

Mr William Johnstone

**Submission to Senate Select Committee of Inquiry into the
Administration of Aboriginal Affairs**

Dear Chairperson,

I hereby make the following submission to the Senate Select Committee on the future administration of Aboriginal Affairs.

The following short comments are made by way of introduction and to place my submission in context.

I was elected as the inaugural Chairperson of the Murdi Paaki (Far West NSW) Regional Council in 1990 and was influential in improving the delivery of health and housing programs to Aboriginal peoples in western NSW. I am the founder of the (Aboriginal) Community Working Party concept that influenced the NSW Government in its development and implementation of a \$200 million Capital Works Program in NSW in 1997. In 1999 I became the first Aboriginal person to be elected to the Board of the NSW Royal Flying Doctor Service. I commenced employment with ATSIC in October 2000 as the State Policy Manager NSW before moving to Canberra where I managed the Program and Policy Reform Branch.

I was a Senior Executive Service Officer with ATSIC before moving to take up the role of Deputy General Manager of the Indigenous Land Corporation (ILC) and, since September last year, have been the Chief Executive Officer of the New South Wales Aboriginal Land Council.

I make this submission in a private capacity as an Aboriginal Australian who is interested in ensuring the best possible representation and outcomes for my people. My comments may not be taken as representative of NSWALC.

I prefix this submission by stating that ATSIC, in whatever form it might have taken, could only have worked if there had been:

- Strong political will by the Government of the day to addressing Indigenous disadvantage and encouraging Indigenous development. Instead, ATSIC was used as a convenient scapegoat for the program and

policy failures of all mainstream departments with primary responsibility for Aboriginal Affairs. I note the submission to this inquiry from the Aboriginal and Torres Strait Islander Social Justice Commissioner has recommended this Committee become a Standing Committee on Aboriginal Affairs with ongoing responsibilities for monitoring the administration of Indigenous Affairs by departments and agencies of Australian Governments. I support this recommendation and strongly urge the committee to further investigate the performance and outcome of all mainstream agencies.

- A further positive step in this regard would be the appointment of a Minister, preferably in Cabinet, with exclusive focus on Indigenous issues to ensure greater co-ordination and oversight of the policies and programs of mainstream departments.
- Recognition and acceptance by Government that ATSIC had a legitimate role to play as the primary advisor on Indigenous affairs and a commitment to a genuine equal partnership between the Government and ATSIC.
- Strong ATSIC legislation that compelled program and service delivery agencies, including State Government agencies, to consult to agreement with ATSIC about Indigenous policy and program development.
- ATSIC should have been required to table an annual “State of Indigenous Australia” report in Parliament setting out continuing areas of socio-economic disadvantage, identifying Indigenous and ATSIC achievements and advising on strategic directions that are to be pursued in the ensuing three years. Please also note my recommendation at section 2.3 that Commonwealth program delivery agencies should be required to attend “Senate Estimate” type hearings where the Minister and ATSIC, or the agency, that will replace it should seek information about the appropriateness of Indigenous expenditure, existing and proposed delivery mechanisms and new policy proposals.
- A commitment to “whole of government” approaches to addressing Indigenous socio-economic disadvantage and facilitating Indigenous development are vital but this approach must involve a national elected Aboriginal body.

I have lodged this submission conscious that both major political parties are committed to the abolition of ATSIC.

It is my personal belief that ATSIC should have been reformed, not abolished.

I do understand, however, the need in the current political climate to move on to another model given the unfair political stigma now attached to the Aboriginal and Torres Strait Islander Commission.

It is my firm belief, and that of many Aboriginal people that I have discussed this matter with, that the new model should be founded on the same principles of self-determination which underpinned the ATSIC legislation. There is considerable debate within the Aboriginal community about what might replace ATSIC. A number have suggested a National First People's Commission.

For the purposes of this submission I refer to a future model as the 'new ATSIC.'

I believe that the recommendations I have made are cost effective, not legislatively complex, will realise benefits for both Indigenous peoples and Government and could be implemented incrementally. My submission consists of comments and recommendations under the following headings:

- Amend Objects of the current ATSIC Act as a basis for framing legislation for whatever national body replaces it. I note that the bill before the committee establishes a national representative body in its preamble but the bill goes on to seek the removal of that body.
- New functions for a "new ATSIC" including removal of most program delivery functions
- New structure for a "new ATSIC Board."
- New functions, structure and name change for ATSIC Regional Councils
- Commissioner and Regional Council elections
- New ATSIC administrative and staffing arrangements

This submission is designed to raise a number of fundamental questions about the future approach of the national government to Aboriginal Affairs. All of the issues, in my view, should be treated with equal importance. There are, however, three points that I wish to highlight in this letter.

