIC Review report concluded that ATSIC should be reformed and result in an organisation that:

- Enables Aboriginal and Torres Strait Islander people to build a future grounded in their own histories and cultures within the broader Australian framework;
- Represents and promotes the views of Aboriginal and Torres Strait Islander people, including their diversity of opinion;
- Vigorously pursues the interests of Aboriginal and Torres Strait Islander people through partnerships with Aboriginal and Torres Strait Islander communities, governments and other sectors of Australian society;
- Influences priorities, strategies and programs at the national, State/Territory and regional level;
- Minimises and streamlines the government interface with Indigenous communities;
- Promotes good Indigenous governance;
- Recognises the complexity of relationships between Aboriginal and Torres Strait Islander individuals, communities, organisations and governments and the values and limitations created by this;
- Is an equal partner in all negotiations, resourced adequately to achieve this equality, and commands goodwill and respect;
- Increases women's participation and expression of views;
- Ensures that there is transparent accountability of all organisations that are funded to provide services for Aboriginal and Torres Strait Islander people;
- Maintains its unique status;
- Recognises that ATSIC is a key player, but not the only player, that seeks to advance the interests of Aboriginal and Torres Strait Islander Australians with government and others.⁴

It is difficult to see how these objectives will be met through the abolition of ATSIC and the proposed alternative arrangements.

The approach of the government over the past twelve, and particularly three months has had a destabilising effect on ATSIC and has contributed to its ultimate demise. From a practical perspective, it is unlikely that ATSIC in its current form could continue as a viable organisation that enjoys the confidence of the Australian community.

This does not, however, justify support for the *ATSIC Bill 2004* and should not make its passage through the Parliament inevitable. Instead, it justifies the (now belated) scrutiny of the Parliament to establish the appropriateness of the Government's actions and the most effective process and mechanisms for ensuring Indigenous participation in government decision making and service delivery.

The Social Justice Commissioner considers that the appropriate starting point for any analysis of the *ATSIC Bill 2004* is to acknowledge the original rationale for the establishment of ATSIC.

ATSIC was intended to recognise the special place of Indigenous people in Australian society, the need for processes to address the ongoing discrimination against

⁴ Hannaford, J, Huggins, J and Collins, B, *In the hands of the regions – Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra 2003, p25.

Indigenous peoples as well as the deeply entrenched historical disadvantage that continues to be experienced by Indigenous peoples.

The intention of the federal Parliament in establishing ATSIC is recorded in the preamble to the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) (herein *ATSIC Act*). It reads as follows.

WHEREAS the people of Australia voted overwhelmingly to amend the Constitution so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race;

AND WHEREAS the people whose descendants are now known as Aboriginal persons and Torres Strait Islanders were the inhabitants of Australia before European settlement;

AND WHEREAS they have been progressively dispossessed of their lands and this dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal persons and Torres Strait Islanders concerning the use of their lands;

AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;

AND WHEREAS it is also the wish of the people of Australia that there be reached with Aboriginal persons and Torres Strait Islanders a real and lasting reconciliation of these matters;

AND WHEREAS it is the firm objective of the people of Australia that policies be maintained and developed by the Australian Government that will overcome disadvantages of Aboriginal persons and Torres Strait Islanders to facilitate the enjoyment of their culture;

AND WHEREAS it is appropriate to further the aforementioned objective in a manner that is consistent with the aims of self-management and self-sufficiency for Aboriginal persons and Torres Strait Islanders;

AND WHEREAS it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government;

AND WHEREAS the Parliament seeks to enable Aboriginal persons and Torres Strait Islanders to increase their economic status, promote their social well-being and improve the provision of community services;

AND WHEREAS the Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms

through:

- (a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
- (b) the acceptance of the Universal Declaration of Human Rights...⁵

Further, section 3(a) of the *ATSIC Act* states that, ‘in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society’, one of the objects of the Act is ‘to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them’.

These factors remain valid today and reflect outstanding human rights issues for Indigenous peoples. As a consequence, the Social Justice Commissioner considers that the starting point for any consideration of proposals for amending *ATSIC* should be to establish whether they respect the objectives and purposes set out by the federal Parliament in the *ATSIC Act*.

Recommendation 1: That the Committee acknowledge the ongoing relevance of the matters addressed in the preamble and section 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989 (Cth)* and reaffirm the importance of maintaining these principles and objectives in any re-engineering of Indigenous service delivery and programs.

The Social Justice Commissioner notes that the *ATSIC Bill 2004* does not seek to repeal the preamble of the *ATSIC Act*. And accordingly will continue to reflect the purposes of any amended *ATSIC Act*.

The Social Justice Commissioner welcomes the retention of the preamble of the *ATSIC Act* in an unamended form. The acknowledgements contained in the preamble of the *ATSIC Act*, such as of the impact of colonisation on Indigenous peoples, the distinct status of Indigenous Australians and of the prior occupation of Australia by Indigenous peoples, remain of great symbolic value to Indigenous peoples.

This is particularly so in the absence of any recognition in the federal Constitution and in the absence of a legislatively affirmed *National Declaration towards reconciliation* (as had been recommended by the Council for Aboriginal Reconciliation in its final report to the federal Parliament in 2000), or of a treaty or agreement making process.⁶

When viewed in light of the preamble of the *ATSIC Act* there are, however, three main concerns about the *ATSIC Bill 2004*. First, abolition of the national board of commissioners of *ATSIC* and in twelve months of the regional councils of *ATSIC*,

⁵ *Aboriginal and Torres Strait Islander Commission Act 1989 (Cth)*, Preamble.

