

**SUBMISSION TO THE SENATE SELECT COMMITTEE ON THE  
ADMINISTRATION OF INDIGENOUS AFFAIRS.**

**Mr Geoff Scott  
Acting Chief Executive Officer  
New South Wales Aboriginal Land Council**

**Sydney, February 2, 2005**

SELECT COMMITTEE ON THE  
ADMINISTRATION OF INDIGENOUS AFFAIRS

REC'D: .....

FROM: *N.S.W. Aboriginal Land Council*

RECOMMENDED FOR PUBLICATION:

SECRETARY: *MAIS*

## INTRODUCTION.

I thank the Committee for the opportunity to appear before you today.

I'd also commend all of those Senators who voted for the establishment of this Committee.

It has provided Aboriginal people an opportunity denied them by the Howard Government.

That is, the opportunity to have a meaningful say on the future administration of Aboriginal Affairs.

I'm mindful in saying this that the abolition of ATSIC by the Howard Government would not have been considered during its last term of office had it not been for the hamfisted attempt by former Labor Leader Mark Latham.

I'd like to begin with a short discussion on the first of your three terms of reference (a) the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004.

I then wish to canvass a number of issues related to terms of reference (b) and (c).

Before I do so let me say this.

The Aboriginal people I talk to throughout New South Wales and beyond accept the fact that the Howard Government will go ahead with the abolition of ATSIC no matter what this Committee recommends to the Parliament.

This should not stop the Committee delivering a strong recommendation that the Bill be withdrawn.

I would urge you to do so.

A proper period of consultation on the reform of ATSIC with Aboriginal people throughout Australia should then follow.

When the real history of ATSIC is written, as opposed to the fiction presented in our mainstream media, many people outside of the Aboriginal community will come to learn what many within our community already know.

With all its faults, ATSIC, was the best model of limited self determination so far developed for Aboriginal people anywhere in the world.

It was a unique organisation.

It should be reformed not abolished.

We need a new ATSIC, as against no ATSIC.

The complete absence of a representative national voice for our people is becoming more apparent with the passing of every day.

The Government Senator's Dissenting Report states that there has been little support expressed in submissions and hearings of this committee for ATSIC.

With respect, that is not my reading of the submissions or the transcripts.

I can assure you it is not a view generally held within the Aboriginal community in New South Wales.

That dissenting Report also states that the bill does nothing more than abolish the ATSIC Board.

It does much more.

I have prepared a written submission which begins by discussing the provisions of the Bill.

With the indulgence of the committee I'd now like to take you through the submission as it relates to your first term of reference.

## **ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2004**

The Bill is regressive.

The dual denials for Aboriginal people are clear from even a cursory glance at the legislation.

The denial of Indigenous peoples involvement in any real and meaningful sense in the delivery of programs and, the denial of their voice.

The gains of the past twenty years are to be swept away and replaced by benevolence and benign contempt.

### **SUMMARY OF SIGNIFICANT PROVISIONS**

The Bill repeals the provisions in the *Aboriginal and Torres Strait Islander Commission Act 1989* ("the ATSIC Act"), which establishes the national board of ATSIC, the administrative arm of ATSIC and the numerous advisory forums with effect from 1 July 2004.

It abolishes all ATSIC functions, constitution, administration and operation--- the position of Chief Executive Officer, the Regional Land Fund, the Housing Fund, the Office of Evaluation and Audit, the Office of Torres Strait Islander Affairs and the Torres Strait Islander Advisory Board.

The Regional Land Fund and the Housing Fund and the Office of Evaluation and Audit are all to be recreated under differing arrangements.

- The Housing Fund is to be transferred to Indigenous Business Australia. It is intended the powers and functions of the IBA be amended to enable it to carry out the programs as ATSIC did. It is intended the Minister be given the power to issue general directions to the IBA.
- The Regional Land Fund is to be transferred to the Indigenous Land Corporation, the ILC powers and functions are to be amended to enable it to implement Programs as ATSIC did. Again, the Minister will be given the power to issue general directions to the ILC.
- The Office of Evaluation and Audit, is proposed to be renamed the Office of Evaluation and Audit (Indigenous Programs). The Office is to report to the Minister (only) on evaluations or audits of relevant programs administered by

Australian Government bodies; and, the activities of any individual or organisation that has received funding under any relevant program

The Bill provides for the retention of Regional Councils until 30 June 2005 and then explicitly for their abolition on that date.

Arrangements and functions of the Regional Councils, in the interim, are to be amended.

The Registrar of Aboriginal Corporations instead of ATSIC will now formulate Regional Council Model Rules for the conduct of Regional Council meetings

The role of the Commission in Regional Council matters would be assumed by the Minister.

