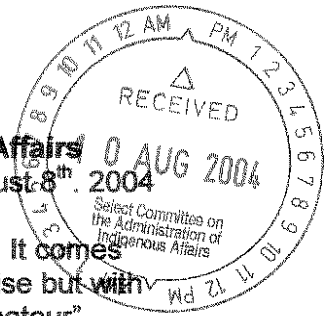


**Senate Select Committee on the Administration of Indigenous Affairs**

August 8<sup>th</sup> 2004



This submission is based on a personal submission to the ATSI Review. It comes from a concerned, non-Indigenous, Australian with no professional expertise but with many years of engagement with Indigenous issues as an enthusiastic "amateur", leading to the formation of a local reconciliation group in the Sutherland Shire, in NSW.

My comments are offered with a sense of humility. The views, and interests, of Indigenous Australians must carry the greatest weight. I earnestly hope that, at the end of this process, their concerns are completely reflected in the policy changes which arise from the current process.

I note that the response to the demise of ATSI is not uniform across Indigenous Australia. Indeed in my own locality, I have heard local Aboriginal leaders echo the views of Mr. Stephen Hagan from Queensland University – a former ATSI regional councillor – who spoke of "overpaid and under-performing ATSI commissioners", "highly volatile council meetings" and, "political manipulation and nepotism" on the part of some Aboriginal leaders. Mr. Hagan was blunt in his assessment of the Government's mainstreaming policy – "What do we have to lose, as they couldn't possibly be any worse than ATSI in Indigenous service delivery."

*Courier-Mail, 20.4.04.*

Nevertheless, notwithstanding the response of my local Aboriginal leadership and that of Mr. Hagan, I also note that many other Indigenous leaders have expressed concerns about the Government's new policy.

To highlight some of those concerns:

**Mr. Patrick Dodson**

"Most of the senior people who have had a long track record of doing business with governments as well as departments and trying to handle the rights of Indigenous people in this country won't go anywhere near an advisory body."

*Sydney Morning Herald, 17.4.04*

**Senator Aden Ridgeway**

"Senator Ridgeway said he would not encourage Indigenous leaders to join (the Government's proposed advisory panel) 'because clearly the Government's decision is one designed to divide Indigenous people'."

*The Age, 17.4.04*

**Mr. Noel Pearson**

"(ATSI) is 'very dysfunctional' and needs 'very radical reform' .....An independent national body such as ATSI which can fight over issues such as native title is necessary, but it should be 'reconstructed and regionalised'.....'We need an ATSI that's centred on, designed around regional autonomy, rather than central bureaucracy and central commission and central politicking in Canberra.'"

*Australian Broadcasting Corporation, Australian Story, 11.11.02*

"This is one necessary step backwards but instead of plotting two new steps forward, the Prime Minister has indicated that, in fact, we're going to take two steps backwards and return to the old mainstreaming disaster in Aboriginal Affairs."

*Australian Broadcasting Corporation, 7:30 Report, 15.4.04*

The late Mr. Djerkurra

"Despite its flaws, and I do not want to deny them, ATSIC deserved better than execution by Prime Ministerial decree.....The Prime Minister has long refused to accept the fundamental difference of Aboriginal people in our community. He was never sympathetic to the principles on which ATSIC was based and founded. He has always rejected any suggestion of Indigenous autonomy and self-determination.. .....No more paternalistic model of government could be found"

*The Canberra Times, 14.5.04*

Ms. Lowitja O'Donohue

"...We do need a national voice and this may push us back to where we were fighting for our rights on the streets. That's the way we did it in the past. It could lead to hostility and radicalism."

*The Australian, 16.4.04*

Mr. Paul Newman, Chairperson, NSW Reconciliation Council.

"The government's policy is both short-sighted and continues to display a disrespect and ignorance about the sovereign rights of Australia's Indigenous peoples to self-determination."

*NSW Reconciliation Council, Media release, 16.4.04.*

Ms. Linda Birney

".....the abolition of ATSIC will further disadvantage the Indigenous community.....the regional ATSIC councils are a conduit for leadership development.....the mainstreaming of Indigenous programs is a tragedy....it is going to be an absolute disaster."