⁶ The only other comparable recognition in federal legislation is the preamble to the *Native Title Act 1993 (Cth)* and the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*.

removes all meaning and content from the purposes and objectives elaborated in the preamble. It creates a contradiction, with the purpose of the act to establish a national representative body for Indigenous peoples being followed by provisions which remove such a representative body.

Second, the *ATSIC Bill 2004* and related measures constitute a significant regression from the principles elaborated in the preamble to the *ATSIC Act*. In expressing this concern, the Social Justice Commissioner acknowledges that there are significant commitments from all Australian governments, through the processes of the Council of Australian Governments, to addressing Indigenous disadvantage. This has most recently been expressed through the *National framework of principles for delivering services to Indigenous Australians*, as agreed at the COAG meeting of 25 June 2004. These principles, as well as those reflected in the COAG Reconciliation Framework of November 2000 and the National Framework for reporting on Indigenous disadvantage (as formulated by the Steering Committee for Government Service Provision), are welcomed by the Social Justice Commissioner.

However, such commitments are narrowly focused and more limited than those matters expressed through the preamble of the *ATSIC Act*.

Commitments to address Indigenous disadvantage, with only limited broader recognition of the unique status of Indigenous peoples, defines Indigenous peoples as ‘disadvantaged peoples’ rather than as peoples with a distinct culture, history, languages and way of life. As I have noted in numerous *Social Justice Reports* and *Native Title Reports*, the citizenship rights of Indigenous peoples and achieving improvements in them are inextricably linked to recognition of the distinct identity and culture of Indigenous peoples.

Third, there have been comments made by some senior members of the government (in the course of announcing the intention to abolish ATSIC) that raise significant concern about the commitment of the government to recognising those factors reflected in the preamble to the *ATSIC Act*. In particular, some members of the government have suggested that ATSIC has resulted in some form of special treatment for Indigenous peoples (or indeed as a system of ‘apartheid’) and a regime of ‘separatism’. In the alternative, these members of the government have emphasised the need for sameness of treatment for Indigenous peoples.

While there are large inconsistencies in the arguments used by the government on this point (the government freely admits that Indigenous peoples experience great levels of disadvantage and inequality on the one hand and suggests that they are somehow privileged on the other hand), what is of particular concern is the significant shift away from the recognition provided by the *ATSIC Act* in 1989 that:

it is appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government.⁷

⁷

ATSIC Act 1989, Preamble.

The Social Justice Commissioner is of the view that the establishment and maintenance of structures to represent Indigenous peoples and to ensure maximum participation of Indigenous peoples in government decision making processes can be classified as a special measure under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Section 8(1) of the *Racial Discrimination Act 1975 (Cth)* incorporates this article of ICERD in domestic Australian law. It confirms that special measures are an exception to the prohibition of racial discrimination.

Accordingly, a form of differential treatment such as the establishment of a representative body to ensure the participation of Indigenous peoples in decision making processes that affect them, is consistent with principles of equality before the law and non-discrimination.

It is also notable that Article 2(2) of ICERD 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.

There can be no doubt that such inequalities continue to exist for Indigenous peoples. Appendix one of the *Social Justice Report 2003* contains a detailed overview of progress in addressing Indigenous disadvantage and indicates that not only are there significant inequalities across many areas of life for Indigenous peoples, but that the inequality gap between Indigenous and non-Indigenous peoples has widened over the past five years.

Recommendation 2: That the Committee recognise that the establishment and maintenance of a representative Indigenous organisation within government constitutes a special measure under the *Racial Discrimination Act 1975 (Cth)* and the International Convention on the Elimination of All Forms of Racial Discrimination.

4) Comments on the need for a national representative Indigenous body within government

The main purpose of the *ATSIC Bill 2004* is to abolish ATSIC in two stages, with the national board to cease to exist in 2004 and the regional councils in 2005. Alongside the Bill, the government has announced that it will:

- create a new Office of Indigenous Policy Coordination within the Department of Immigration, Multicultural and Indigenous Affairs;
- progressively replace existing ATSIC and ATSI offices with Indigenous Coordination Centres; and
- establish a national Indigenous advisory council, to be appointed by the government and which will have no legislative mandate.

The government has announced that it will mainstream services formerly delivered by ATSIC (and in the past twelve months, ATSI) and have indicated that they will (or have already commenced to):

- transfer programs from ATSI to mainstream government departments and agencies;
- establish a Ministerial taskforce on Indigenous Affairs; and
- establish a Secretaries Group for Indigenous Affairs.

While issues of mainstreaming service delivery and the existence of a national representative body are inextricably linked, they are separated in this and the next section of the submission for greater clarity.

The main impact of the proposed changes through the *ATSIC Bill 2004* and related reforms is the abolition of a national elected Indigenous organisation within government. In effect, ATSIC is to be replaced by a council appointed by the government. The Social Justice Commissioner does not support this.

The Commissioner believes that any national body for Indigenous peoples must be:

- representative of Indigenous people and communities;
- accountable to Indigenous people and communities;
- adequately resourced to facilitate the effective participation of Indigenous peoples in decision making processes;
- equipped with legislative powers and functions that enable it to interact with government departments and agencies with legitimacy and with leverage; and
- able to reflect the aspirations and determine the priorities of Indigenous people and communities, rather than being constrained within the restrictions of government policy and programs.