These are:

- gazetting regional boundary determinations;
- approving Regional Council engagement of staff;
- determining terms and conditions for members of Regional Council advisory committees;
- declaring persons to have ceased to be members of, or to have been removed/resigned from a Regional Council;
- appointing/terminating an administrator for a Regional Council;
- granting leave of absence (other than recreation leave) for Regional Council Chairpersons; and
- convening a meeting of a Regional Council at any time

Changes to Regional Councils functions include:

- Provide the Minister (previously the Commission) with views of Aboriginal people and Torres Strait Islanders about the activities of the Torres Strait Regional Authority and Commonwealth and state/territory and local government bodies in their region;
- No requirement to prepare draft budgets or proposals for allocation of moneys but the Regional Councils will retain the capacity to make proposals on expenditure of the Regional Land Fund (which is to be administered by the Indigenous Land Corporation);
- Submit annual reports to the Minister; and
- Keep a register of the interests disclosed by members of a Regional Council

These are important. They downgrade the role of the Regional Council during the transitional period in terms of advice and involvement in resource allocation.

The measures further explain and clarify the intent and subordinate position the Regional Councils would be relegated to.

The zones and electoral review are to be abolished. No future elections of any description are proposed.

The Torres Strait Regional Authority is not affected by these processes. As such they will now be the only "Indigenous" people in the Commonwealth sphere who will have an elected representative body to advocate for their interests.

The Bill proposes to remove any involvement of Aboriginal people from 11 separate pieces of legislation, ranging from receipt of notice, to advice and/or nomination on board membership to direct program administrative roles.

The amendments are consequential as a result of the intent to eliminate the voice of Aboriginal people through the ATSIC Board of Commissioners and the Regional Council voice from the deliberations and decision-making in the realm of the Commonwealth.

**The various pieces of legislation affected by the bill include the following:**

**Aboriginal and Torres Strait Islander Heritage Protection Act 1984**

The Bill removes reference to the Chief Executive Officer and staff of ATSIC from the delegation provisions and enables any delegation to an officer of the Department in force immediately before 1 July 2004 to continue to operate.

**Aboriginal Councils and Associations Act 1976**

Extends the functions of the Registrar to the formulation of model rules for the conduct of proceedings at Regional Council meetings.

**Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987**

Removes reference to the Chief Executive Officer and staff of ATSIC from the delegation provisions and ensures that any delegation to an officer of the Department in force immediately before 1 July 2004 will continue to operate.

**Aboriginal Land Rights (Northern Territory) Act 1976**

Removes reference to the Chief Executive Officer, staff or a member of ATSIC in the secrecy provisions and transfers the role of the Commission in preparing an annual report for the operation of the Aboriginals Benefit Reserve to the relevant Department.

**Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989**

Removes all references to ATSIC, the ATSIC Act and the Torres Strait Islander Advisory Board. A Torres Strait Islander will continue to be appointed to the Australian Institute of Aboriginal and Torres Strait Islander Studies Council by the Minister but not on the recommendation of the Torres Strait Advisory Board which is to be abolished. And confirms that a person appointed by the Minister before 1 July 2004 continues to hold office.

**Environment Protection and Biodiversity Conservation Act 1999**

Removes the requirement for the Minister to inform and invite comments from ATSIC after receiving a proposal to take an action.

**Human Rights and Equal Opportunity Commission Act 1986**

Removes the requirement for the Aboriginal and Torres Strait Islander Social Justice Commissioner to consult ATSIC in the performance of his or her functions.

### **National Health and Medical Research Council Act 1992**

Removes reference to an ATSIC member of the Council, the requirement that ATSIC must nominate that person to be appointed to the Council and confirms that a member appointed on that basis before 1 July 2004 will continue to hold office for the balance of the term of their appointment.

### **Native Title Act 1993**

The amendments essentially substitute the Departmental Secretary for ATSIC in respect of the roles previously performed by ATSIC. Additionally it allows for the Departmental Secretary to delegate the powers to another SES officer. The roles specifically identified include:

- In considering whether to withdraw recognition of a body the Minister will consider reports given by the Secretary not ATSIC.
- A representative body will now apply to the Secretary of the Department for funding.
- Repayment of funding after 1 July 2004 in cases where recognition is withdrawn from the representative body will be to the Commonwealth.
- Breaches of conditions of funding will be dealt with by the Secretary.
- Allow for the provision of funds from the Commonwealth by the Secretary of the relevant Department to representative bodies. This will remove the restriction of funding being provided through grants.
- A representative body may be audited by the Office of Evaluation and Audit (Indigenous Programs) under the Aboriginal and Torres Strait Islander Act 2004.
- The role of ATSIC in informing the Minister of certain matters in relation to activities of representative bodies will be substituted by the Secretary.
- Review of assistance decisions will be undertaken by the Secretary instead of ATSIC.