It is imperative, in my view, that **self determination** be the guiding principle for any new arrangements which are recommended by your committee. It is also imperative that this include the concept of elected representatives, with portfolio responsibilities, on a national body **working directly** with the relevant portfolio Ministers and their agencies.

I believe the majority of their time should be spent advocating for the interests of their people directly with the Minister's and their agencies, e.g. 80/20 split. The third point is the absolute need for legislation to ensure the national elected body is provided with similar powers to that of a **Senate Estimates style committee**.

I would appreciate the opportunity of meeting with members of the Select Committee to expand on this submission and answer any questions that might arise.

Yours faithfully,

William Johnstone
9 August 2004

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Affairs
William Johnstone**

1. Amend Objects of the current ATSIC Act as a basis for a new organisation¹

In my view, the Objects stated in section 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989* ('the Act') needed to be strengthened to:

1. Legislate its role as the primary source of advice to Government about Indigenous issues; and
2. Ensure that program and service delivery agencies, including those administered by State and Territory governments, are charged with ensuring agreement with a new ATSIC about the way in which Indigenous policy and programs are developed and implemented - see section 3(d) of the Act.

2. Functions for a new ATSIC²

In my view, programs generally should have been moved from ATSIC to appropriate mainstream agencies that possess the expertise and infrastructure to deliver programs and services effectively. The exceptions would be those programs that are critical to "Aboriginal and Torres Strait Islander identity" including arts, culture, language, sport, native title, sponsoring NAIDOC celebrations and handling sensitive issues like the return of skeletal remains.

I believe that Aboriginal and Torres Strait Islander Australians must become part of the "mainstream" rather than remain marginalised including through having Indigenous programs administered by an Indigenous agency. Too often, Indigenous peoples have been disadvantaged in accessing mainstream program opportunities because other agencies deferred clients to "ATSIC's Indigenous programs."

I am conscious, however, that talk of mainstreaming in the current debate may be taken as an indication that I support the policy of the current government.

Nothing could be further from the truth.

The model proposed by the current government sets back Aboriginal self determination by at least 30 years. We must move forward, not backwards.

The removal of most program delivery functions³ from ATSIC would have assisted in alleviating concerns about elected representatives having conflicts of interest at the same time as ensuring Indigenous participation in the formulation and implementation of government policies that affect them. It would also have freed ATSIC to truly assume the dynamic role of being the primary source of advice to Government about Indigenous issues including the risk management of issues between the Government and Indigenous peoples.

¹ Amend section 3 of the Act - 'Objects'

² Amend section 7 of the Act - Functions of Commission

³ Amend grant provisions of the Act

A new national elected body should have five key functions:

1. Providing high quality policy advice to Government (and its agencies).

As the Government's primary adviser on Indigenous issues, the role would include providing high quality policy advice on the Government's relationship with Indigenous peoples, and its objectives, interests, and obligations relating to Indigenous peoples. This would include advice on sectoral issues, the risk management of issues between the Government and Indigenous peoples, and how to address socio-economic disadvantage and accelerate Indigenous development.

2. Monitoring Indigenous expenditure nationally and in each State/Territory.

A new ATSIC would be responsible for promoting higher achievement by Indigenous peoples against a range of socio-economic indicators including in respect to education, training and employment, housing, health and economic development. To assist in ensuring Indigenous access to adequate services, it would be the new ATSIC's job, including through its Regional Councils, to monitor all service providers and report to Commonwealth and State Parliaments on achievements and gaps.

The new national body would be required, each year, to table a "State of Indigenous Australia" report in Parliament setting out continuing areas of socio-economic disadvantage, identifying Indigenous and ATSIC achievements and advising on strategic directions that are to be pursued in the ensuing three years.

The Chairperson of the new body would be required to outline the highlights of the report in a speech to Federal Parliament. (Ideally, Commissioners would replicate this in State and Territory Parliaments). These would be powerful tools, as agencies would not wish to be named as "under-performing" in their Indigenous program and service delivery roles.

3. Oversight of program and service delivery to Indigenous Australians.

As described above, the new ATSIC's job would be to monitor program delivery and service provision and to examine potential improvements. Program and service delivery agencies would be required to consult to agreement with the national elected body on an annual basis about the means in which programs and services are delivered. Commonwealth agencies delivering programs and services to Indigenous peoples would be required to attend "Senate Estimate" type hearings where the Minister and the new ATSIC would seek information about the appropriateness of Indigenous expenditure, existing and proposed delivery mechanisms and new policy proposals. The

outcomes of these consultations would be a feature of a “State of Indigenous Australia” report to Parliament developed by the national representative body.