An appointed advisory council, in the terms proposed by the government, does not meet these requirements. Accordingly, it will be unlikely to enjoy the support of or be seen as legitimate in representing the views and opinions of Indigenous peoples. It will also be more easily sidelined by the government if it presents views which are not

consistent with those of the government. The recent history of the Aboriginal Coordinating Council (ACC) in Queensland, since at least the time of its vocal opposition to the Queensland government's stolen wages offer, illustrates this problem. The ACC was increasingly marginalised by the government until the government announced that it was to abolish the Council earlier this year.

The national appointed advisory council will also find it difficult to influence the national agenda or to ensure that the national agenda is shaped by the views and desires of Indigenous peoples rather than the priorities of the government.

It is important to note that the abolition of ATSIC and replacement with an appointed advisory body is being done against the wishes of Indigenous peoples. The need for a strong, nationally elected representative body for Indigenous peoples was a key finding of the ATSIC Review's final report in November 2003.

That Review suggested that ATSIC could perform its obligations to Indigenous peoples better. This is an entirely different finding to the suggestion that there should be no such national elected representative body through which Indigenous people can participate in government decision making.

The replacement of ATSIC with an appointed council also raises concerns of lack of compliance with Australia's international human rights obligations.

The Committee on the Elimination of Racial Discrimination (which operates under the ICERD) has noted that indigenous peoples across the world have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and that as a consequence, the preservation of their culture and their historical identity has been and still is jeopardized.

To address this, the Committee has called upon States parties to ICERD to 'ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent'⁸.

In light of the continuing discrimination and inequality experienced by Indigenous peoples in Australia, it is likely that the Committee 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.

Notably, when Australia most recently appeared before the Committee on the Elimination of Racial Discrimination in 2000, it expressed concern at the inequality experienced by Indigenous people in Australia and recommended that the government not institute 'any action that might reduce the capacity of ATSIC to address the full range of issues regarding the indigenous community'.⁹

The abolition of ATSIC and its replacement by the proposed advisory council is also

⁸ Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII – Indigenous people*, 18 August 1997, UN Doc: A/52/18, annex V, para 4(d).

⁹ Committee on the Elimination of Racial Discrimination, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc: CERD/C/304/Add.101, 19/04/2000, para 11.

potentially in breach of Australia's obligations under Article 1 of the International Covenant on Civil and Political Rights. Article 1 provides that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹⁰ The ability to do so is clearly constrained by replacing an elected body with a non-elected one.

For these reasons, the Social Justice Commissioner does not support the abolition of the ATSIC Board or Regional Councils and their replacement with a non-elected, appointed national advisory council.

Recommendation 3: That the Committee recognise that any national Indigenous body must be:

- **representative of Indigenous people and communities;**
- **accountable to Indigenous people and communities;**
- **adequately resourced to facilitate the effective participation of Indigenous peoples in decision making processes;**
- **equipped with legislative powers and functions that enable it to interact with government departments and agencies with legitimacy and with leverage; and**
- **able to reflect the aspirations and determine the priorities of Indigenous people and communities, rather than being constrained within the restrictions of government policy and programs.**

Recommendation 4: That the Committee oppose the *ATSIC Bill 2004* on the basis that it does not comply with these principles and may in breach of Australia's human rights obligations.

The *Social Justice Report 2003* and the Social Justice Commissioner's submission to the ATSIC Review Team¹¹ identified priorities for improving a national, representative Indigenous body. They recommended that:

- a national representative body be maintained with a national board and regional councils;
- mechanisms for regional elected councils be retained and that planning processes at the local level be accorded higher priority in the formulation of national policies;
- there be a separation between processes for setting policy priorities and the making of individual funding decisions.

They also recommended that there should be an enhancement of the powers currently exercised by ATSIC by strengthening the scrutiny role of the national representative

¹⁰ For a discussion on the applicability of Article 1 of the ICCPR to Indigenous Australians see *Social Justice Report 2002*, Chapter 2. Note: The Human Rights Committee affirmed its application to Australian Indigenous people in its concluding observations on Australia in July 2000: Human Rights Committee, *Concluding observations on Australia*, UN Doc CCPR/CO/69/AUS, para 10.

¹¹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the ATSIC Review*, HREOC Sydney 2003 (Herein: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to ATSIC Review*). Available online at: www.humanrights.gov.au/social_justice/submissions/

body over service delivery and program design by other government departments. This could be achieved by:

- empowering the national body to set the objectives and guiding principles for service delivery to Indigenous peoples across all issues, but also to empower them to be able to develop legally binding directions for service delivery agencies that accord with these principles;
- require the Minister to table in Parliament all such directions set by the national representative body;
- provide that all directions issued by the national representative body and subsequently tabled in Parliament have the status of legislative instruments (or delegated legislation);
- require all government departments to include in their annual reports to Parliament information as to how they implement the directions of the national representative body in delivering relevant services and programs;
- empower the national representative body to evaluate how government departments and agencies (at all levels) comply with these directions in delivering services;
- provide for regular scrutiny of compliance with these directions by the Australian National Audit Office or through an enhanced Office of Evaluation and Audit (previously located in ATSIIS and recently transferred to DIMIA); and
- provide for scrutiny processes by the Parliament, including through the national representative body reporting to Parliament about deficiencies in department's complying with directions and for parliamentary committees to scrutinise the actions of departments through specific inquiries or senate estimate processes.

The *Social Justice Report* and ATSIIS Review submission also support enhancing the structure of the national representative body for interface with state and territory governments as well as enhancing the body's powers at the regional level, with an emphasis on increasing the input at the regional and local levels to inform policy development and decision-making processes at the state/territory and national levels.