### **Remuneration Tribunal Act 1973**

Substitutes the Aboriginal and Torres Strait Islander Act 2004 for the Aboriginal and Torres Strait Islander Commission Act 1989 and removes reference to the payment of remuneration and allowances of office holders under Part 2 or Part 3 of the ATSIC Act by moneys available to ATSIC.

### **Social Security Act 1991**

Removes references to ATSIC. The Secretary of the Department whose Minister is responsible for the administration of the Community Development Employment Program (CDEP) scheme will have responsibility for approving CDEP participant schedules.

In all of these no provision for an alternative has been identified nor canvassed

## **Mainstreaming - The current policy environment**

I now turn to the second term of reference you are asked to inquire into; the proposed administration of Indigenous programs and services by mainstream departments and agencies.

The level of resources provided for Indigenous Affairs over an extended period of time has not produced the results we would have expected.

There is an enormous gap between expectation and reality.

It is a major credibility gap.

The wider the gap between what we say we will achieve and what is actually achieved, the greater the level of mistrust and despair among Indigenous Australians, and the greater the levels of attacks, denials and buck-passing among governments will be.

The so-called mainstreaming new way is, in reality a return to the past.

To truly move towards a new way, and to build the capacity of Indigenous people, we must embrace the development agenda, invest in people, and provide people and their organisations with certainty.

We must trust the organisations we resourced to do the job.

We must not blame them for not delivering outcomes they were never asked, nor given responsibility to achieve.

This is what has happened to ATSIC.

Shared Responsibility Agreements founded on suspect policies and bribes are not going to induce sustainable change in behaviour.

It can only promote and achieve behavioural change whilst the inducement is available.

Communities that have been offered 'a swimming pool if the children go to school' will implicitly revert to not going to school as soon as the initial pressure abates, even if some regime is imposed to limit access to the pool if school attendance is not maintained at the desired levels.

And what consideration has been given to potential unintended consequences.

I'd ask you to consider the following scenario's.



- The provision of pools is not just a social issue. It is a health issue. Preventing access would promote adverse health consequences. In that situation how can access reasonably be denied
- The policing of access would, in my view, give rise to negative governance pressures within the community. Who, if anyone, is tasked in these situations with measuring, and then re-measuring the point at which access is to be denied.
- Governance is never easy but surely we should not be building in conflict triggers.

The project mantra is the methodology employed by almost all funding bodies, be they government or otherwise.

It is short term in focus, and is premised on the belief that a desired outcome can be engineered by the implementation of a series of projects focused on addressing the symptoms.

The environment created by this approach is one in which the following is evident:

- Short term funding cycles seeking an immediate outcome to entrenched problems;
- Organisations focussed on ensuring the continuity, or continuance, of funding at the expense of a focus on the task at hand (ie reporting, accounting and submission writing);
- Deficient funding - provision of resources to the deemed minimum level 'required' with an expectation that maximum results should be achieved.
- A focus on symptoms and not causes;
- Equation of accounting with accountability, a focus on money without a complimentary focus on outcomes; and
- The promotion of insecurity in Indigenous organisations, their staff and their operations.

Indigenous affairs is littered with attempts by government and Aboriginal people to develop and implement responses to the many issues confronting our people.

Indigenous people themselves have advocated through innumerable groups and bodies over decades.

It should be appreciated that these creations have been a consequence of the inability of the mainstream, of the existing government and societal structures, to address the specific needs of Indigenous Australians.

Indigenous specific agencies, programs and initiatives were created to address the "failure" of governments in respect of Indigenous Australia.

Elected bodies included:

**The National Indigenous Consultative Committee NACC**  
(Established in 1974 and abandoned in 1976 – 41 elected members)

**The National Aboriginal Conference**  
(Established in 1977 and abandoned in 1984 – 35 elected members) NAC

**The Regional Council(s)**  
(Created in 1990 – to be abolished in 2005)

**The Aboriginal and Torres Strait Islander Commission) ATSIC** (Established in 1990 and “abandoned” in 2005 – 17 elected members.)

Appointed Bodies included:

**The Aboriginal Land Fund Commission**  
(Created in 1975 - Abolished in 1980)

**The Aboriginal Loans Commission**  
(Created in 1975 – Abolished in 1980)

**The Aboriginal Development Commission**  
(Created in 1980 – Abolished 1990)

**The National Indigenous Council** (Created 2004)

Government Agencies

**Department of Aboriginal Affairs**  
(Created in 1975 – Abolished in 1990)

**Office of Indigenous Policy Coordination**  
(Created 2004)

In addition

**The Indigenous Business Australia (1990)**

**The Indigenous Land Corporation (1994)**

**The Aboriginal Hostels Limited**

**The Australian Institute for Aboriginal and Torres Strait Islander Studies  
AIATSIS (1989)**

### **The Torres Strait Regional Authority (1994)**

I have not attempted to list the creations of the State and Territory governments.

