

ANSWERS TO QUESTIONS ON NOTICE FROM THE SENATE SELECT COMMITTEE ON THE ADMINISTRATION OF INDIGENOUS AFFAIRS

ATSIC-ATSIS transition

1. Can the Committee be provided with a copy of the ATSIC-ATSIS transition agreement, please?

Yes, a copy is at **Attachment A**.

Assets

2. Can the Committee be provided with advice on what assets are intended to be declared exempted class A, and exempted class B, by category, please?

Which specific assets will be declared exempted class A and B assets is a matter yet to be determined by the Minister. However, it is expected that those programme land and buildings remaining in ATSIC's ownership at transfer day will become class B assets ie will vest in the ILC.

It is not yet known whether shareholdings (eg in Yepereny and Imparja Television) are to be declared class A or class B assets but, unless divested beforehand, they are expected to be declared as exempted assets in one of those categories.

3. What assets won't be exempted, that is, what assets are intended to be vested in the Commonwealth, per item 191(1)(a)? Can the Committee be provided with a list of these assets, please?

The assets which are expected to be vested in the Commonwealth are those assets which ATSIC/ATSIS have needed to perform their functions. With the functions now the responsibility of the Commonwealth, these assets will follow function and are to be distinguished from programme assets. They and their values at 30 June 2004 are:

Staff land/housing	\$28,591,150.00
Office land/buildings	1,135,000.00
Office improvements	9,050,808.64
Software	2,394,106.00
Office equipment	1,503,855.69
Office Furniture	48,150.00
Artwork and artefacts	1,763,750.00

Computer equipment	1,138,194.00
Motor vehicles accessories	1,000.00
Finance Lease Agreement – IT equipment	1,989,617.00

Torres Strait Islander Advisory Board

4. What functions does the Torres Strait Islander Advisory Board (TSIAB) currently perform?

The TSIAB retains its roles and functions as outlined in the *Aboriginal and Torres Strait Islander Commission Act 1990* until the Act is changed.

5. Has its role changed in any way since 1 July 2004?

No, see above answer.

6. How was the TSIAB consulted on its proposed abolition?

TSIAB is being abolished as one of its primary functions was to act as an advocate for Torres Strait Islander concerns within the ATSIC structure. With the abolition of ATSIC there is no logical reason for retaining the Advisory Board. It was therefore not considered appropriate to consult TSIAB once the decision to abolish ATSIC had been made. However, a member of the Minister's office attended a meeting of TSIAB to explain the implications of the abolition of ATSIC.

7. Has the TSIAB expressed any concern to the government about its proposed abolition? If so, what concerns and in what form have they been expressed?

TSIAB wrote to the Minister for Immigration and Multicultural and Indigenous Affairs expressing concern about the possible abolition of TSIAB and the Office of Torres Strait Islander Affairs.

8. How has the government responded to those concerns?

The Minister for Immigration and Multicultural and Indigenous Affairs responded to TSIAB's concerns by indicating that the National Indigenous Council would in future provide her with advice on policies and programmes affecting Aboriginal and Torres Strait Islander people and inviting TSIAB to suggest individuals who would be suitable for nomination to the Council. The Minister has also indicated that the Office of Indigenous Policy Coordination would provide policy advice and monitor the performance of Government programmes and services for Torres Strait Islander people.

9. How will Torres Strait Islander interests on the mainland be represented upon passage of the bill?

It is intended that there will be at least one Torres Strait Islander on the National Indigenous Council. In addition the Torres Strait Regional Authority will continue to advise the Minister on policies and programmes affecting Indigenous people living in the Torres Strait. It is of course open to Torres Strait Islanders to establish their own representative bodies which could advocate their views to government.

Office of Evaluation and Audit (Indigenous Programmes)

10. Is it correct to say the new Office of Evaluation and Audit (Indigenous Programmes) will have the power to evaluate or audit the activities of any individual or organisation that has received funding under a relevant programme, defined as any programme that exists for the purpose of furthering the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders?

Yes, but only to the extent of money, loans, guarantees or other property received under a relevant programme.