Overall, the *Social Justice Report* identified enhancing the role of the national representative body as:

a critical aspect in achieving the effective participation of Indigenous peoples in decision making processes and supporting sustainable development. The extent to which the government supports (this) over the coming year to more effectively drive an agenda for change, including by providing (the national representative body) with sharper legislative powers, will be the litmus test of their commitment to achieving sustainable improvements in Indigenous communities¹².

5) Comments on mainstreaming of government service delivery and performance monitoring processes

Concerns about service delivery to Indigenous peoples by mainstream agencies and

¹² *Social Justice Report 2003*, p105.

departments have been expressed for some time, such as by the Commonwealth Grants Commission in its landmark *Report on Indigenous Funding* in 2001.

The Social Justice Commissioner supports processes which increase the accountability and coordination of mainstream government departments and agencies in meeting the needs of Indigenous peoples. The Commissioner wishes to endorse some aspects of the proposed reforms announced by the government relating to mainstream service delivery. In particular, the Social Justice Commissioner endorses the ongoing commitment (beyond the COAG whole of government community trials) to the existence of a Ministerial Taskforce on Indigenous Affairs at the federal level; and the existence of the Secretaries Group for Indigenous Affairs to support the Ministerial Taskforce.

The Social Justice Commissioner also considers that the establishment of this Select Committee of the Senate for the conduct of this inquiry is long overdue. It is appropriate for the Senate to have a specialist committee to examine Indigenous issues, much as the House of Representatives have for some time had a standing committee on Indigenous affairs.

The Commissioner is of the view that the Committee could, and should, play an integral role in monitoring the progress of the Australian government in addressing what remains one of the most severe human rights challenges facing Australia as a nation. Accordingly, the Commissioner recommends that the Select Senate Committee on the Administration of Indigenous Affairs should become a standing committee of the federal Parliament to undertake reviews of the administration of Indigenous affairs on an ongoing basis. It should not be discontinued at the conclusion of this inquiry.

Recommendation 5: That the Senate ensure that this Select Committee becomes a Standing Committee of the federal Parliament with ongoing responsibilities for monitoring the administration of Indigenous affairs by departments and agencies of Australian governments.

Chapter 2 of the *Social Justice Report 2003* considers a number of issues of relevance to the proposed mainstreaming of service delivery. In particular, it provides a progress report on the COAG whole of government community trials and considers the adequacy of performance monitoring and accountability mechanisms for government. The recommendations of the *Social Justice Report 2003*, as well as relevant recommendations from the *Social Justice Report 2000*, which relate to these issues are included as **Attachment A** to this submission.

a) The Council of Australian Governments' whole of government community trials

The *Social Justice Report 2003* considers in detail progress in the COAG trials. Overall, it found that:

While the trials remain in the preliminary stages of development, rapid progress has been made during 2003... Government departments are embracing the challenge to

re-learn how to interact with and deliver services to Indigenous peoples... Through the active involvement of Ministers and secretaries of federal departments in the trials, a clear message is being sent through mainstream federal departments that these trials matter and that government is serious about improving outcomes for Indigenous peoples... ATSIC have stated that to date 'there has been clear success through improved relationships across governments at trial sites'.¹³

At this stage, however, it is too early to determine whether the trials will have a positive impact in improving government service delivery to communities in each trial region in the longer term.

Of particular relevance to this inquiry, it is also not clear at this stage whether the lessons learnt to date through the trials will be transferable and be able to be of broader benefit to the rest of the Indigenous community. This is of concern as it is clear that the experience from the COAG trials to date forms one of the main underpinnings of the reforms to ATSIC and service delivery in general announced by the government.

The following challenges were identified in the *Social Justice Report 2003* relating to the COAG trials. With the announcement by the government of the establishment of Indigenous Coordination Centres nationally as well as the use of *Shared Responsibility Agreements* these matters are also relevant to the new proposed arrangements.

First, the report identified that coordination of government activity in the eight trial sites had proven to be a more resource intensive and lengthy process than originally envisaged. The report made a number of recommendations relating to the ongoing role of the Indigenous Communities Coordination Taskforce in this regard. The government's recent announcement will intensify the level of coordination required considerably. This needs to be acknowledged and factored in to ensure that the transition from the existing arrangements does not collapse into a series of bottlenecks and confusion as to line responsibilities of various agencies across the country.

Second, the COAG trials were 'kick-started' with the establishment of a Flexible Funding Pool consisting of \$3million for each of the 2003-04 and 2004-05 years. This funding pool was intended as a short term process to commence the re-engineering of programs and services. There may now be the need for additional transitional funding as the government attempts to expand the whole-of-government community focus to all regions and communities. Close attention will need to be paid to the implementation of the new approaches to ensure that there is a sufficient degree of flexibility from the government in the allocation of funding to ensure that some communities are not disadvantaged in the roll-out of the new coordination centres.

Third, a significant concern with the COAG trials has been the performance monitoring framework established for the trials. As already noted, anecdotal evidence and enthusiasm about the trials has been a significant factor in influencing the new proposed arrangements for mainstreaming service delivery. However, the trials do not have a sufficiently rigorous performance monitoring system. As stated in the *Social*

¹³

Social Justice Report 2003, p45.