*ABC News Online, 15.5.04*

Ass. Prof. Boni Robertson, Director, Gumurri Centre, Griffith University.

"The April 15 announcement of the abolition of ATSIC came without warning or adequate consultation with those affected and, it appears, without due consideration to the ramifications of such an act.....Indigenous Australians want ineffective services to be dealt with but not at the expense of the demise of an entire organisation that gives them voice.....The abolition of ATSIC is not the answer. It is a retrograde step that erodes the good work accomplished by governments and Indigenous organisations."

*The Courier-Mail, 29.4.04*

I wish to support those calling for radical reform of ATSIC rather than abolition of the organisation. I do so on the basis of the following:

#### History

History gives us no reason for confidence in policies of "mainstreaming" and for trusting in the "good faith" of governments, and for that matter of the wider community. Indigenous Australians have for too long suffered the failure of successive governments to improve their lot. They have seen commissions come and go, and report after report handed down detailing appalling living conditions, recommending, in vain, changes to the way governments deliver services.

A simple reflection on relevant recent history, covering approximately the past 20 – 35 years, shows clearly that if ATSIC failed Aboriginal people so did its predecessors, and so did its contemporaries in government administration. They, perhaps, have failed even more abominably. My purpose in reviewing this history is not to provide some sort of negative defence of ATSIC, but to demand that we make a real commitment to "getting it right" this time.

To cite some examples of this governmental and bureaucratic failure I make reference to various governmental reports covering this period.

A 1989 inquiry into the financial affairs of the Aboriginal Development Commission, by the then Commonwealth Auditor-General, found financial mismanagement

I refer also, and in particular, to the notorious case of the Aboriginal settlement at Toomelah, in NSW, which the then Premier of NSW, Mr. Nick Greiner, noted was only one example of many similar Aboriginal communities across the state. (Which situation he sought to blame on the, then 5 year old, NSW Aboriginal Land Rights Act. - **Scapegoating seems to be a forever present.**)

Ref. *Sydney Morning Herald*, 16.6.88)

In 1988 the Human Rights and Equal Opportunity Commission reported on the living conditions of Aboriginal people at the Toomelah Aboriginal Mission. Detailing scandalous bureaucratic incompetence, the report noted that conditions there resembled those in the most disadvantaged of Third World countries. The report said that **Federal Government mismanagement was the direct cause of the Third World living conditions**. It made the further point that Government attention had been, on many occasions, drawn to living conditions in Toomelah, most notably in 1970, by Professor Wootten, who described living conditions in almost identical terms to the 1988 HREOC report.

In spite of this, by 1988 nothing had been done. The HREOC report noted interest shown by **numerous government bodies** in the problems at Toomelah, yet **none had been willing to spend money rectifying them**. It described the Federal Government's Aboriginal Development Commission as, "a body designed to, provide for the basic needs of Aborigines, (which) pursued policies which directly impeded and obstructed their interests."

The HREOC made some 32 recommendations, which included a call for more co-ordination between various instrumentalities responsible for aspects of Aboriginal development. It is to be noted that this call was echoed by the ATSI Review Panel, **some 16 years later**.

#### The current national situation

The ATSI Review Panel confirmed that there have been some improvements, but **many of the issues identified in the past**, by the Commonwealth Auditor-General and by the HREOC **still remain as stumbling blocks to the advancement of Indigenous people and communities**. The ATSI Review Panel report also revealed **mainstream government instrumentalities** (responsible for the vast majority, about 85%, of government spending on behalf of Indigenous Australians) **failing in their duties** and passing the buck to ATSI (another ever-present human failing), with negative consequences for ATSI's public image, and the public image of Indigenous Australians.

The ATSI Review Panel also cited two other significant, recent, Federal Government commissioned reports indicating **continuing governmental failure** in their responsibilities towards Aboriginal people – reports of the Commonwealth Grants Commission and the Productivity Commission.