The new ATSIC would be responsible for leading “whole of government” approaches to addressing Indigenous disadvantage and promoting development. It is ludicrous that Whole of Government approaches developed by the current Federal Government were led by DIMIA rather than ATSIC.

4. Research, statistical and data responsibilities.

A new ATSIC would be responsible for the creation of a national “Indigenous Knowledge Centre”, supported by similar centres in each region. Clear partnerships would be established with the Australian Bureau of Statistics, the Commonwealth Grants Commission, the Productivity Commission, the Australian Institute of Aboriginal and Torres Strait Islander Studies and other research institutes, and program and service delivery agencies.

5. **Administer only those programs that are critical to “Indigenous identity”**. These would include, but not necessarily limited to, rights, arts and culture, sponsoring NAIDOC celebrations, native title, and issues of critical cultural significance such as the return of skeletal remains.

3. New structure for ATSIC Board

There are a number of factors that contributed to a lack of confidence in the ATSIC Board by Indigenous and non-Indigenous Australians and Government. These included too many Commissioners, a (real and perceived) lack of appropriate skills, conflicts of interest arising from membership of Indigenous organisations and a significant gender imbalance.

I recommend the following to address these issues in a new national body:

- Reducing elected Commissioners to twelve. A by-election would be held in that region from where the Chairperson is elected⁴
- Four Commissioners appointed by the Minister (who would seek self-nominations prior to 3 yearly elections) to ensure gender balance and help address any skills gaps
- Commissioners would have national and regional responsibilities including membership of the Board and Chairpersonship of Regional Directorates (see section 3 below - ATSIC Regional Indigenous Directorates)
- Commissioners would be required to resign from Indigenous organisations prior to appointment by the Minister.
- Commissioners would be allocated portfolios in accord with the Ministerial portfolio's of the national Government. They should be empowered to work directly with the relevant Minister's office in those portfolio areas in the development and implementation of policy and

⁴ Amend Schedule 1 to the Act

programs. In essence they would fulfill a similar role to that of Parliamentary secretaries under the current administrative structure of Government.

- All should be employed full time and their entitlements determined, as they are now, by the Remuneration Tribunal.

4. Residence of elected Chairperson of a new ATSIC.

The Chairperson ought be required to reside in Canberra for the period of his/her term. This would facilitate closer relationships between the Chairperson, the Minister for Aboriginal and Torres Strait Islander Affairs and the CEO and staff of the Commission. It would also enable increased dialogue (and lobbying) with key opinion and policy drivers in the national capital, particularly those in Parliament House.

5. Regional Councils – roles, functions, structure and name change

5.1 Roles and functions⁵

I envisage more strategic, policy-focussed representation for Aboriginal and Torres Strait Islander peoples at the regional level. This would be initiated by the removal of most program delivery responsibilities (devolved to mainstream agencies as discussed above) and a clearer focus on functions that largely mirror those of a new ATSIC Board. These would be particular to the region (or State/Territory) represented, including:

- Providing high quality policy and program delivery advice on Indigenous issues to a new ATSIC, government agencies, the private sector and State and Territory Parliaments
- Monitoring Indigenous expenditure in the region/State/Territory and reporting through the new body to the Federal Government
- Developing a “Regional (or State/Territory where applicable) Statement of Indigenous issues” for tabling in State/Territory Parliaments. This would be a powerful tool as agencies would be reluctant to be identified as “under-performing” in Indigenous program and service delivery.
- Oversight of program and service delivery to Indigenous Australians in the region/State/Territory. Program and service delivery agencies would be required to consult to agreement with RIPDs on a bi-annual basis about the means by which programs and services are delivered in the region/State/Territory. The RIPD would act as a clearing house
- Encouraging communities, individuals and families to take responsibility for determining local developmental needs and advising them about appropriate avenues for assistance from mainstream agencies and/or the private sector

⁵ Amend section 94 of the Act

- Research, data and statistical responsibilities – creation of an “Indigenous Knowledge Centre” for the region (which would feed into the new ATSIC National Indigenous Knowledge Centre)
- Ensuring effective consultation with constituents and the provision of program and policy advice. Funding would be available to facilitate Community Working Parties as issues arise. Agencies would be charged a “user pays” fee for the dissemination of program and/or policy advice by the RIPD to constituents
- Administering those programs critical to Indigenous identity as discussed above

5.2 Regional Council name change⁶

I propose that the present structure of Regional Councils be retained with some modification given the networks that have been developed over the past decade but should be re-named Regional Indigenous Policy Directorates (RIPDs) to better reflect these new functions.

