

From: Beryl Phillips [mailto:beryl@mt-evelyn.net]
Sent: Wednesday, 28 July 2004 5:16 PM
To: Committee, Indigenous Affairs (SEN)
Subject: Administration of Indigenous Affairs

41 The Crescent,
MT. EVELYN,
3796.
20th July, 2004.

The Secretary,
Senate Select Committee on the
Administration of Indigenous Affairs,
Parliament House,
CANBERRA, ACT, 2600.

Dear Sir/Madam,

Thank you for the opportunity of making an input to the Committee's Inquiry on the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004, and related proposed changes to the administration of Commonwealth Indigenous affairs policy.

The decision to refer the future of ATSIC to a Senate Review is to be commended.

INTERNATIONAL RIGHTS OBLIGATIONS

Australia has an obligation to respect and protect the rights of our Indigenous peoples to self-determination human rights, and First People's Status, and the inherent rights that flow from such status.

The current bill and related changes will breach these obligations.

GOVERNMENT ATTACKS ON ATSIC & INDIGENOUS AFFAIRS

Attacks by the government on the total Indigenous community, especially through the bill that was proposed to remove ATSIC – and in the process, nullify any form of self-determination – are horrifying and quite unacceptable.

The decision of the Federal Government to introduce its Bill to destroy ATSIC at the time it did, was cynical in the extreme - for several reasons -

- This happened right at the beginning of Reconciliation Week.
- That day was the anniversary of the day when the Indigenous community first received the vote.
- The bill introduction followed immediately on the death of Mr. Djerrkura, who was the first chairperson of ATSIC.

In the same breath, the government has praised Mr. Djerrkura, and condemned ATSIC.

Government attacks are quite cynical, when it is realised that a very extensive review process was carried out during 2003. This has been completely bypassed. It has been widely accepted that ATSIC was in need of improvement. However, that is a long way from the governments' intention to abolish it.

There is no way now that the Coalition could possibly claim any form of commitment to reconciliation, when its real intention has so obviously been, since its accession to government, to remove the body which has provided the only form of a real indigenous voice, or of Self-Determination.

Church and community groups have widely criticised the actions of government in this regard. Our national reputation on human rights is at an all time low. This is a matter of deep justice.

The proposed bill to disband ATSIC and replace it with an appointed – not elected – body was quite iniquitous.

It was serious enough when the real strength of ATSIC was removed, and many of its functions transferred to ATSISS, specially created for this purpose. In the process, ATSIC was forced to become a virtual 'toothless tiger'.

It should be remembered that many of the weaknesses claimed of ATSIC by the government, were actually those of government itself. Many have asked, if ATSIC was disbanded, what the government could then use to blame for its own failures.

Failures on the part of ATSIC stand at the feet of the government. It was to be expected that sufficient appropriate assistance should have been available to offer guidance, training and support, to ensure an effective and competent functioning by this very important body. Instead, the government has stood back and criticised, no doubt hoping it would fail.

More than two hundred years of exploitation, discrimination and determination to destroy our indigenous population as a cultural identity, or as people with genuine needs, are a national disgrace. The refusal of the Prime Minister to make an apology on behalf of our nation is most regrettable. However, his claim that it would be more effective to concentrate on 'practical reconciliation' has had little, if any, actual results. What is needed more than anything else, is reconciliation at both the symbolical and practical levels – such reconciliation being based on justice.

Australia has grown wealthy at the expense of its original owners. We owe them considerable restitution for their discriminatory treatment and exploitation. We can never undo what has happened, but cannot rest with a clear conscience until serious efforts have been made to help compensate for what has occurred in the past.

Any move to remove an effective, elected indigenous governing body is to be deplored, and must not be allowed to happen. There is no way that the removal of

this Indigenous decision-making body can be justified. It is essential that there be a valid, elected body, independent of government intervention or domination.

It seems increasingly apparent that the then Minister for Aboriginal Affairs, Philip Ruddock, was determined from his emergence into that role to kill ATSIC. Attacks on its chairman, Geoff Clark, proved to be very convenient to assist in that process. It is not at all clear that the attacks on its chairman were not encouraged, if not inspired, by government.

I believe that the whole intention to disband this peak indigenous decision making group should be reversed, and a more satisfactory and acceptable process put in place to ensure that it, or an equivalent alternative, is allowed to work.

ATTACK ON INDIGENOUS LEGAL SERVICES

Another action with potentially unacceptable repercussions is the separate intention to mainstream Legal Services for Indigenous Australians through a tender process. This has been widely condemned by community and church groups, since it can only mean that services for Aborigines and Torres Strait Islanders could only get worse.

All too few of the recommendations, if any, of the 1991 Black Deaths in Custody Royal Commission have been acted on, including, particularly, that relating to the urgent need for improvement of legal representation for indigenous people, with the aim of keeping them out of jail. Further restrictions would be catastrophic and most unacceptable.

Such a tendering process is to widely condemned. Privatisation of services throughout the community in recent years has been largely a recipe for disaster, but to apply this to Indigenous people and communities is beyond all reasoning. All it does achieve is a confirmation that the Federal Government is determined to deny Aborigines and Torres Strait Islanders any form of legitimacy. It illustrates the insincerity of government when it talks about practical reconciliation.

REMOVAL OF INDIGENOUS VOICE

One of the most serious aspects of the government's attacks on and determination to disband ATSIC is the significant intention to remove any form of self-determination on the part of the Indigenous community.

Another is that this represents a move back to assimilation – a complete denial of the whole Indigenous community. This is to be deeply deplored.