The Productivity Commission, Review of Government Service Provision Report 2003, "paints an alarming picture in respect of the situation of Indigenous people... (and) shows that the situation for Indigenous people in **all areas where governments provide services** remains poor"

*Discussion Paper page 17, quoting ATSI submission to the ATSI Review.*

*It is to be noted that most services provided to Aboriginal people are already mainstreamed. Education has always been a mainstream responsibility, as has health, except for a short period following the establishment of ATSI. Health*

*was returned to mainstream responsibility in 1995, when Mr. Richardson was the Minister. Yet clearly things are getting worse for Indigenous Australians in these areas.*

The Commonwealth Grants Commission Report on Indigenous Funding 2001 found that:

“Supplementary funds provided through ATSIC and other agencies are forced to do too much work, due to barriers to access to mainstream programs.”

“Australia’s federal system of government obscures responsibility between various levels of government and creates opportunities for cost shifting, both between governments and between agencies at the same level of government.”

The Grants Commission also concluded that ATSIC had done a “more than reasonable job of properly allocating its housing fund.

*Ref. ABC Radio National, The National Interest 27.4.03. Mr. Bob Collins speaking.*

#### A Situation for National Shame

I well remember the tears of Justice Marcus Einfeld, when delivering the HREOC 1988 Toomelah report. It is soul-destroying to read the words of Mr. Stephen Hagan reporting the reaction of ABC TV Four Corners journalists on a recent visit to Cunnamulla:

“.....I witnessed their producer and journalist, hardened from assignments in war-torn Africa and Eastern Europe, brought to tears on hearing the depressing stories of Indigenous people living in this town.....”

*Courier-Mail article previously cited.*

What is now needed, and this must surely now be recognised, is a genuine national commitment, to end Indigenous disadvantage, which transcends white ideological concerns and self-interest and, which fully recognises cultural differences and Indigenous aspirations.

In the words of Mr. Sam Jeffries, Chair of ATSIC’s Murdi Paaki Regional Council:

“We do not need any more bureaucratic caravans passing through on consultation tours that recommend more research and more task forces.”

*ATSIC Media Release, 26.4.04*

#### Empowerment

Recent studies, in Europe & the United States have indicated that “empowerment” (the degree of personal power one holds to directly affect one’s own personal situation) is a key to mental and physical health.

If the cycle of welfare dependency is to be broken, it can’t be through a return to paternalistic control, it can only come through “empowerment”, both at the individual and the local community level. It is, therefore, vitally important that the principle of self-determination be re-affirmed and accepted as being at the core of efforts to reform & restructure ATSIC.

#### A Basic Principle - Self-determination

For some years now “self-determination” has been a guiding principle of Aboriginal affairs – a principle which has been, largely, honoured in the breach.

The Hawke Labor Government was courageous in introducing ATSIC in an effort to enhance the process of advancing the development of Indigenous peoples and communities in this country. It was from the beginning, and remained, controversial – both among Aboriginal and non-Indigenous Australians. It raised hopes among some of uniting the Aboriginal peoples, while others saw it as just “another piece of paper” which would not change anything, others again saw it as the birth of impending disaster. From the beginning Aboriginal people, particularly traditional peoples, were

expressing concerns about the ability of a large bureaucracy to handle the affairs of, and represent the interests of the broad diversity of Aboriginal communities.

"Self-determination" is a principle which is often misunderstood and even misrepresented. It should not be seen as a demand for separate nation status, nor a pre-cursor to that. Central to this principle is the notion of Aboriginal sovereignty which needs to be seen in the light of the historical, and continuing, diversity of Aboriginal Australia. As Dr. H.C. Coombs noted, in 1984, "the 'self-management' or 'self-determination' which Aborigines seek is primarily local in its form and purpose." This must be taken into account in the planning and delivery of services to Aboriginal people. A bureaucratic "one-size-fits-all" approach fails comprehensively. Real decision making power must be placed in the hands of the projected beneficiaries of programs and services. Programs and services must match real and not perceived needs and must also aim to promote permanent, positive change. As the Commonwealth Grants Commission report, referred to above, said:

"...Local and regional arrangements have the potential to move decision making closer to the grassroots Indigenous communities and to further promote community control of service provision. They have the potential to provide dynamic a link between joint decision-making at higher levels and local community control over service delivery matters."

