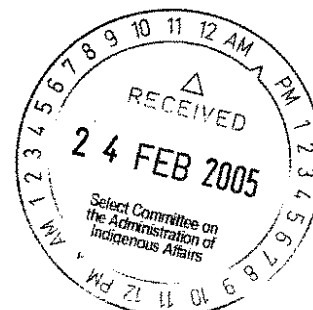


PW.JGW:1625



Law Council
OF AUSTRALIA

Mr Jonathan Curtis
Committee Secretary
Senate Select Committee on the
Administration of Indigenous Affairs
Department of the Senate
Parliament House
Canberra ACT 2600



Dear Mr Curtis

**SENATE SELECT COMMITTEE ON THE ADMINISTRATION OF
INDIGENOUS AFFAIRS**

I refer to conversations between the Law Council's Mr James Greentree-White and yourself and Mr Timothy Watling of your office. Thank you for the opportunity to make this submission. In brief, the Law Council wishes to state:

- (a) that the Law Council does not have an opinion on the substantive question of whether the Aboriginal and Torres Strait Islander Commission ("ATSIC"), in its current legislative form and with its current powers and functions, should be abolished, as proposed by the government in its Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;
- (b) however, the government should take further measures to consult with Indigenous people, towards addressing gaps that may be left with the abolition of ATSIC and the "mainstreaming" of services formerly provided by ATSIC. In particular, the Law Council would look toward the establishment of an elected representative Indigenous body, potentially with ATSIC's present advocacy function, as well as with any other functions, administrative or legislative, for which consultations with Indigenous people and organisations showed support.

About this submission

This submission is made with assistance from members of the Law Council's Advisory Committee on Indigenous Legal Issues. The Law Council, however, is not an Indigenous organisation and is not claiming to be speaking on behalf of Indigenous people in this submission. The Law Council's focus is on principles of good governance, in the context of international conventions to which Australia is a party that apply to Indigenous affairs.

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The terms of reference

This inquiry's terms of reference are as follows:

- "(1) *On 17 November 2004, the Senate reappointed the Select Committee on the Administration of Indigenous Affairs to inquire into and report by 8 March 2005, on the following matters:*
- (a) *the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;*
 - (b) *the proposed administration of Indigenous programs and services by mainstream departments and agencies; and*
 - (c) *related matters."*

Role of Indigenous people

As noted above, the Law Council does not have an opinion on the substantive question of whether ATSIC, in its current legislative form and with its current powers and functions, should be abolished.

The Law Council does, however, believe that the government should take further measures to consult with Indigenous people, towards addressing gaps that may be left with the abolition of ATSIC and the mainstreaming of services formerly provided by ATSIC. In particular, the Law Council would look toward the establishment of an elected representative Indigenous body, potentially with ATSIC's present advocacy function, as well as with any other functions, administrative or legislative, for which consultations with Indigenous people and organisations showed support.

Such consultation would only be a first step towards a measure of self-determination for Indigenous people in regard to their political representation in governmental forums and in the management of their own affairs, including the provision of services to Indigenous people (whether such services are provided by Indigenous controlled services or mainstream agencies).

Such further consultation would be consistent with the spirit of, and is arguably required by, Australia's obligations under relevant international conventions, particularly the Convention on the Elimination of all forms of Racial Discrimination ("CERD") and the International Covenant on Civil and Political Rights ("ICCPR"), including: the right of self-determination, rights of political participation, the prohibition of racial discrimination, and the rights of ethnic minorities.

With respect to an elected representative body for Indigenous people, there will be a surprising, if not disturbing as potentially discriminatory, anomaly in the treatment of Indigenous people in Australia if ATSIC is abolished and not

replaced with an elected representative body whilst the Torres Strait Regional Authority ("TSRA") continues (as the Law Council would expect it to do). The Law Council is certainly not recommending the abolition of the Torres Strait Regional Authority, however it is unclear as a matter of legal principle and policy why such a structure would be appropriate for Torres Strait Islanders, but not for Aboriginal Australians.

About the Law Council

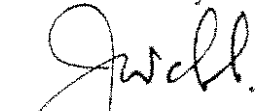
The Law Council is the peak national representative body of the Australian legal profession. The Law Council was established in 1933. It is the federal organisation representing approximately 40,000 Australian lawyers, through their representative Bar Associations and Law Societies (the "constituent bodies" of the Law Council).

The Law Council speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

Further contact

If you have any questions about this submission, please contact Mr Greentree-White on (02) 6246 3715.

Yours sincerely



Peter Webb
Secretary-General

23 February 2005