I listed the above to illustrate that elected bodies are "not new", and appointed bodies are "not new".

We need a rationale assessment of their respective roles, functions, efficiency and effectiveness.

We then need to carefully analyse their contributions and consider how we can use their experience and performance to improve the overall environment.

The rationale for the closure of all of the above elected organizations (the NAC and the NACC) by the Government of the day was that they had lost the support of the Indigenous people.

The same rationale has been put forward for the abolition of ATSIC.

In my experience as a former Chief Executive Officer of ATSIC and a former Director General of the NSW Department of Aboriginal Affairs, ATSIC provided the best model developed so far for participation by Aboriginal people in the processes of Government.

ATSIC's elected arm exercised real, if limited power over a range of supplementary programs and had a real voice.

Loathed or lauded, it had influence.

If it did not, the public venom and polarity of the support and opposition to it would not have been so rabid and entrenched.

ATSIC in reality was a government department with an elected arm placed on top.

It had a limited sphere of influence in terms of budget and policy, (especially given the public perception of its budget and role).

It was still subject to the same budgetary constraints as a normal agency with an even more rigorous accountability framework than other agencies, and it had a constituent base which was primed with unrealistic levels of expectation and performance.

ATSIC had a bureaucratic arm that was both responsible to both the Minister and the board.

This reality created very real tensions both within and outside of ATSIC, even at the community level.

There was no political cushion between the elected arm and the bureaucracy as exists between the elected arm of all mainstream Federal and State Parliaments and their bureaucracies.

ATSIC had a number of functions. The major ones included:

- To formulate and implement programs
- Monitor the effectiveness of other agencies programs
- To develop policy proposals
- To assist, advise and cooperate with Indigenous people
- To advise the Minister

In short ATSIC had a legislative mandate to run a small number of programs, but then to have an oversight role on the rest of the effort in Indigenous Affairs and to advocate the interests of Indigenous people.

To give effect to that not insignificant responsibility, executive mandate and authority was required.

It was never given.

That mandate has now emerged and been given....but not to ATSIC.

The power and capacity was withheld from the arena until now.

### **THE ATSIC REVIEW**

I'd now turn to what has become known as the "ATSIC Review."

This was, in fact, a review of how Aboriginal and Torres Strait Islander people could best be represented in the process of the development of Commonwealth policies and programs to assist them.

The review was to consider the roles and functions of ATSIC.

It was, therefore, not a review of ATSIC *per se*.

In my view the final report from the Review team lacked objectivity.

Rather, it appears to be a compilation of subjective and anecdotal views presented as fact, and serves only to give legitimacy to the narrow perspectives put forward.

Contributors have a right to put forward any views based on fact, or their views from their own perspective, but if readers are to get a meaningful perspective from the report those views need to be adequately sourced.

A more strategic assessment and commentary on the views and expectations of the various stakeholders would have been desirable.

The foreword to the discussion paper commenced by quoting the Coalition policy from the 2001 election, which was a force behind the reassessment.

It was not, however, the Terms of Reference (TOR).

It set the focus for the report and articulated what the reassessment team interpreted as their task, the Review of ATSIC.

The narrow interpretation of the TOR represented another lost opportunity to objectively and critically assess the Indigenous Affairs arena. Let us not forget Minister Ruddock's late intervention when he asked the Review Team to

*...to give particular attention to the structure of the relationship between the government and the Commission, including "the adequacy of the Minister's powers" and the merits of a possible Ministerial veto power in relation to specific ATSIC decisions.*

The TOR, and especially the subsequent request from the Minister, steered the focus of the reassessment to ATSIC only, and then explicitly sought to resolve the many competing issues by revision to the structure and processes of ATSIC.

Although referred to many times in the body of the report its conclusions did not contemplate any assessment of the total Indigenous Affairs environment.

There was no meaningful assessment of the plethora of policy advice and consultation mechanisms employed by the three levels of government and their agencies, be they specific Indigenous, or line agencies.

The report did not address the tensions between government policies and the views and expectations of Indigenous people. (Practical reconciliation, development, and rights issues to canvass a few).

A process evolved which effectively sheeted all blame home to ATSIC for the failures of all Government policies and programs.

Those who have taken to time to read the submissions, would have noticed the venom in many from Indigenous people.

They invariably lamented a lack of funding support from ATSIC without any realization the agency had limited supplementary funds. It was, in essence, a funder of last resort.

