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Secretary
Select Committee on the Administration of Indigenous Affairs
Parliament House
Canberra ACT 2600

29 July 2004

Dear Secretary,

Please find attached my brief submission to the Inquiry into the administration of Indigenous Affairs.

I look forward to the report of the Inquiry.

Michael Davis
Encl.

Submission to the Senate Select Committee on the Administration of Indigenous Affairs

1. The decision by the Federal Coalition Government to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC) has profound implications for policy, advocacy and representation for Aboriginal and Torres Strait Islander people.
2. While there clearly there were some problems in the operation and administration of ATSIC, I argue that its abolition without establishing an alternative representative organisation for Indigenous people is in violation of Indigenous peoples' inherent right to self determination.
3. There are many areas of policy in which Indigenous peoples' perspectives are not in accordance with those of government. ATSIC provided a critical vehicle for Indigenous people to advocate their own positions, and to represent their communities' interests in a range of forums – including internationally.
4. Indigenous people have inherent rights that arise from their status as first peoples. These inherent rights are not clearly articulated in mainstream human rights instruments. They are however well provided in the *Draft Declaration on the Rights of Indigenous Peoples*. Perhaps the most important of these is the right to self-determination. This means the right, as a group, or collective of peoples, to make their own decisions, to determine their own lives, and importantly, to represent and advocate their own views. The right to participate fully and equally *on their own terms* in the political and economic life of the nation-state in which they live is a crucial aspect of self-determination.
5. The establishment of ATSIC in 1989 was a step towards empowerment for Australia's Indigenous peoples. It provided capacity for policy formulation and advocacy for critical areas of their rights across a wide range of important aspects of their lives. The key area in which Indigenous peoples' rights cannot be represented and adequately formulated by government is in the recognition and exercise of the collective inherent rights of Aboriginal and Torres Strait Islander peoples. This work can, and must be pursued by Indigenous peoples themselves.
6. Certainly, Indigenous communities and organisations require support and resources to assist their rights-based work towards greater self reliance and empowerment. Regional and remote centres for administering Indigenous affairs can of course contribute to this process, as illustrated by the government's proposed Indigenous Coordination Centres. Negotiated agreements and partnerships between governments and Indigenous peoples' organisations are also useful mechanisms for encouraging Indigenous self-determination.
7. These do not, however, go far enough. In key areas of Indigenous rights based policy development, a fully representative Indigenous organisation, with critical linkages to government is essential. Areas where Indigenous peoples' wish to articulate their own views and advance their rights include environment, biodiversity, cultural and intellectual property and traditional knowledge. Policy formulation on recognition and protection of Indigenous traditional knowledge, intellectual property,

repatriation of ancestral remains must be pursued by Indigenous peoples or their advocates fully endorsed by, and representing their communities. These areas of policy development have consistently been ones in which there are fundamental differences of views and approaches between Indigenous peoples, and governments. They are also areas which governments have not advanced, and are generally not considered priority for government.

8. Another critical area in which a representative organisation for Indigenous peoples is critically important is their participation in, and advocacy of their views in international forums. In particular, Indigenous peoples' participation on their own terms is vital in forums concerned with cultural rights in the areas of environment, sustainable development, natural resource management, cultural heritage and cultural and intellectual property rights. Participation by ATSIC in international meetings concerned with biodiversity and traditional knowledge illustrate this point. The views ATSIC Commissioners have presented to these meetings cannot, and should not be presented by governments. As well as representation by Commissioners, ATSIC was also able to provide funding for other Aboriginal and/or Torres Strait Islander community representatives to participate in these meetings. These activities are crucial for the advancement of Indigenous peoples' self determination, and have made vital contributions to standard setting for key areas of inherent collective Indigenous cultural rights. Governments cannot take these responsibilities – and it is not appropriate for them to do so. They do however, have a responsibility to support and resource Indigenous people to represent themselves. It is the primary responsibility of the Commonwealth Government to provide the means for Indigenous peoples to represent themselves. It is for this reason that I argue in this submission that the Commonwealth Government has a responsibility to take measures to enable a fully representative organisation to be established for Aboriginal and Torres Strait Islander peoples for critical policy development. This should be established for the conduct of policy alone – without the encumbrance of program or service delivery functions. This body must be formulated in full consultation and negotiation with Indigenous people.

Recommendation

The Government should:

- 1 undertake to commit to enable a fully representative Indigenous policy and advocacy body to be established. This body will:
 - be the key advisory, advocacy and decision-making body representing Aboriginal and Torres Strait Islander peoples' interests in critical areas of social and cultural policy,
 - have a charter to advance recognition of Aboriginal and Torres Strait Islander peoples' rights to self-determination and advancement of their capacity to exercise their inherent Indigenous rights, and
 - pursue a consultation and negotiation process with Aboriginal and Torres Strait Islander communities and organisations and other

relevant organisations and individuals towards establishing such a body;

- 2 prepare a fully comprehensive Discussion Paper on options and models for such a body, and seek public submissions and convene discussions on this Paper; and
- 3 establish an expert Panel or Working Party to explore further the type of model and structure to be established.

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Canberra
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