

# Submission

to

## Senate Select Committee on the Administration of Indigenous Affairs

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## Background

The Australian Council of Social Service (ACOSS) is the peak council of the community services and welfare sector in Australia and the national voice for the needs of people affected by poverty and inequality. Given the extraordinarily high levels of poverty and disadvantage among Indigenous people in Australia, ACOSS considers issues of Indigenous policy and programs to be a major priority.

While ACOSS has an extensive membership among national community service and welfare agencies, as well as affiliated Councils of Social Service in each state and territory of Australia, the membership base among Indigenous people and Indigenous community organisations is modest. ACOSS has worked to enhance its links with Indigenous people and community organisations. The organisation has a standing group of voluntary Indigenous policy advisers and two members of the ACOSS Board of Governors are themselves Indigenous.

ACOSS is a founding member of Australians for Native Title and Reconciliation (ANTaR) and is represented on the management committee of that body. A number of alliances with which ACOSS works include the Aboriginal and Torres Strait Islander Commission, the Institute of Aboriginal and Torres Strait Islander Studies or other Indigenous groups.

This submission does not claim to be the result of extensive consultation with the wider Indigenous services sector, nor with a wide range of Indigenous people. The capacity, infrastructure and networks to do that effectively existed with the Aboriginal and Torres Strait Islander Commission. The responsibility for ensuring such consultation and engagement is effectively achieved before any decision to abolish the Commission is finalised now falls to Parliament and to this inquiry.

ACOSS urges the committee to exercise its responsibility to ensure the full range of Indigenous voices are heard before abolishing the democratically elected national representative voice that is embodied in the Aboriginal and Torres Strait Islander Commission.

This submission is framed around the committee's terms of reference. A number of recommendations are made, which are summarised at the start.

## **Summary of recommendations**

### **Recommendation 1**

That the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 be rejected.

### **Recommendation 2**

That the Aboriginal and Torres Strait Islander Commission should be retained and the recommendations of the Review of the Aboriginal and Torres Strait Islander Commission, *In the hands of the regions - a new ATSIC* (November 2003), be implemented.

### **Recommendation 3**

Any changes to the administration of Indigenous programs and to the Aboriginal and Torres Strait Islander Commission should be determined only after full consultation and negotiation with Indigenous stakeholders and on the basis of their informed consent.

### **Recommendation 4**

In the event the Commission is abolished:

- a) that resources and administrative support be provided for the development of a new democratically elected representative body to represent and advocate for the interests of Australia's Indigenous people; and
- b) that this body be invited by the Australian Government and Parliament to enter into discussions with a view to developing a treaty or similar agreement between the Commonwealth and the Aboriginal and Torres Strait Islander peoples.

### **Recommendation 5**

That consideration be given to including a new democratically elected Indigenous representative body as a member of the Council of Australian Governments.

### **Recommendation 6**

That Indigenous issues be a standing agenda item at meetings of the Council of Australian Governments.

### **Recommendation 7**

That any changes to the administration of Indigenous programs and those affecting Indigenous people be made on the basis of delivering improved outcomes and strengthening Indigenous control of the delivery of services.

## **Terms of reference**

(1) A select committee, to be known as the Select Committee on the Administration of Indigenous Affairs, is appointed to inquire into and report, by 31 October 2004, on 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.

## **a) The provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004**

The Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 represents an attempt by the Australian Government to abolish the democratically elected and nationally representative voice of Indigenous Australians. As such, it represents a significant disenfranchisement of Australia's Indigenous peoples and should be opposed.

The Aboriginal and Torres Strait Islander Commission serves a multi-faceted role. Among these, it helps to improve the effectiveness, coordination and delivery of government programs and services to Indigenous people across Australia. It has management responsibility for a small number of programs, including the Community Development Employment Program. Critically, it also provides a representative and coordinated voice for input into national and international policy issues affecting Aborigines and Torres Strait Islanders. The importance of this latter role to Indigenous people for their aspirations, self-image and capacity to contribute to the life of the nation should not be underestimated.

ACOSS believes the current Bill should be rejected.

### **Recommendation 1**

**That the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 be rejected.**

### **Indigenous controlled program management, priority setting and decision making**

If a representative structure building on existing groups such as the Commission's Regional Councils and the Torres Strait Islander Advisory Board is to be retained, ACOSS believes that, rather than abolish the Aboriginal and Torres Strait Islander Commission, Parliament should commit itself, its agencies and the Council of Australian Governments to building the capacity of the Commission so it is able to be more effective in its policy development role and better contribute to improving the coordination and delivery of programs and services to Indigenous Australians.