The narrow and immature perspective contained in those submissions, plus the Latham intervention, provided the bullets the Howard Government required to execute ATSIC.

This was backed up by amateur brinkmanship displayed by numerous Indigenous "leaders."

What is still to be mapped, and analysed, and understood, and rationalised, is, the totality of advice to government. The future administration of Indigenous Affairs will continue to repeat the mistakes of the past unless this is done.

I would urge you to give this long and careful consideration when you come to consider your recommendations.

Every government agency, has a number of policy forums that are utilised for "advice", each level of government maintains a similar regime.

The result is a plethora of uncoordinated and unstructured policy agendas focused in the main on supporting a parochial power base and targeted at short term programmatic responses to very deep seated structural problems.

While “we” continue to respond to the requests, demands and actions of government in such an ad hoc manner without, an overall agenda and consciousness, Indigenous people will always be at the beck and call of the benevolence of the government of the day.

### **Future Directions**

The Government has articulated its’ vision for the immediate future which involves a coordinated approach from government.

A number of new bodies have been created and became operational on 1 July 2004,

- Secretaries Group (headed by the Secretary of Prime Minister and Cabinet)
- Ministerial Forum (headed by the Minister)
- Office of Indigenous Policy Coordination (within the Department of Immigration, Multicultural Affairs and indigenous Affairs)
- Indigenous Coordination Centres (at state and regional levels)

And, as mentioned, the National Indigenous Council.

### **Reality Checks and Balances**

While many will focus on what has been lost by virtue of these changes, we must also focus on making the best of the opportunities that emerge.

For the first time government line agencies will have to account for their activities and “outcomes”.

There is potential for some breakdown in the silo mentality of project service delivery, but only if driven relentlessly, without fear or favour.

There is potential if people are organised to take the opportunity of the Regional Framework Agreements that are to be developed to guide effort at the regional level.

There is potential for some positive outcomes from the consultations on the Shared Responsibility Agreements that are envisaged, but again if some greater degree of lateral thinking is injected.

Finally we are all responsible for monitoring the progress of these measures and the changes they will bring,

I would suggest a Standing Committee on Indigenous Affairs will be the only objective and credible process by which such scrutiny could be effectively brought to bear once the Howard Government assumes control of the Senate in August this year.

But, we must also be cognisant of the traditional resistance at the various levels of bureaucracy. I suspect that despite the rhetoric about joined up Government:

- Ministers are unlikely to give away control of their programs decision making to another body.
- Secretaries can be expected to be reticent to cede decision making to another body over resources for which they are responsible.
- The new initiatives represent new ways of working for most of the government agencies involved and would be viewed with suspicion.

These levels of resistance are natural and are present in all organisational structures.

They must be expected.

This is not to discount the efforts and contributions being made by some communities and individuals to negotiate the current environment, but the best efforts are to be found where those negotiating have held true to their principles and the needs of their people.

### **Conclusion**

A central question in any consideration on the future of the administration of Indigenous Affairs must be why ATSIC could not achieve the functions accorded to it under the legislation.

In my experience, it was the lack of cooperation from other jurisdictions.

They saw ATSIC as an unnecessary imposition.

It is also my view that while Parliament created ATSIC the majority of parliamentarians, on both sides of both chambers, never fully understood nor sought to understand and appreciate what was created.

The Australian political system is simply not mature enough to understand or embrace such an entity. It is testament to the commitment and skill of those who worked in both the elected and administrative arms of the organization that it has survived as long as it has.

Lesson need to be drawn from its existence.

ATSIC created politicians.



When these politicians behaved like politicians “we” got upset.

The conflict and tension between the executive and representative roles of the ATSIC Board members caused enormous concern.

It was never appropriately addressed.

The advent of ATSIC was not accompanied by any authority or change in attitude from any level of government.

COAG acknowledged this fact, and consequently attempted to assist by endorsing as policy the National Commitment to Improved Service Delivery to Aboriginal and Torres Strait Islander People in 1992.

The belligerence of governments did not change.

ATSIC embarked on a program of negotiations with States and Territories on an individual basis.

This strategy was successful. A number of positive agreements were struck.

ATSIC was naïve to assume there was no hidden agenda behind the Howard Government initiated review.

The panel members were either implicit in this process, naïve, or lacked the intestinal fortitude to withstand the pressure applied by the government to focus singularly on ATSIC.

The Coalition Government was on record prior to coming to power that it wished to abolish ATSIC.

Let us not forget the first act of the Howard Government was to seek to appoint an administrator and a Special Auditor to the organisation.

No widespread corruption or fraud was unearthed.

Rather, the Special Auditor found a lack of business skills in the two thousand plus organizations funded by ATSIC.