11. What's the rationale behind these expanded powers?

The powers of OEA(IP) *per se* have not been expanded beyond those prescribed for the Office of Evaluation and Audit (OEA) under the *Aboriginal and Torres Strait Islander Commission Act 1989*. OEAs powers under the ATSIC Act were exercisable only in respect of funding under that Act.

The Review of ATSIC recommended that the role of OEA be expanded to enable it to evaluate and audit the programmes and services of all service providers, including all agencies of government where the Australian Government has provided resources for the provision of services for Aboriginal and Torres Strait Islander people (Recommendation 54).

Now that the funding previously provided by ATSIC-ATSISS has been transferred to other departments and agencies, not only will these programmes remain subject to evaluation and audit by OEA(IP), but it was also considered appropriate that Indigenous specific programmes within other departments and agencies become subject to evaluation and audit by OEA(IP), in keeping with the recommendation of the ATSIC Review.

There is a sense in which the powers of OEA(IP) have been modified in comparison with the powers under the current ATSIC Act. There is strong legal support that section 76 permits OEA to include in its evaluation and audits, the evaluation and audit of activity generated income that is, income generated by or from the funding or assets granted to an organisation. Under the proposed Bill, these powers are subject to section 193X(1)(c), which permits an evaluation and audit of such income only when a funding or loan agreement provides for this.

12. Does this mean the new OEA(IP) will be able to audit the activities of organisations that currently receive funding from mainstreaming agencies, eg. community controlled health organisations that are funded by the Department of Health and Ageing?

Yes, in respect of money, loans, guarantees or other property received under a relevant programme.

13. Senator Vanstone has produced a document titled Identifiable Commonwealth Expenditure itemising total identifiable Commonwealth Indigenous funding of \$2.9 billion in 2004-05.

Will every individual or organisation that receives funding from programmes on this list be subject to evaluation and audit by the new OEA?

See below.

14. If yes, are there other programmes considered "relevant" within the meaning of the bill and therefore subject to the ambit of the new OEA's powers? Can the Committee be provided with a list please?

See below.

15. If no, what programmes on the Minister's list are not relevant?

Individuals or organisations that receive funding from programmes on this list may be subject to evaluation and audit by OEA(IP). OEA (IP) will develop a triennial programme for the evaluation and audit of organizations or individuals receiving funding from relevant programmes. The first programme would cover the period ending 30 June 2007, and each subsequent programme would cover 3 years. In developing the programme, the Director would have regard to a risk matrix that would include the overall size of the relevant programme, the number of organisations funded, and corporate governance issues.

It is currently estimated that some 5% of the \$2.9 billion in identified Commonwealth Indigenous expenditure relates to elements of broader mainstream programmes that are targeted to Indigenous specific purposes. The balance (and bulk) of the identified funding relates to Indigenous specific programmes – ie programmes agreed and resourced by Government specifically for the benefit of Indigenous people. Because all funding identified in the \$2.9 billion is funding that has been provided for Indigenous specific purposes under a Commonwealth programme, every item in the table could fall within the scope of the term "relevant programme". Similarly, by definition, all expenditure under "relevant programmes" is intended to be reflected in the table of Identified Commonwealth Indigenous Expenditure.

16. What is the proposed budget of this new office, and how does it compare to the budget enjoyed by its predecessor?

OEA(IP) has a budget of some \$5.149 million in 2004-05. This includes all salaries; direct costs; indirect costs; and on-costs associated with the office, for example telephones, computers, office accommodation, office equipment. The OEA budget in ATSIC/ATSIS was \$2.995 million; however, this related only to salaries and direct costs.

Environment Protection and Biodiversity Conservation Act

17. Can you explain the impact of the amendment to the Environment Protection and Biodiversity Conservation Act in relation to the handling of proposals under the Act, please?

The Environment Minister receives referrals of proposals to take action, for his decision as to whether or not the action is a controlled action that would be prohibited without approval under Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act). The Environment Minister must invite comment from relevant Ministers and the public on whether the action requires approval under the Act.

Subsection 74(1A) of the Act also imposes an extra consultation requirement in some circumstances. Under that subsection the Environment Minister must inform ATSIC of referrals of proposals to take certain actions and invite comments from ATSIC on whether the proposals are controlled actions. The requirement to invite ATSIC comments relates to referrals of proposals where the action could impact on the Indigenous heritage value of a National Heritage place or a Commonwealth heritage place. The proposed amendment will repeal subsection 74(1A).