In summary, a viable and realistic approach to service delivery must, at the minimum, be one of engagement, consultation and negotiation, at the local level.

#### **Further Issues**

The ATSI Review Panel canvassed a broad range of issues, far too many for me to comment on them all. In many instances I lack the expertise and the knowledge base to allow valid comment. Nevertheless, in addition to the comments made above, I feel moved to comment on the following:

##### ATSI's Role and Relationship with the Government

The ATSI Review Panel identified a lack of clarity as to ATSI's role in the Commonwealth and revealed concerns that the Minister and ATSI are not working effectively together. It was felt that the Minister came to rely increasingly on the Office of Aboriginal and Torres Strait Islander Affairs, within his Department for policy advice and less on ATSI.

Indigenous Affairs has long been a political football, with Indigenous people - particularly in recent years - being caught up in the struggle between competing white political and social visions. That the Minister chose to rely on advice from OATSIA rather than from ATSI, may, from one point of view, be seen as a case of the Minister "shopping for advice", advice which suits the Government's own ideological perspective. On the other hand it may reflect a loss of ATSI's credibility and authority among Aboriginal people.

Either way, ATSI seemed to have been increasingly sidelined into irrelevance until, finally, the Government saw its opportunity to abolish an organisation with which it had never been comfortable.

Accepting that ATSI had lost credibility and authority among Aboriginal people - as the ATSI Review Panel indicated - one has to ask, what credibility has OATSIA with Aboriginal people?

Government must have a transparent source of advice on Aboriginal issues which has the trust and confidence of the Aboriginal peoples of this country.

It may be that the Minister is receiving advice on Aboriginal issues from sources with little credibility among Aboriginal people.

To resolve this Government must;

- 1) Establish an authoritative source of advice which has demonstrable credibility with the Indigenous peoples of Australia.
- 2) Re-commit itself to the principle of self-determination. This seems to be intrinsic to the recommendation at 1) above.
- 3) Commit itself totally to this authoritative source of advice.

The logical solution here would seem to be the restructure and re-invigoration of ATSIC, coupled with the dissolution of OATSIA. It will take time to achieve the restructure and re-invigoration of ATSIC, consequently a phased dissolution of OATSIA may be necessary. There must, nevertheless, be an upfront commitment by the Minister to the dissolution of OATSIA, and it would require some sensitivity on her/his part as to the timing.

#### ATSIC electoral/representative basis

Is the current electoral basis of ATSIC a white democratic impost? In Aboriginal tradition, decision making is based on consensus.

The consensual model of decision making works well in small groups but is it able to be implemented at a wider level? Clearly, modern mass societies cannot, ultimately, operate solely on the consensus model.

My belief is that if we value Aboriginal culture, in its variety, we must take steps to protect and enhance it. While I understand that "sovereignty" and "self-determination" are primarily local in character and are likely to remain so, I yet believe that there is an underlying unity to Aboriginal Australia which, for the advancement of all, could be, and should be, enhanced.

A model for selecting ATSIC commissioners must incorporate elements of the consensual model along with the electoral democracy model required for modern society. It must, also, reflect the variety of contemporary Aboriginal experience and allow flexibility for changing communities to adapt their procedures/processes to accommodate changed circumstances.

#### A Structure

What sort of structure might accommodate this? I venture to suggest a three tier structure.

The top level would be the national body. This would be the Government's advisory body. It would provide political advocacy, set national policy and benchmarks and monitor service delivery (this should extend to service delivery by all government departments). It should have direct representation to the Council of Australian Governments on Indigenous matters.

The second tier would be comprised of blocks of three types of regional council; representing traditional peoples, rural peoples and urban peoples respectively. Each of the three blocks would combine, nationally, to select, for example, 12-18 candidates from which 6 would be elected, on a national basis, to the national body. This national vote would mean that candidates would need to have national exposure, this would encourage insight into areas other than their own and decision making on a basis of other than solely their own local area interests.