The Government then removed some \$460m from the ATSIC budget which had the effect of curtailing the bulk of the programs which provided support and people based services to Indigenous communities.

These included a range of business development courses identified by the Special Auditor as so sadly lacking in funded organizations.

The consequential effect was that the capacity of ATSIC to exercise any discretion was stymied.

ATSIC was blamed.

Community support waned.

The government also embarked on a program of denial and misinformation concerning the relative responsibility for programs and issues.

This strategy was reinforced by a compliant mainstream media.

The Howard Government has now established a new arrangement in the way it will address the Indigenous Affairs arena.

The formal rationale is contained in the publication by the Secretary of the Department of Prime Minister and Cabinet, Dr. Peter Shergold, entitled: "Reconnecting Government".

The document maps out the rationale and cites overseas examples of the new arrangements to follow.

The plans are proceeding with haste. There is no semblance of rationale analysis

The government has merely shuffled the deck chairs and moved responsibility around the agencies.

Their new ATSIC is the office of Indigenous Coordination Policy.

The new agency is tasked with the responsibility of coordinating the planning and priorities of the line agencies who have now been accorded the responsibility for implementation of the former ATSIC programs and the continuation of the existing responsibilities in respect of non-ATSIC programs.

The new approach does not in any way attempt to address the fundamentals of current modes of government service delivery.

When the planning and decisions are made hopefully in a more logical manner, individual agencies will still deliver their programs as they always have under a project model.

The Cape York Report promised much in the way of getting government to consider new ways of operating.

The report articulated three themes under which issues were to be considered:

- Development,

- Intervention, and,
- Public Sector Reform.

They are the three fundamental issues to be addressed if sustainable and effective reform and progress are to be made.

Development is essential if any sustainable impact on the plight of Indigenous people is to be obtained.

This entails capacity development, governance development, development of human and social capital..

If this is to be effective, well planned, and well structured, long term investments have to be made.

But even before we can consider these we must be able to acknowledge and agree on the principles, for want of a better word, which underpin much of the effort in the Indigenous affairs arena.

There are a range of existing principles and constraints

These include

**Geography:** The location of communities with the accompanying policy that resources had to be provided where Indigenous people choose to live. This brings with it substantial costs and logistical problems.

**Social capital:** The circumstance of Indigenous people is not conducive to “positive” governance and social practices which are acceptable to the government.

### **Community**

This is currently a nebulous concept in terms of government points of interaction and focus. It has, and continues to be, a central focus for government interaction but remains ill-defined and problematic.

### **Capacity Building & Governance**

These have become clichés. They have not served us well. They have as many meanings as there are communities. A common definition and focus has yet to develop.

The level of disadvantage and the appalling circumstances still being experienced by Indigenous people today, and the pace at which this is being addressed, is clearly unacceptable.

The ongoing level of funding being applied to the Indigenous affairs without the demonstrated positive outcomes is unacceptable by any standard.

Are our policy parameters and focus wrong?

Are our priorities wrong?

How do we ensure that progress is made which has a sustained positive impact on the day-to-day lives of Indigenous peoples?

Without the knowledge and analysis of all governments efforts (Commonwealth, State and Local), the commentary and debate will continue to be subjective and narrow.

The scrutiny on Indigenous agencies and their performance is a normal part of administration. It is ongoing and welcomed.

The performance of mainstream agencies has not been subjected to the same level of scrutiny.

This is, to say the least, disappointing.

Indigenous specific agencies do not have responsibility or resources to address:

- Health: health and aged care
- Housing: family and community services
- Education: education and training
- Legal services: attorney generals
- Law and order: attorney generals
- Domestic violence: Family and Community Services and Prime Minister and Cabinet
- Substance abuse: health and aged care

The recent Commonwealth Grants Commission Report, although restricted by the Terms of Reference, provided a good basis for objective operational and strategic evaluation of performance and effort.

An objective reading of the report, and the responses to date from government, provide some pertinent points, which have, to date, been lost to the public debate

- The terms of reference were crafted so that the inquiry did not identify the absolute level of need or resources required to address the many competing needs, but it did provide a basis for considering redistribution of the existing effort.
- That mainstream agencies had withdrawn their level of specific resources at a greater rate than indigenous specific programs were created to address their

failings. A push to now redirect specific effort to the remote areas on the assumption that this will result in line agencies and state and local government meeting their responsibilities is problematic. This needs careful and sustained attention.

- The silo mentality of the agencies, which compromised the capacity of programs to have effect and in fact, meet their objectives. The lack of effective coordination being endemic.
- That the transaction costs involved in getting levels of government and agencies to meet their obligations and responsibilities are substantial.

The area of Indigenous policies and programs are fraught with frustration.