Justice Report 2003:

The lack of a clear evaluation strategy is of great concern. It may be that the uncertainty in this regard is largely the product of the evolving nature of the trials and that there will be much greater clarity during 2004. I have previously, however, expressed concern at reliance by COAG on internal monitoring and evaluation strategies. In particular, I have expressed concerns about the lack of information that is publicly reported about such evaluations (thus limiting government accountability), the lack of appropriate consultation with Indigenous peoples and lack of independence in the monitoring process.¹⁴

The concern about performance monitoring processes is reinforced by the failure in recent years of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs to complete two significant evaluations on COAG's behalf and in a timely manner. The first is the review of progress by all levels of government in implementing the recommendations of the *Bringing them home* report. The second is an audit of family violence programmes to guide the response of COAG to this crisis issue. Approximately three and a half years after these reviews were announced, neither has been presented to COAG nor made public.

As ATSIC have stated about the monitoring framework for the trials:

The Commission is particularly concerned that a comprehensive national evaluation strategy is not in place. This is likely to lead to unclear judgements later on, as the starting point for assessing change has not been clearly established. In addition, the Commission is concerned that there is no commitment to an independent evaluation of the initiative. The reliance on a systems-based internal evaluation strategy might not provide the most objective perspective on the successes and failures of the initiative, and may produce an inadequate basis upon which to make long term policy and program reforms.¹⁵

A related issue is the existence of adequate data to contribute to the monitoring and evaluation process. Recent *Social Justice Reports* have expressed significant concern at the lack of appropriate data to support benchmarking efforts to ensure appropriate levels of government accountability for service delivery.¹⁶

In the initial stages of the COAG trials, there has been a significant focus on developing local level priorities, outcomes and benchmarks. The 'Indigenous Communities Coordination Taskforce Database' has been developed to capture this information across the eight trial sites. The intention is that this information will be able to be aligned with the headline and strategic change indicators developed by the Steering Committee for the Provision of Government Services, and that data will be able to be compared 'against existing portfolio budget statements and other cross-government frameworks at the national level'¹⁷.

It is not, however, clear how the local level data will be able to be matched up to the

¹⁴ *ibid.*, p46.

¹⁵ *ibid.*, p47.

¹⁶ *Social Justice Report 2003*, Chapter 2; *Social Justice Report 2002*, Chapter 4; *Social Justice Report 2000*, Chapter 4.

¹⁷ Indigenous Community Coordination Taskforce, *Shared responsibility shared future – Indigenous whole of government initiative: The Australian government performance monitoring and evaluation framework*, DIMIA Canberra 2003, p3. See Appendix 2 of the *Social Justice Report 2003* for further information.

national level in these ways. There is very little ability to disaggregate, on a regional or local basis, the statistics which form the basis of the headline indicators and strategic change indicators in the national reporting framework. The emphasis of the trials to date has also, quite rightly, not been on improving data collection at this local level. Hence, existing systems of data collection are very poor at identifying the status of Indigenous people in a particular locality or region across a broad range of social and economic indicators. Accordingly they are also ill equipped to measure change in such indicators.

It is quite likely that it will not be possible to match up local level indicators with the national reporting framework, other than through the provision of case studies which can illustrate links between particular types of policy interventions and outcomes. This will, of itself, be valuable information. The concern is that the trials have set objectives for data analysis and performance monitoring that will not be able to be achieved because of the existing limitations in data quality and collection.

This concern will need to be addressed more broadly in the re-engineering of mainstream service delivery if we are to have any ability to measure the actual progress being achieved through these changes. The *Social Justice Report 2003* included a number of recommendations to address this concern. These are reproduced as **Attachment A** to this submission.

Fourth, the report identified a number of issues which will need to be addressed in order for the lessons learnt from the trials to be transferable and contribute to broader reform of program design and service delivery for Indigenous peoples. The adequacy of the performance monitoring framework, as discussed above, will be one of the key determinants of such lessons.

ATSIC have expressed some preliminary concerns about the conduct of the trials and the transferability of lessons learned. Their concerns relate to three broad factors. The first is limited experimentation of new approaches by Lead Agencies in the trials. ATSIC argue that to date:

there has been little progress in doing ‘business’ differently... Silos continue to characterise government relationships and the way in which funds are provided and accounted for, leading to restrictions in the experimentation of interventions. Lead Agencies are struggling to balance different priorities with trial partners leading to difficulties in progressing joined-up projects on the ground. As little obvious progress has been made in re-engineering programs, Lead Agencies are tending to use existing programs in the trial sites with little flexibility or creativity.¹⁸

They note, significantly, that ‘programs that are used more flexibly tend to be Indigenous-specific rather than mainstream’¹⁹.

The second concern identified by ATSIC is that there has been a blurring in some instances of Commonwealth and state responsibilities, ‘attracting the possibility of cost shifting between parties’ compounded by the ‘inexperience of Lead Agencies and their personnel when engaging with Aboriginal and Torres Strait Islander

¹⁸ Quartermaine, L, quoted in *Social Justice Report 2003, op.cit*, p48..

¹⁹ *ibid.*

communities'²⁰. ATSIC sees a need for 'clearer mechanisms... to facilitate a more cohesive joined-up approach accompanied by greater flexibility in the availability of fund to improve outcomes' combined with 'effective and timely evaluation'²¹.