5.3 Number and membership of RIPDs – relationship to new ATSIC Board

I recommend the establishment of eleven RIPDs⁷ - Tasmania x 1, Victoria x 1, South Australia x 1, Western Australia x 2, NT x 2, Queensland x 2, NSW x 2 - that would replace the current 35 Regional Councils. I also recommend that RIPD membership be limited to eight.⁸ My rationale for less RIPDs and RIPD members includes:

- Clearer and less points of contact for program and service delivery agencies and governments
- Enhanced consistency in program delivery and policy advice across larger regions (Community Working Parties would be formed by the RIPD where local advice is required)
- Increased competition for RIPD membership and, hopefully, a commensurate increase in appropriate qualifications, skills and experience
- Cost savings would enable the payment of an annual stipend (say \$30-40,000) to RIPD members to better remunerate their attendance at RIPD meetings, advocacy and representational work, and meetings with relevant agencies

Clear linkages between the new ATSIC Board and the RIPDs, and additional savings, would be established through Commissioners having the dual responsibility of chairing RIPDs and participating as a member of the ATSIC Board. This would obviate the need for Regional Council Chairpersons⁹ but require the election of full-time Deputy Commissioners to assist with the leadership and operations of RIPDs.

⁶ Amend section 92 of the Act

⁷ Amend Schedule 1 to the Act

⁸ Amend section 115

⁹ Amend section 127 of the Act

6. Location of RIPDs

I recommend that consideration be given to locating RIPDs in the following regions: Cairns and Brisbane (QLD), Sydney and Dubbo (NSW), Melbourne (VIC), Adelaide (SA), Perth and Broome (WA), Darwin and Alice Springs (NT) and Hobart (TAS). However I am sure that arguments can be mounted to locate these in other regions and would be happy to consider those.

7. Regional Council and Commissioner elections

Notwithstanding the provisions of section 102 of the ATSI Act - *Persons qualified to be elected to Regional Councils* - there is no guarantee that persons elected possess the appropriate qualifications, skills or experience to be effective Councillors or Commissioners. I would recommend an amendment to section 102 that would require candidates to lodge a public statement of the qualifications, work experience and skills they claim they would bring to positions. Provisions would also be included outlining the penalties that could be imposed on any candidate who makes false claims.

I believe that such provisions would assist in enhancing the accountability, transparency and skills of a new ATSI Board and RIPD members.

7. ATSI staffing and administrative arrangements

7.1 Staffing

Section 55 of the ATSI Act provides that the staff required to assist the Commission in the performance of its functions shall be persons engaged under the *Public Service Act 1999*. This has led to a perception by elected representatives, and Aboriginal and Torres Strait Islander peoples, that ATSI staff have been loyal to either the Minister or the Government rather than to the Board. It is anomalous that Indigenous Business Australia¹⁰ and the Indigenous Land Corporation¹¹ are staffed outside of the *Public Service Act 1999* with terms and conditions of staff determined in writing by their respective Boards. This has been a major issue in all previous reviews of ATSI.

I recommend that a new ATSI be staffed outside of the *Public Service Act 1999* with its own workplace agreement providing greater flexibility to engage the professionals (researchers, economists, health professionals, actuaries, statisticians etc) needed to accurately quantify and qualify Indigenous disadvantage and assist Indigenous development. Without this expert capacity, any new body will continue to struggle to gain the confidence of governments, agencies and Indigenous peoples. These staffing arrangements will also assist in overcoming the perception that staff members are not loyal to a new ATSI Board.

¹⁰ See section 175 of the Act

¹¹ See section 192S of the Act

7.2 administrative structure

I recommend that a new administrative structure should align itself to the elected arm structure resulting in a National Office (to support the new ATSIC Board) and RIDP Offices to support Commissioners and elected RIDP members. This would result in significant savings in property operating and other expenses currently incurred in 30+ ATSIC State and Regional Offices and the arrangements currently being put in place under the Howard Government's new administrative arrangements.

8. Ministerial support

I acknowledge that a Minister exclusively responsible for Aboriginal and Torres Strait Islander Affairs would require support and advice independent from that provided by ATSIC. It will not be the case that the Government and ATSIC agree on all issues. I recommend that an office in the Department of the Prime Minister and Cabinet provide support to the Minister as has occurred previously. A Memorandum of Understanding would have to be developed between that office and ATSIC to set out administrative arrangements.