However the general consultation requirements seeking comment from the public and relevant Ministers will remain. In addition, there are similar consultation requirements imposed in relation to an environmental assessment of a referred proposal and when the Environment Minister is considering granting approval for a proposal. These consultation requirements will ensure that Indigenous views can be put forward in relation to proposals which could impact on Indigenous heritage values.

Native Title Act

18. Can you explain the impact of the amendments to the Native Title Act, particularly the impact for Native Title Representative Bodies, please?

Part 11 of the *Native Title Act 1993* (the Act) deals with representative bodies. Some consequential amendments will be made to remove references to ATSIC and to sections of the ATSIC Act which are to be repealed.

The funding arrangements for representative bodies are proposed to be amended. Representative bodies will no longer apply for grants from ATSIC, but for the provision of funds from the Secretary of the Department which has administrative responsibility for Part 11 of the Act. This is presently the Department of Immigration and Multicultural and Indigenous Affairs. This will remove the restriction on funding being provided through grants.

The Secretary of the relevant Department, rather than ATSIC, will have a role in overseeing the performance of representative bodies. Section 203F will be amended to require the Secretary (rather than ATSIC) to inform the Minister of matters relating to the performance of representative bodies. Section 203FB will be amended to provide that review of assistance decisions made by a representative body will be undertaken by the Secretary of the relevant Department, rather than ATSIC.

The operations of representative bodies will no longer be evaluated under s76 of the ATSIC Act but under the new s193X.

A new s203FI is being added to allow delegation of certain of the Secretary's powers to an officer of the Australian Public Service who is a member of the Senior Executive Service or has equivalent rank.

19. Item 34 of the bill substitutes the words “grant of money” for “provision of funding”.

What is the rationale for this amendment and what impact will it have?

Item 34 of schedule 4 of the Bill omits “grant of money” and substitutes “provision of funding”. The Government is seeking to ensure greater accountability for outcomes for funds provided to bodies which provide services to Indigenous people. One means of promoting such accountability is to provide funds on the basis of an outcomes-based contract for the provision of services. The use of the term “funding” allows for greater flexibility in the way funds are provided, including through a contract for services.

Human Rights and Equal Opportunity Commission Act

20. Can you explain the impact of the amendment to the Human Rights and Equal Opportunity Act, please – will the amendment mean the Aboriginal and Torres Strait Islander Social Justice Commissioner won't be required to consult with any Indigenous representative organisation – indeed, any Indigenous person?

The amendment to the *Human Rights and Equal Opportunity Commission Act 1986* (the Act) will remove the requirement for the Aboriginal and Torres Strait Islander Social Justice Commissioner to consult with ATSIC in the performance of his/her functions. Currently ATSIC is the only body that the Aboriginal and Torres Strait Islander Social Justice Commissioner must consult with on appropriate matters, consequently, if the amendment is

passed, there will not be a requirement for consultation with an Indigenous representative organisation.

However, the Aboriginal and Torres Strait Islander Social Justice Commissioner has broad consultative powers under the Act. The Commissioner may consult with organisations established by Aboriginal or Torres Strait Islander communities and any organisations the Commissioner considers appropriate. Although these provisions are permissive rather than mandatory, it is highly unlikely that the Aboriginal and Torres Strait Islander Social Justice Commissioner would perform his/her functions without consultation (where appropriate).

21. Can you outline for me the nature of consultation with the Social Justice Commissioner on this amendment?

The Attorney-General's Department consulted the Human Rights and Equal Opportunity Commission about the proposed amendment.

Subordinate legislation

22. Can the Committee be provided with details of all subordinate legislation affected by amendments in the bill?

The zone election rules made pursuant to s138 of the ATSIC Act will be redundant after ATSIC is abolished.

The regional council election rules made pursuant to s113 of the ATSIC Act and the ATSIC (Regional Councils – Election of Officeholders) Regulations 1993 will no longer be necessary once regional councils are abolished.