At the bottom level would be the local bodies which would select "x" number of representatives to their regional bodies, by either the consensual model or the electoral democracy model, depending on their own choice.

Membership of local bodies would be open to all eligible persons, generally as per local custom. However, here one feels compelled to recommend a requirement to

allow female membership, where local custom disallows the input of women, (if that situation pertains anywhere)

### The Role of the Minister

While recognising the Government's ultimate responsibility for all Australians, and the principle of Ministerial accountability, the Minister's relationship with the Board should be characterised by an ethic of service, so that in actual practice the normal role of the Minister would be one of service, support and advocacy.

Ministers must be chosen for their knowledge of Indigenous people and the issues facing them and for their passion in advocating on behalf of Indigenous people. They must be fearless in their advocacy. We cannot expect that the mass media's often poor standard of reportage of Indigenous issues is suddenly going to fade away. Ministers must be well-informed, media savvy and willing to confront inaccurate reportage and myth perpetuation by mainstream media organisations. The myths must be effectively challenged so that the wider populace can gain a better understanding of the difficulties Indigenous Australians face.

I recognise that, in the preceding, I have proposed some "left-field" suggestions not canvassed by the Review Panel, but I believe that the provision of regional councils based on the three main types of contemporary Aboriginal experience may best reflect the range of contemporary Aboriginal experience, and concerns, at the national level.

If it were successful in so doing it would re-establish ATSIC's credibility with Aboriginal people and hence provide the Minister with the needed authoritative advice. There may still arise occasions when the Minister may require "specialist" advice. On such occasions, the Minister would select such specialist advisers in consultation with the ATSIC board.

Finally, we should not consider any changes to ATSIC, or any new structure, as representing an ultimate solution. Fine tuning will more than likely be required as time progresses. As the Review Panel noted: "there will always be a degree of tension between the structures of cultural groups and ATSIC's representative structure, no matter how sensitive the design of ATSIC. The issue is how ATSIC deals with these tensions, both structurally and by delivering positive outcomes."

*Discussion Paper, pages 13/14.*

### Service Delivery

Responsibility for service delivery must be devolved to regional councils/authorities. Clear lines of communication across all levels, facilitated and supported by appropriate protocols, procedures and resources must be established.

There would seem to be many, ready, willing and able, local incorporated Aboriginal organisations, through which Regional Councils - where the expertise exists - might work to deliver services. Where that expertise does not exist the Regional Councils must have oversight of mainstream bodies delivering services to Aboriginal people, ensuring that those bodies work effectively in appropriate ways to meet the needs of local Aboriginal people. Where expertise is lacking, government should make it a priority to, not only supply the appropriate service, but also develop local expertise through education and training programs.

Several years ago I was told by a local Aboriginal elder that a major reason government programs for Aboriginal people fail is that they do not take into account Aboriginal family structure and values. It does seem that it is only at the local level that this can adequately be taken into account. A bureaucratic structure, even based at a regional level, would seem totally inimicable to Aboriginal family values. It is for

this reason that I suggest that Regional Councils work through local Aboriginal incorporated bodies.

I would not support a reduction in the numbers of Regional Councils from current levels, in spite of administrative efficiencies that may be achieved by doing so. This, to me, seems to be antithetical to the principles of "self-determination" and "de-bureaucratisation", and would do nothing to encourage empowerment. In this day and age, it should be possible to use information technology to minimise administrative inefficiencies.

Finally, I would like to turn to, and comment upon, issues of corruption and nepotism and community disharmony reflected in the "highly volatile council meetings" referred to by Mr. Hagan.

#### Corruption within ATSIC

ATSIC was the most heavily scrutinised of all government bodies. The Review Panel noted that::

"There has been a great deal of debate and public comment for years about ATSIC's accountability. The usual response from ATSIC is to point to the relatively clean bill of health that it and the organisations it funds get from the Australian National Audit Office. While this compliance aspect is true, it does not necessarily indicate effectiveness."