The following dot points demonstrate some of the commonly identified issues in respect of Indigenous programs and policies which would strike a chord with many of those closely involved.

They also provide a sounding board from which we should advance.

- Most Indigenous affairs policies and programs have not been designed on the basis of genuine Indigenous consultations.
- Most programs are guided by specific departmental or Ministerial concerns.
- Indigenous affairs programs are duplicated, fragmented, overlapping and counter-productive.
- Design of most programs is often ad-hoc
- Very few social programs for Indigenous people are designed with reference to clearly defined, meaningful and measurable targets.
- Most programs are not designed/implemented according to a clear list of priorities in Indigenous affairs.
- Co-ordination is often adhoc with no clear guidelines.
- Co-ordination is also sometimes used as a synonym for convening meetings rather than carrying out implementation.
- Departments put insufficient focus upon client outcomes.
- Consultation with the Indigenous community to facilitate needs based planning, appears to be on a crisis management basis.
- Very few program evaluations have yet occurred.
- Program achievements are not linked to program objectives.

There have been a number of Council of Australian Government initiatives to address the issues that beset Indigenous policy; the two most recent initiatives have been the National Commitment to Improve Service Delivery to Aboriginal and Torres Strait Islander People and the recent Reconciliation initiative.

The former articulated a number of principles and operational objectives and guidelines.

The initiative did not have the intended impact as it required a fundamental change to the underlying policy parameters.

Some of these shortcomings were addressed in the recent Reconciliation Initiative, including a focus on capacity building, on leadership, on program review and on economic independence.

We, as yet do not have all the answers.

What is clear is that our current efforts are not having the required effect.

There are numerous examples where significant progress has been made, where communities have succeeded.

I would suggest this is a result of persistent and resilient individuals within the Indigenous community.

The performance has been at best patchy, but the progress made by some communities and individuals cannot be curtailed or undermined by the lack of performance in other communities.

The notion of diversity and the fact that one approach does not fit all must be acknowledged and given practical effect.

What we do have is an environment in which a degree of lateral thinking is coming to the fore, where new and fresh ideas are being actively considered.

We therefore have the opportunity to acknowledge and learn from what we have been doing and move on, constructively.

### **The Self Determination Principle**

There has been much debate surrounding the principle of "self determination", what it means and the merits of self-determination as a policy approach. Self-determination cannot be labelled a failure; it has yet to be implemented.

The difference between self-determination and self-management is fundamental and one, which has been blurred by emotive, and dishonest rhetoric.

Self-determination is a right.

Self-management is not.

The former is empowerment, the latter control.

Self-determination is a fundamental human right to enjoy the right to make a choice limited by ones own options.

Self-management is based on a conditional arrangement between a governing party and another (often through a prescriptive agreement which has limited options)

It is more about extended privilege and recruitment of the recipient party to an arrangement in which their right to autonomous decision making is severely impeded.

We have had a form of self-management.

This regime has allowed communities to manage within an externally determined series of programs policies and guidelines. These bear little resemblance to the true needs of indigenous communities and individuals..

### **A Way Forward.**

There are signs of a consensus on the overall long-term goals – to foster socially just, sustainable economies with accountable, inclusive systems of governance, which deliver real and lasting benefits to Indigenous people. Improvement in people's livelihoods and physical well being in sustainable ways requires the development of their capacities and those of their organisations..

We are talking about true empowerment.

Empowerment in the sense that, individually and collectively, Indigenous people are able and willing to make claims on processes as well as instigating their own.

This calls for different modes of operation from the traditional investment in water supplies, health care, education and economic support programs and so on.

We require the adoption of strategies and methodologies which build up the capabilities, the capacities of the community, of organisations, and of individuals, and not agencies.

The current programs and program structure and priorities, tend to enshrine the 'service delivery' approach to community development.

Service delivery is of course essential; there is no argument about this basic need.

But, it is not sufficient, by itself, to ensure meaningful and lasting positive change.

What distinguishes capacity development from the service delivery approach is its holistic nature.

The sustainable social, political, economic cultural and environmental development of a community involves a very complex system or interrelated elements; capacity development recognises the importance of thinking about individuals, organisations, programs, policies, etc, as part of a broader whole rather than as discrete, or loosely connected concerns.

The loosely connected programs are the focus of our effort.

And these programs as well as the accountability requirements are largely driven by the political environment (quarantining of funds, etc). So any attempt to alter the situation will need to work on a number of fronts.

We are talking not only about projects on the ground, but also about fundamental change, transformation in the way we do our business.

The continued adherence to the service delivery model – at the expense of seeking additional approaches to dealing with endemic social and economic issues confronting some Indigenous communities will mean that the required transformation is still some way in the future.

We need to break with business as usual and focus on what will make a difference.