In recent years there has been much questioning of the Commission's effectiveness in coordination and service delivery. In November 2003 the report of the Australian Government's *Review of Indigenous Participation in the Development of Commonwealth Policies and Programs* highlighted areas in which its operational and structural features could be improved or made more effective.

Ineffective, uncoordinated and often half-hearted delivery of mainstream federal and state government programs and services to Aborigines and Torres Strait Islanders has long been a feature of Indigenous public policy. The complexity of this policy and service provision is a direct result of long-term and persistent disadvantage among Indigenous Australians and of systematic neglect by policy makers.

In this context, the Aboriginal and Torres Strait Islander Commission might only ever have been expected to provide an incremental improvement to the situation that existed prior to its creation. While there have been a small number of recent attempts to pilot whole-of-government approaches in Indigenous communities, there is little evidence that non-Indigenous mainstream agencies' capacity to coordinate polices and services has improved in the fourteen years since the establishment of the Commission.

## **Recommendation 2**

**That the Aboriginal and Torres Strait Islander Commission should be retained and the recommendations of the Review of the Aboriginal and Torres Strait Islander Commission, *In the hands of the regions - a new ATSIC* (November 2003), be implemented.**

### **Advocacy and representation of the views of Aboriginal and Torres Strait Islander people**

Important as provision of services and programs are for addressing Indigenous disadvantage, the right of Indigenous people to a say in the design and delivery of programs and services affecting them is also critical. In the past, mainstream agencies have been unwilling to cede control of the design of programs that were not explicitly managed by the Commission. As a consequence major programs in areas such as health, income support and employment services retain policy models whose relevance and appropriateness are questionable for large numbers of Indigenous Australians.

The role of the Commission 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.

It is difficult for many non-Indigenous Australians to understand the depth of feeling associated with this recognition. A central aspiration of Indigenous Australians is to have an effective voice regarding decisions by non-Indigenous government. This aspiration is at least partly covered by a number of international agreements and treaties which seek to recognise and address discrimination and racism. Some of these apply to 'peoples' generally, some apply to 'minorities', and some apply specifically to 'Indigenous peoples'.

Most of the relevant standards represent binding obligations on States which have accepted them. Australia has ratified most of these international standards including,

- *International Covenant on Civil and Political Rights;*
- *International Covenant on Economic, Social and Cultural Rights;*
- *International Convention on the Elimination of all Forms of Racial Discrimination.*

However, opposition to discrimination and/or advocating tolerance to overcome racism are not sufficient. In order to counter racism and discrimination it is necessary to actively promote policies, programs and behaviours that directly address and prevent unlawful and unacceptable behaviour and attitudes.

The right of 'peoples' to self-determination, together with the principle of equal rights and non-discrimination, is one of the few specifics in the United Nations Charter's references to human rights. This is echoed in the *Draft Declaration on the Rights of Indigenous Peoples*. Effective participation of Indigenous peoples in decisions which affect them is needed to ensure such self determination.

Within the body of 'hard law' represented by international treaty obligations accepted by Australia, there is sufficient basis for requiring governments to deal with Indigenous peoples in making decisions which affect them, their lands, resources and their cultures. The challenge is to establish governance structures for an interface between Indigenous peoples and largely non-Indigenous governments which can produce effective decisions which accord with Indigenous structures, customs and processes.

### **Informed consent**

ACOSS believes that any changes to the administration of Indigenous programs and services and to the nature of the representative bodies giving voice to the aspirations of Indigenous people should only be made in consultation and negotiation with Indigenous people themselves and on the basis of their informed consent. Parliament should not presume to speak on behalf of the wishes of Aboriginal and Torres Strait Islander people without their involvement in the decision making process.

### **Recommendation 3**

**Any changes to the administration of Indigenous programs and to the Aboriginal and Torres Strait Islander Commission should be determined only after full consultation and negotiation with Indigenous stakeholders and on the basis of their informed consent.**

If the existing Commission structure is abolished, ACOSS calls on the Parliament to immediately institute a process to arrive at a treaty or agreement between the Australian Government and Aboriginal and Torres Strait Islander people. Funds should be made available to Indigenous organisations and communities for the purposes of participation in such negotiations. In concert with this, financial resources and administrative support should be provided on an ongoing basis to allow for the development by Indigenous people of appropriate representative structures to advocate on their behalf within the public discourse and government processes. In developing a new formal relationship between the Australian Government and the Indigenous peoples, consideration should be given to including any new democratically elected Indigenous representative body as a member of the Council of Australian Governments.