Discussion Paper, page 52.

Ineffectiveness and corruption are not the same thing. Some of the reasons for the overall ineffectiveness of ATSIC have been discussed in the preceding. It seems clear that not all blame can be attributed to ATSIC Commissioners/Councillors. Much of the blame may be sheeted home to government. In particular may this be so in relation to the continuing failure of governments to implement, and adequately resource, the sound recommendations from the many inquiries over the past few decades.

One might comment, also, that Ministers have failed to properly advocate on behalf of Indigenous Australians and ATSIC. There has been much uninformed and biased commentary on Indigenous affairs – indeed, by comparison, rarely does the manifest corruption within white society and organisations receive such intense and prolonged media attention. Perhaps this is because Aboriginal peoples are recipients of 'public monies', coming out of the tax payers pocket. All too rarely do we realise that corruption within white owned businesses also costs the public, through higher prices for goods and services consumed. I wonder if the media happened to be Aboriginal owned and controlled whether that would alter our perceptions.

Too rarely have Ministers displayed the courage to confront the myths, and the myth makers. No Australian could be better placed to do so and therefore the moral responsibility to do so sits heavily on the Ministers' shoulders.

Allegations of corruption have been detrimental, in the extreme, to ATSIC, and to general community perceptions of Indigenous people. That those allegations have been allowed, by the Minister, to "fester" has contributed to the erosion of confidence in ATSIC across both the Indigenous and non-Indigenous communities. The Minister has had at his/her disposal the Office of Evaluation and audit within ATSIC and has failed to use the powers available.

One is entitled to ask 'why did the Minister not institute decisive action to investigate and stamp out the alleged corruption? Are we not entitled to see the Ministers failure as part of a long history of failure on the part of government?'



Given that the allegations and perceptions of corruption have had such far reaching effect and given that the Government has done nothing to authoritatively establish the truth of these allegations, might it not be possible for the Parliament to establish a well-resourced, wide-ranging inquiry to determine the truth of such allegations. It is observed, that should Labor win government at the forthcoming election, a different outcome to this current process is likely. It would seem vitally important that no new, permanent, arrangements be made until this issue has been cleared up. We need to learn from this experience and apply that learning to any new arrangements, so that history is not repeated. Perhaps something like South Africa's Truth & Reconciliation Commission might be appropriate.

#### Disharmony within Indigenous Communities

Observation of division, disharmony and conflict within some, perhaps many, Indigenous communities does not escape the attention of those of us committed to reconciliation with our Indigenous brothers and sisters. It is a source of pain to them, as it is with us also. Again, a simple reflection on post-contact history indicates to us that much of that division, disharmony and conflict is attributable to past, and present, government policies. Policies of displacement and dispossession, have broken links with land, disrupted concomitant protocols and traditional relationships between peoples exacerbating traditional rivalries and conflicts, Child removal policies have, in addition, broken family links and many have been institutionalised, disrupting normal psycho/social development.

Nevertheless, it is a psychological truism, that in the end, the responsibility for healing falls back on us as individuals. The "talking cure", for all of us, is a process necessary for psychological health and, psychologically healthy people do, constantly, conduct a "wise" internal dialogue. Where distress is extreme the process needs support, and individuals need support.

I believe that there is a case for Government to financially assist culturally appropriate psycho/social support for Indigenous people and communities. The emphasis must, here, be on "culturally appropriate" and I believe that there may well be "healers" within the Indigenous community to which the Government could turn.

#### Conclusion

It is to be noted that much of the positive aspects of the change, the Government is seeking to make, take up recommendations made years ago - including by this writer (a very ordinary Australian) in a submission in response to the 1998 attempt by the Greiner Governments to abolish the NSW Land Rights Act. One sees so many parallels between that situation and this, and one sees a continuance of the push by the conservative right of Australian politics to deny Indigenous Australians their rights.

So, I repeat my demand that we make a real commitment to "getting it right" this time. Let us be done with nourishing our favoured socio/political visions and let us finally adequately resource and support Indigenous Australians to do for themselves that which we haven't been willing to do for them.



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