No-one currently has the responsibility to focus on the real issues, the level of dysfunction and lack of capacity in the indigenous community, to engage the mainstream agencies, and to operate and run the programs that are required in the mid to long term to address the issues.

Many communities are not in a position to run the programs.

The flaw here is the focus on the community service or the project model of service delivery, and it is just that service delivery, not development or human capital, which is so vitally important for sustainable and meaningful positive change.

### **The Project Mantra**

The focus on program delivery from the “community service model” or the “project” mantra continues to be central to the methodology preferred by government and instrumentalities.

↘ The central assumption of this approach is that it is possible to construct a defined future but this does not reflect how societies change.

At worst projects,

- impose a linear way of thinking on cultures which may have alternative modes of understanding,
- introduce financial time frames which have no bearing on the time availability of the people,
- do not recognise the consequences of unintended effects,
- place effective power in the hands of those who define the project,
- introduce an imbalance between tangible outputs and human processes with a bias towards the former because of financiers expectations,



- recognise then ignore necessary links to other activities to meet pre determined deadlines,
- restricts free choice during the process and introduces a mindset which is predisposed toward authoritarian style of interaction,
- promotes a process which equates progress to disbursement and, accountability with accounting for financial or material resources
- lead to an abrupt termination instead of a staged withdrawal as appropriate conditions are created
- keeps all participants in a constant state of insecurity inducing the need for acquisition of projects for self-sustainability, overriding community perspectives.
- work against community and organisational continuity and consistency
- is too short term in relation to the ultimate goal and confuses means with ends thereby inputs being equating to impact.
- does not allow learning through trial and error. While ignoring learning from post project effects.

Despite all the limitations, projects remain the standard mode of operation because they can be cut into bite size, manageable and fundable chunks.

Despite the calls for reform and some limited experimentation, the project system dominates because it best suits the administrative needs of the financiers.

This approach requires a substantive rethink, as alone it does not contribute to sustainable long-term development, it represents the intervention approach. Intervention must be balanced by adopting a developmental approach as well.

Both are required but intervention strategies must be viewed as a short term, interim measures and development, the overall as the prime goal.

### **The Rights Approach**

The rights accorded as a citizen of a country is what is supposed to unite us all.

It is meant to be something we are proud of.

It is a subject which is not debated in our society.

The necessity of a rights framework to underpin and inform policy is one, which must be acknowledged and actively developed.

It must be recognised that policy without a legislative or constitutional authority is not legally enforceable.

We must articulate and understand the relationship between the rights framework and policy development. The lack of rights protection is evident in our society and such a framework would provide a minimum standard against which to assess performance. A rights based approach cannot and should not be viewed with suspicion.

Working and being involved in Indigenous affairs is thought by many to be an insurmountable task, frustrating and heart wrenching, where the issues to be resolved and the obstacles to be overcome seem to multiply as we progress.

The truth is just that there is still a long, long way to go.

Indigenous affairs is at a crossroads. It is now recognised we cannot continue with the same policy perspective of the past 30 years.

There is a need to break from the risk averse nature of programs and policy and commence an era of support and trust, of acknowledging the mistakes of the past and moving on to correct the shortcomings, and facilitate a meaningful and sustainable future for Indigenous Australians.

A return to the mainstream is not the way to go.

I would like to close with an extract from a note to ATSIC/ATSIS staff from myself in June 2004, which includes a message that is real and should not be lost. Those staff have been badly treated in this change of government direction. Their efforts over many years and the pain and denigration they were and are being subject to should be acknowledged.

***"I cannot agree with the populist rhetoric touted around as fact that ATSIC was a total failure.***

***The legacies will remain and future assessments will paint a more balanced picture. Time will pass over the obsession of many of the current commentators and then truth can dare to surface. The media has now gone strangely quiet.***

***ATSIC has had a torrid life and whatever replaces it, if anything, can expect the same. You cannot advocate for a poor, marginalised minority group of people and expect anything different. To put forward the claims of Indigenous people in today's societal culture is to threaten someone else, a sad but true reflection, and in such an environment we cannot expect more.***

***ATSIC had many successes and we cannot let that very fact be forgotten. Many indigenous people are far better off today because of the work and dedication of many of you and never forget that. There are many Indigenous people out there who know and appreciate the effort and dedication staff have put in. Their lives have been changed for the better as a result of your efforts.***

***We work in an environment where the negatives are focussed on and the positives let go by. We all knew that and most accepted that as part of the conditions.***

***The world is not fair, and we should never expect it to be, it is the bit that we do, our contribution that does make a difference, and I can only***

***encourage people to continue that commitment.***

***We can only learn from our experiences over the last decade, and ensure that we use those experiences and knowledge to do better in the future.”***

Thank You.