## **Recommendation 4**

**In the event the Commission is abolished:**

- a) that resources and administrative support be provided for the development of a new democratically elected representative body to represent and advocate for the interests of Australia's Indigenous people; and**
- b) that this body be invited by the Australian Government and Parliament to enter into discussions with a view to developing a treaty or agreement between the Commonwealth and the Aboriginal and Torres Strait Islander peoples.**

## **Recommendation 5**

**That consideration be given to including a new democratically elected Indigenous representative body as a member of the Council of Australian Governments.**

### **Democratic basis**

A key element of the Commission's current legitimacy to speak on behalf of Indigenous people is its democratic base. This has provided both a platform and processes through which Indigenous representatives can be identified and given access to public discourse and public policy making. ACOSS strongly supports democratic processes as a central and legitimising characteristic of any Indigenous representative body.

In particular, ACOSS considers that objectives for participative Indigenous representation should include:

- increasing the level of voter participation in the representative structures, including strengthening participation in Regional Council elections and processes;
- encouraging greater participation by Indigenous individuals and communities in decision making and policy development processes affecting them – particularly women and young people and in areas such as health, housing, justice, employment and other services.

### **Constituencies**

The need for an effective representative national voice is highlighted by the poor policy outcomes for Indigenous people. Decisions and policies that have broad ownership and are based in evidence would help avoid some of the worst failures of the past. Injustices and policy failures in areas such as land use, human services, health, education, employment, community infrastructure, governance and the justice system have been great and sustained. For large areas of social and economic policy, the issue of Indigenous control and self determination remains even to be approached, let alone dealt with. Australia should not accept policy decision making by government on issues affecting Indigenous people that is not balanced by effective advocacy and input by Indigenous people themselves.



Areas of policy that remain important in terms of a continuing need for advocacy include:

- Indigenous-specific programs and services - including programs currently or previously managed by the Commission. An emphasis on improving outcomes and identifying benchmarks and timeframes is needed;
- Mainstream Australian Government policies and programs - in particular to monitor outcomes for Indigenous people and evaluate whole-of-government approaches;
- Other levels of government - state and local government are important providers of services and community infrastructure for Indigenous peoples and communities. Many of these governments and their agencies have policy relationships and common planning frameworks that have been developed over time with the Commission. These arrangements and/or their intended outcomes may be placed in jeopardy if the Commission is abolished without adequate consultation and time to develop alternative arrangements.;
- The Council of Australian Governments - as representatives of the elected legislatures, with Indigenous issues warranting a standing place on COAG's agenda;
- The corporate and private sector - particularly in relation to dealings regarding Indigenous lands and to the corporate social responsibility activities of businesses in Australia;
- The third sector - important contributors to civil society as well as contributors to Indigenous peoples and communities through service delivery, welfare, arts, sporting and cultural activities;
- The wider community - the need to address misperception and racism in the community is manifest.

## **Recommendation 6**

**That Indigenous issues be a standing agenda item at meetings of the Council of Australian Governments.**

### **The need for good will**

Whatever representative or administrative structure is eventually agreed, ACOSS calls on the Parliament, as well as the federal and state governments to demonstrate good will towards both the body and the people it represents and serves. The history of the Aboriginal and Torres Strait Islander Commission has been one of frequently being forced to defend itself from attack and external review. Whilst scrutiny and probity of operation are important, prolonged attacks can lead to diversion of resources and a loss of organisational focus. A siege mentality can breed an inward- and backwards-looking orientation and work against a strategic and forward-looking approach.

## **b) The proposed administration of Indigenous programs and services by mainstream departments and agencies**

For fourteen years, the Aboriginal and Torres Strait Islander Commission has been an important funding provider for Indigenous people and communities. This has been particularly so for funding for employment, housing and infrastructure, legal services and native title representative bodies, among others. ACOSS has been aware of concerns held by Indigenous people and communities regarding some Commission-funded programs and their administration. The Commission, however, is not alone in Australia in facing criticism as a service and funding provider. It is important to re-state here that mainstream departments have had responsibility for the vast majority of programs and policies that affect Indigenous people and communities.

Funding provision for services is often contested territory – typically available funds fall short of objective levels of demand, particularly so given the high levels of Indigenous disadvantage. The need clearly exists for monitoring to ensure probity standards are met, as well as ensuring fair contestability and value-for-money factors are considered. In addition, given that Indigenous people are highly diverse in terms of language, culture, locational and other factors, the administration of Indigenous programs requires particular sensitivity in monitoring and assessing performance from a range of perspectives.