The third concern identified by ATSIC relating to transferability of outcomes is a perception that initiatives in one trial are not being identified as having potential application in other trials. They state:

One of the strengths of the initiative is the opportunity to develop locally based solutions to meet locally identified needs. It seems reasonable therefore, that where a Lead Agency has proceeded to implement a program differently, such as increasing the provision of housing to one of the communities in the trial site, then that initiative should be considered for the other trial sites. This would address basic needs that are common to most of the sites.²²

Ultimately, the transferability of outcomes from the trials in the longer term will depend on whether the trials are able to more broadly change the status quo of service delivery and program guidelines. A significant challenge will be ensuring that the adoption of more holistic, whole-of-government approaches is not a transient feature and that departments do not simply slip back into their usual ways of doing things once the trials have ended. Factors that will need to be addressed to ensure that this is not the case include the following:

- *Continued engagement of mainstream departments and programs:* It is clear that a significant factor in the early success of the trials has been the high level involvement and commitment of ministers and departmental secretaries at the federal level in taking responsibility for particular communities (as the lead agency) and harnessing the services and programs of mainstream departments. The lead agency approach is not sustainable beyond a limited number of communities in its current format. Mechanisms such as the Minister's group and the Secretaries group may be more sustainable, so long as departments continue to have a significant investment in promoting improved coordination of services.
- *Coordinating funding of proposals in non-trial sites:* Similarly, the identification of a region or community as a trial site has naturally elevated the priority with which the service delivery needs of that community or region are dealt with. Governments and departments have been able to look to how they can relax program guidelines or join up funding from different programs and areas for more holistic solutions. A significant challenge is identifying how proposals in areas that were not trial sites can also benefit from this approach where such proposals do not enjoy such priority or intensive attention.
- *Resource constraints:* While the emphasis of the trials is not on new money but on better coordinating and getting value from existing money, there is a broader context of significant under-funding of key areas of Indigenous disadvantage. The focus on a limited number of communities, and the

²⁰ *ibid.*

²¹ *ibid*, p49.

²² *ibid.*

availability of a short term funding pool, shields the trials from this broader issue. Funding restrictions will become a significant issue when seeking to more broadly implement the lessons learnt from the trials. This will be complicated further by an emphasis on addressing relative need and reallocating funding towards those areas and issues of greatest disadvantage.

- *Capacity development of Indigenous communities:* Each of the trials has built on local Indigenous initiatives that were already under development to improve service delivery to their communities. For example, processes such as the ATSIC Murdi Paaki Regional Council initiatives of community working parties, the incorporation of the Tharmarrurr Regional Council under local government legislation in the Northern Territory, and the Cape York Partnerships in Queensland were relatively developed when the decision was made to make each of these areas a trial site. The trials have undoubtedly greatly advanced processes that were previously underway in these and other trial areas.

However, the broader concern is how transferable lessons will be drawn from the trials for those communities which experience a high degree of dysfunction and which are not, at least at this stage, capable of organising themselves so that they can better interact with governments²³. In other words, how do we avoid the situation where governments focus their attention on improved coordination of service delivery to those communities that are relatively organised? Even in the trial sites, where there has been a great deal of activity by communities to address these issues, it has taken a long time to develop the capacity of the communities to the point where they can determine what the priorities of the community are and the approaches that should be adopted. It is critical that in the longer term other communities do not get left behind because they do not have such capacity.

A fifth issue raised by the *Social Justice Report 2003* was that there were a number of processes available to ATSIC and Indigenous peoples to build on the achievements of the trials and more broadly inform policies and programs. There are at least three significant processes which ATSIC has to date utilised which provided ATSIC with some leverage for advancing inter-governmental coordination and improved service delivery. Namely:

- ATSIC has entered into a number of partnership agreements with states and territories. An overview of these agreements was provided in Appendix 1 of the *Social Justice Report 2002*. As an example, the *Statement of commitment for a new and just relationship with Aboriginal Western Australians* was signed by ATSIC, the Western Australian government and other Indigenous representative organisations in October 2001. This commits the parties to the agreement to a whole-of-government approach with the negotiation of regional agreements based on an acknowledgement of shared responsibility, as well as the negotiation of framework agreements in areas such as health,

²³

It is the interaction of these factors that is critical – many of the communities in the trial sites would describe themselves as experiencing high levels of dysfunction. It is the determination, and in most cases simply the ability, to address this that is missing in some other communities.

housing, essential services, justice and native title. ATSIC has also negotiated agreements and compacts with federal government departments such as the Department of Workplace Relations (DEWR), the Department of Education, Science and Training (DEST) and the Department of Health and Ageing²⁴.

- The operation of ATSIC's Regional Councils and the development of their regional plans. As ATSIC have stated about their approach to the COAG trials:

ATSIC-ATSI's approach has been to promote the Regional Councils as the pre-eminent source of Aboriginal and Torres Strait Islander advice in all trial sites. This is easier in regions where Regional Councils are the main source of leadership but it has proved difficult where other organisations compete for this role or the trial boundary differs from the Regional Council boundary.²⁵

The better utilisation of ATSIC Regional Councils and the capacity of ATSIC's regional planning process has been identified as a significant opportunity for coordinating government activity within regions. Recent agreements between ATSIC, DEWR and DEST, for example, commit these departments to using the regional planning process to better coordinate their activities regionally.

- ATSIC leads the Community Participation Agreements (CPA) initiative under the *Australians Working Together* package. The CPA process provides ATSIC with a significant tool for advancing the objectives of Indigenous communities or regions as they relate to aspects of government service delivery.