In all of this, it is vital that the Indigenous community be adequately consulted with – not merely informed. Awareness of the way in which Aborigines make decisions is also of great importance, if such a process is to succeed. Consensus, sometimes achieved over a lengthy period, is basic to their decision making processes. To expect an immediate response is unrealistic, as well as paternalistic.

Australia's reputation overseas has deteriorated considerably in recent years, both with regard to Indigenous justice, and with regard to refugees and asylum seekers. We cannot allow this to continue. What is particularly disturbing with regard to the attacks on ATSIC, as well as the other issues currently under reconsideration, is that, if successful, our country would be returned to a position of decades ago, when there might have been some excuse (often through ignorance) for what was in effect quite unacceptable. However, such an excuse can no longer operate. We do know better. It is a mystery how our government could even consider the moves it has on its agenda. They must not be given credence or legislative support. We have enough national shame as it is, without increasing it.

REPRESENTATION & SELF-DETERMINATION

It is vital that Indigenous people should be able to enjoy these rights to determine who represents them – locally, regionally, nationally and internationally. There is no reason at all why this should not apply fully to Australia's First Peoples. This should include their right to make free and informed choices for themselves, their families and communities.

The current bill and proposed administrative arrangements will deny these fundamental rights. An appointed advisory role in no way substitutes for these. They also go against the Government's own review of ATSIC which endorsed the need for elected Indigenous representation, and greater regional level control.

It would be a breach of our obligations under international law for this bill to proceed. The Australian Government has been found by the UN in the past to be in breach of its International Rights obligations, especially with regard to native title legislation and mandatory sentencing laws.

NEW INDIGENOUS REPRESENTATIVE STRUCTURE

Australia's Indigenous people have endorsed the need for a National Indigenous Representative Body, reflecting their values and aspirations, and is open, transparent and accountable to Aboriginal and Islander people. This body should have the primary role of representation and advocacy, be the principal source of Indigenous policy advice to government and have control over the provision of Indigenous-specific services.

Such rights are critical for the well-being of Indigenous Australians. Apart from decision-making processes which should not be made on their behalf, appropriate cultural recognition is vital.

There must be a sustainable, independent National Indigenous Representative Body that:

- reflects the aspirations and values of Aboriginal and Torres Strait Islander peoples
- is open, transparent and accountable to the Aboriginal & Torres Strait Islander peoples
- is achieved with the informed consent of Indigenous peoples through inclusive processes that acknowledge their diversity and traditional authority structures.
- has primary roles in representation and advocacy, be the principal source of Indigenous policy advice to government, and have control over the provision of Indigenous-specific services.
- only results in a model and structure from negotiation with Indigenous peoples, and only determined on their informed consent.

MAINSTREAMING AND ACCOUNTABILITY

Mainstreaming services would not only be a backward step to an already failed paternalistic approach: it would be catastrophic in its outcomes. For far too long government has wasted good money which rightly belongs to the Indigenous community on services which are irrelevant, distant and ineffective. Accountability should be required of governments, mainstream departments and agencies in all actions affecting Indigenous people.

The lack of accountability has enabled governments to scapegoat ATSIC as responsible for the failure to improve outcomes for Indigenous Australians, even though ATSIC only controlled 15% of Indigenous expenditure, the rest being controlled by governments, delivered through mainstream departments and agencies.

INDIGENOUS CONSULTATION AND CONSENT

Any replacement for ATSIC must be in full consultation and negotiation with Indigenous stakeholders, and on the basis of their informed consent. **Consultation does mean notification.** The right to self-determination is basic to addressing severe disadvantage and systemic discrimination faced by our original inhabitants/owners/caretakers of this land. Their right to determine and maintain their identity as Indigenous peoples is absolutely vital. A return to assimilation is just not on.

Amongst other things, secure recognition as Indigenous Peoples, including particularly constitutional recognition are vital to ensure that they will not remain vulnerable to the whims of governments and other vested and hostile interests.

REFORMING ADMINISTRATION OF INDIGENOUS AFFAIRS POLICY

Australia has a duty to pursue social justice and economic development for all of our Indigenous peoples, and to address the present unacceptably high levels of systemic disadvantage.

The needs of Indigenous people and communities are so immense, that both mainstream resources and Indigenous-specific service delivery are needed, working cooperatively, if successful outcomes are to be achieved. This requires full decision-making powers, and the existence of capable and culturally appropriate Indigenous institutions of governance.

A false dichotomy between practical and symbolic policies has been encouraged by the present federal government. Instead, both are vitally needed, to be tackled symbiotically. Neither is adequate on its own.

Addressing current unacceptably high levels of disadvantage faced by the original Australians should be a national priority. In addition, significant efforts should be made to provide a sound economic base for the future development of Indigenous communities.

ATSIC'S ASSETS

It is vital – and obligatory – for ATSIC's current assets, both financial and other resources, to be securely preserved for transfer to the new body.

In all of this, I wish to urge consideration of this vital aspect of Australia's life and responsibilities towards Indigenous Australians, with a full recognition that we are dealing with real people, with real needs, but shackled by discrimination throughout 206 years of white occupation.

We are at a crucial time in our national history. We can choose whether to exercise wisdom and a sense of humanity, or we could continue to act with selfishness, compromise and short-sightedness. This is our opportunity to mature as a nation of which we can be truly proud.

I wish to request a public hearing in my area eg. Eastern suburbs of Melbourne.

Yours sincerely,

(Ms.) D. Beryl Phillips.