ACOSS does not have the capacity, expertise or mandate to undertake a wholesale analysis of the merits or otherwise of the administration of specific programs affecting Indigenous people – either by the Commission or by mainstream departments. However, it is relevant to note that over many years of direct federal government control of funding for services to Indigenous peoples and communities there has been a limited impact in terms of positive outcomes.

There is a clear and pressing need to do better in relation to both the coordination and effectiveness of programs serving Indigenous Australians. The poor life expectancy, health, education, employment, housing, justice, wealth accumulation and parliamentary representation outcomes in relation to Indigenous people are testament to the broad-based disadvantage they face. Current policies, programs and services are simply not effective at enabling Indigenous Australians to participate in the life of the nation with the same level of access and benefit that the wider community takes for granted.

Indigenous controlled funding for services through the Commission's own programs has been a relatively recent phenomenon. Clearly, many Indigenous communities value and need the support that results from these programs and related services. Any changes made to the program management and service delivery arrangements for these programs should ensure that effective elements of existing arrangements are retained while those needing to be improved are addressed.

Regardless of the structures through which services are funded, two goals should be key:

- 1) ensuring that outcomes are delivered, particularly those that address disadvantage in terms of educational, health, housing, justice and paid employment; and
- 2) strengthening Indigenous control of the delivery of services.

## **Recommendation 7**

**That any changes to the administration of Indigenous programs and those affecting Indigenous people be made on the basis of delivering improved outcomes and strengthening Indigenous control of the delivery of services.**

Criteria that should be considered in making any decisions about changes to Indigenous programs and services funding and delivery include:

- Strengthening Indigenous democratic governance - given the importance of Indigenous control and democratic governance, Indigenous program funding might usefully include priority aims such as mentoring and leadership; civic participation; awareness of voting rights; and information regarding rights to access services and to make complaints. Given the significant cohort of young Indigenous people and the value of including Indigenous women through such processes, these groups might constitute a priority for such work.
- Innovation and flexibility - with the high degree of disadvantage associated with a history of service failure and dispossession, innovation and flexibility in design should be a valued criterion for services that are often not well provided for through mainstream funding.
- Service gaps and emerging needs - the existing Commission structures, including the Regional Councils, are well placed to study service systems and outcomes to identify gaps in provision, respond quickly to these, and advocate for embedded systems and structural reform to address needs over the longer term. The relatively recent attention, concern and action around family violence issues, and the need for prevention, are examples. Similarly emerging needs might be anticipated through policy analysis across all levels of government, the private and third sectors. Again, given the age profile of the Indigenous population, policy and service issues related to young Indigenous people will likely continue to emerge and might well constitute a priority. The dismantling of existing integrated management structures may well reduce the capacity for the identification of unexpected interactions or gaps between programs and policies.
- Inter-sectoral projects - the high degree and complexity of Indigenous disadvantage is a great challenge and inter-sectoral collaboration is likely to be needed. There is a role for whatever coordinating structure is agreed in ensuring maximum collaboration and cooperation across different sectors is encouraged and improved.
- Reviewing current service delivery and governance arrangements - for appropriateness, relevance and accountability to Indigenous people.

## **c) Related matters**

### **Relevant ACOSS documentation - available on request.**

ACOSS *et. al.* (1997) Statement of Apology and Commitment to Aboriginal and Torres Strait Islander People ACOSS, Sydney.

ACOSS *et. al.* (2001) Achieving Justice for Indigenous Australians - a Joint Statement by the Community Services Sector ACOSS, Sydney.

ACOSS (2002) Australian Council of Social Service Inc. Constitution comprising 'Objects and Purposes of Association and Rules of Association' (Amended November 2002), ACOSS Sydney.

ACOSS (2003) Submission to the Review of Indigenous Participation in the Development of Commonwealth Policies and Programs (The ATSIC Review) ACOSS, Sydney.

ACOSS (2004) Blueprint for a Fairer Australia - Federal Budget Priorities Statement ACOSS, Sydney

Finlayson, Julie for The Australian Collaboration (2004) Success in Aboriginal Communities - A Pilot Study Australian Institute of Aboriginal & Torres Strait Islander Studies, Canberra

Yencken, David and Porter, Libby for The Australian Collaboration (2001) A Just and Sustainable Australia (Case study "Reconciliation and the rights of Indigenous people" p 41) ACOSS, Sydney