ATSIC's ability to enter into partnership agreements with governments is a significant tool for achieving change. It is not clear that there will be any ability for this approach to continue under the proposed new arrangements. Similarly, while Regional Councils are due to continue to operate for a further twelve months, they do not appear to be integrated within the proposed approach to whole of government coordination. This is likely to result, in most regions, in significant opportunity being lost for grounding local community's involvement in the re-engineering of services and programs. The Community Participation Agreement (CPA) process has been transferred to a mainstream government department. While this program has under-performed to date it still offers significant potential. It remains to be seen how relevant mainstream departments will utilise this tool and coordinate local Indigenous community involvement in developing CPAs.

b) Adequate performance monitoring processes

A significant focus of recent *Social Justice Reports* has been on the adequacy of performance monitoring standards and government accountability mechanisms. The Commissioner notes the general commitment to overcoming Indigenous disadvantage from the government, but remains concerned that sufficient steps are not being taken

²⁴ See comments on this approach by the CEO of ATSIC in Aboriginal and Torres Strait Islander Commission, *Annual Report 2002-03*, ATSIC Canberra 2003, pp15-16.

²⁵ Quartermaine, L, quoted in *Social Justice Report 2003*, p51.

to introduce appropriate and adequate performance monitoring mechanisms, including benchmarks and targets.

The *Social Justice Report 2003* noted the development of significant measures for advancing reconciliation within the framework of the Council of Australian Governments in 2003. The national reporting framework on Indigenous disadvantage and whole-of-government trials under COAG are in fledgling stages and there are a number of issues that remain to be addressed before success is assured.

The report also notes the lack of adequate progress in improving Indigenous well-being across a number of key indicators.²⁶ The *Social Justice Report 2003* notes that:

These initiatives have not, however, been backed up by a range of other commitments and processes that are necessary to ensure the long-term sustainability of improvements in the well-being of Indigenous peoples. There remains an absence of an appropriate national commitment to redressing Indigenous disadvantage, sufficiently rigorous monitoring and evaluation mechanisms, and benchmarks with both short-term and longer term targets agreed with Indigenous peoples. There are also critical issues relating to the depth of inequality experienced by Indigenous people, the size and growth of the Indigenous population and under-resourcing of services and programs to Indigenous peoples that cannot continue to be ignored if there is to be any genuine improvement in Indigenous peoples' circumstances.

Ultimately, the process of practical reconciliation is hampered by its lack of a substantive action plan for overcoming Indigenous disadvantage in the longer term, with short-term objectives to indicate whether the rate of progress towards this goal is sufficient.

At this stage, it is not possible to foresee a time when 'record levels of expenditure' of the Commonwealth on Indigenous services will not be necessary. It is also not possible to foresee a time when a continuation of the current approach will result in significant improvements in the lives of Indigenous peoples. Practical reconciliation does not have a plan for *overcoming* rather than simply managing Indigenous disadvantage.²⁷

The *Social Justice Report 2003* and the *Social Justice Report 2000* contained a number of recommendations to ensure adequate performance monitoring standards. These are reproduced as **Attachment A** to this submission. The Social Justice Commissioner recommends that the Committee recognise the importance of these findings and recommendations to ensure that there is sufficient government accountability for mainstream service delivery and programs.

Recommendation 6: That the Committee request the introduction of adequate and appropriate performance monitoring standards for mainstream government agencies and at the inter-governmental level as a central component of any re-engineering of government service delivery to Indigenous peoples. The findings and recommendations contained in Chapter 2 of the *Social Justice Report 2003* form an appropriate basis for the development of such standards.

²⁶ See in particular Appendix 1 and Chapter 2 of the report.
²⁷ *Social Justice Report 2003*, pp55-56.

6) Concluding comments

The Social Justice Commissioner does not support the passage of the *ATSIC Bill 2004*. The overall package of measures proposed by the government fails to ensure the continuation of a national representative Indigenous body so that Indigenous peoples are able to effectively participate in decision making that affects them. Similarly, the Commissioner is concerned that there are not sufficient monitoring processes to ensure government accountability for mainstream service delivery and that the government is moving towards achieving improvements in the livelihoods of Indigenous peoples within the shortest possible timeframe.

This submission contains a number of recommendations to the Senate Committee to address these concerns. Supporting material can be found in the *Social Justice Report 2003* and *Social Justice Report 2002*.

Attachment A – Recommendations from *Social Justice Report 2003* and *Social Justice Report 2000* - extracts

Social Justice Report 2003

Recommendation 1 on reconciliation: Data collection

1. That the federal government request the Australian Bureau of Statistics (ABS) to provide to COAG information on the actions that need to be taken in order to improve Indigenous data collection. The ABS should respond to the suggestions made by the Steering Committee for the Review of Government Service Delivery in the *Overcoming Indigenous Disadvantage Report 2003*, as well as identify actions that they consider necessary to ensure the availability of relevant data on a regular basis. In providing this information, the ABS should:

- identify those issues that could be addressed through improvements to its existing data collection processes, as well as those issues which would require additional one-off funding allocations and those issues which would require additional recurrent funding from the federal government or COAG;
- estimate the cost of any additional one-off and recurrent funding needs, including the cost of conducting the Indigenous General Social Survey on a triennial basis; and
- consult with the Steering Committee for the Review of Government Services, the Aboriginal and Torres Strait Islander Commission, and other relevant agencies.

Recommendations 2 -5 on Reconciliation: Ministerial Council Action Plans

2. That the federal government, through its leadership role in the Council of Australian Governments, ensure that all Commonwealth / State Ministerial Councils finalise action plans on addressing Indigenous disadvantage and reconciliation by 30 June 2004. These action plans must contain benchmarks, with specific timeframes (covering short, medium and long term objectives) for their realisation. Where appropriate, these benchmarks should correlate with the strategic change indicators and headline indicators reported annually by the Steering Committee for the Provision of Government Services.

3. That the federal government, through its leadership role in the Council of Australian Governments, request the Aboriginal and Torres Strait Islander Commission (ATSIC) to advise COAG whether it endorses these action plans and the benchmarks contained within, following consultations through its Regional Councils. ATSIC should be required to advise COAG of its endorsement or any concerns about the action plans within a maximum period of six months after being furnished with the action plans.

4. That the federal government ensure that all Commonwealth / State Ministerial Council Action Plans are made publicly available as a compendium of national commitments to overcoming Indigenous disadvantage.

5. That COAG publicly report on progress in meeting the benchmarks contained in each Commonwealth / State Ministerial Council Action Plan on an annual basis.

Recommendations 6 – 9 on reconciliation: COAG Whole-of-government community trials

6. That the federal government, through the Department of Immigration, Multicultural and Indigenous Affairs, commit to the existence of the Indigenous Communities Coordination Taskforce for a minimum of the five year duration of the COAG whole-of-government community trials and accordingly commit resources to the Taskforce until 2007.

7. That federal government departments participating in the COAG whole-of-government trials increase their staffing commitments to the Indigenous Communities Coordination Taskforce by placing additional officers in the Taskforce's Secretariat.

8. That COAG request the Productivity Commission (as Chair of the Steering Committee for the Review of Government Service Provision) to provide advice on aligning the benchmarks and outcomes agreed at the local level with COAG's National Framework for Reporting on Indigenous Disadvantage. This advice should include any recommendations for adapting the Indigenous Communities Coordination Taskforce Database to enable reporting of outcomes against this National Framework.

9. That COAG agree and fund an independent monitoring and evaluation process for the whole-of-government community trials initiative. The Productivity Commission, Commonwealth Grants Commission or ATSIC's National Office of Evaluation and Audit would be suitable agencies to conduct this review.

Social Justice Report 2000

National commitments to overcome Aboriginal and Torres Strait Islander disadvantage

1. That the federal government adopt, on a whole of government basis, long-term policies that identify overcoming Aboriginal and Torres Strait Islander disadvantage as a national priority. That the government take steps to target the progressive reduction of such disadvantage (from both a deprivation and inequality perspective) and negotiate with the opposition parties in the Parliament for cross-party support for a long-term strategy and commitment.

2. That the federal government, through the processes of the Council of Australian Governments (COAG), seek the agreement of the states, territories and local government to identify as a national priority measures to overcome Aboriginal and Torres Strait Islander disadvantage. That such agreement be formalised by COAG renewing the 1992 COAG *National commitment to improved outcomes in the delivery of programs and services for Aboriginal peoples and Torres Strait Islanders*, after negotiation with ATSIC.

3. That the federal government, through the processes of COAG, seek the agreement of the states, territories and local government, and ATSIC, service delivery agencies

and Indigenous organizations on benchmarks for Indigenous service delivery at the national, regional and local levels.

Improved data collection

6. The federal government request the Commonwealth Grants Commission, Australian Bureau of Statistics (ABS) and ATSIC to provide advice within three months of the finalisation of the Commonwealth Grants Commission's current inquiry into Indigenous funding on:

- Mechanisms for improving the sufficiency and quality of national data necessary to identifying Indigenous needs, on an absolute basis. This advice should consider the ABS' strategy for improved data collection as outlined in *Directions in Australia's Aboriginal and Torres Strait Islander statistics* (March 2000);
- The feasibility of the ABS repeating the National Aboriginal and Torres Strait Islander Survey of 1994 on a regular basis, or undertaking the Indigenous General Social Survey on a triennial basis;
- Proposals for increased coordination and consistency of data collection at the national, state and territory level; and
- Cost implications of improved data collection.

7. That the Australian Bureau of Statistics address deficiencies identified in national data collection processes relating to Aborigines and Torres Strait Islanders.

8. That the federal government coordinate the negotiation of framework agreements under the COAG National Commitment to improve coordination and standardisation of data collection between the federal, state and territory governments, ATSIC, Indigenous organisations and service delivery agencies.

Monitoring and evaluation mechanisms

9. That the federal government amend the *Commonwealth Grants Commission Act 1973* (Cth) to require:

- The Commonwealth Grants Commission to conduct a biennial inquiry into Indigenous funding (from an absolute needs perspective); and
- A joint committee of the federal Parliament to examine the Commission's report and, following consultation with Indigenous organizations, recommend any actions required to improve Commonwealth service delivery to Indigenous people.

Adequate funding should be provided to the Commission in order to undertake the inquiry. The scope of the CGC inquiry should include mechanisms for the Commonwealth to encourage states and territories to report on and meet benchmarks; and proposals for the direct funding of Indigenous organizations (in accordance with the fiscal equalisation principle).

10. That the Commonwealth, state and territory governments agree to report to their respective parliaments and COAG on a biennial basis as to progress in addressing Aboriginal and Torres Strait Islander disadvantage, and the measures taken to meet

the commitments made in the COAG National Commitment. That governments report to the biennial Reconciliation Conventions proposed by the Council for Aboriginal Reconciliation in the *Reconciliation Bill 2000*.

Negotiating with Indigenous peoples

11. That the federal government introduce framework legislation providing legislative support for the negotiation of agreements with Indigenous peoples at the national, regional and local levels. The Council for Aboriginal Reconciliation's proposed *Reconciliation Bill 2000* is an appropriate legislative model.

12. That the federal government and COAG adopt the *Principles for Indigenous social justice and the development of relations between the Commonwealth government and Aboriginal and Torres Strait Islander Peoples* as proposed by ATSIC in *Recognition, rights and reform*, as forming the framework for negotiations about service delivery arrangements, regional governance and unfinished business.