The model rules for the conduct of proceedings at meetings of regional councils are currently made under s128(12) of the ATSIC Act which is to be repealed and substituted, but the Bill provides for the preservation of the rules as if they were made under the new s128(12) while regional councils are still in place.

There are references to ATSIC or to regional councils in the following subordinate legislation made under other Acts:

Remuneration Tribunal (Miscellaneous Provisions) Regulations 1976
Financial Management and Accountability Regulations 1997
Superannuation (CSS) Salary Regulations 1978
Electoral and Referendum Regulations 1940
Lands Acquisition Regulations 1989

Financial Transactions Reports Regulations 1990
Federal Court Rules
Electronic Transactions Regulations 2000
Privacy (Private Sector) Regulations 2001

Public Service Regulations 1999

23. What draft regulations has the government prepared, and can the Committee be provided with all such drafts, please?

In relation to regulations to be made under the ATSIC Act, the Government has not prepared any draft regulations.

The regulations referred to above and made under other Acts do not fall within the portfolio responsibility of the Department of Immigration and Multicultural and Indigenous Affairs.

MAINSTREAMING

Funding maintenance

24. On 15 June 2004 Senator Judith Troeth advised the Senate that “no programmes will cease as a result of the changes we are making and existing levels of funding will continue.”

Does the government intend to honour that commitment?

Yes.

25. Have any funding agreements with Indigenous or other organisations had to be renegotiated before the end of the financial year?

Most 2003-04 Funding Offers were for a one year period. Consequently, the majority of Funding Agreements (over 99%) for 2004-05 involved new negotiations. ATSI had previously decided to introduce Programme Funding Agreements as the contractual relationship for delivery of the services for 2004-05.

In developing programmes for 2004-05 there was a renewed emphasis on outcomes based funding and the capacity of providers to deliver the services required. The negotiations on funding generally took place in May and June 2004 and funding decisions were made in late June, significantly earlier than in previous years.

26. If yes, can the Committee be provided with a schedule, please?

Rather than re-negotiated agreements, virtually all agreements (some 1300) were new agreements as noted above.

27. Are any negotiations on new funding agreements outstanding? If so, in relation to which funding agreements and when will negotiations be concluded?

Negotiation of funding agreements continues to take place throughout the year as not all allocations and priorities are determined by 1 July. The overwhelming majority has been finalised. It is not possible to provide a precise number of how many are still being negotiated without devoting excessive resources to the task. However, by way of example, as at 22 July 2004, 230 out of 239 CDEP agreements had been dispatched and 214 had been accepted; the remaining 16 had not been returned.

Staffing

28. Can you provide the Committee with a schedule showing staff changes related to the transfer of Indigenous programmes, please – something showing overall staff numbers, where staff have been and where they are going?

The list below outlines the number of staff that have moved from ATSI to “receiving agencies” (based on average staffing levels):

Attorney-General’s Department	63	
Department of Communications, Information Technology and the Arts	103	
Department of Finance and Administration	21	
Department of Environment and Heritage	11	
Department of Employment and Workplace Relations	294	(of which 63 will move to IBA after passage of the Bill)
Department of Family and Community Services	231	
Department of Health and Ageing	22	
Aboriginal and Torres Strait Islander Services	83	(of which 60 will move to IBA after passage of the Bill)
Department of Immigration and Multicultural and Indigenous Affairs	500	
<u>TOTAL</u>	<u>1328</u>	

Indigenous Coordination Centres

29. Have all Indigenous Coordination Centres (ICCs) commenced operation?

Yes.

30. On what date did each ICC commence operation?

All ICCs commenced operations on 1 July 2004

31. What staff are located at each ICC, by agency?

The table at **Attachment B** shows staff numbers at each ICC by agency, as at 1 July 2004. Please note that the table includes all staff located in Tasmania, as staff there undertake both State Office and ICC functions. In addition, staff from other Australian Government agencies (eg DEST) will be moving staff into ICCs.

32. Will Indigenous people be able to contact these centres using a toll free telephone number?

Indigenous people can contact ICCs by calling 1800 079 098 which diverts to the nearest office in each state. The two exceptions to this are Nhulunbuy and Katherine where the toll free numbers are 1800 089 148 and 1800 193 357 respectively.

33. What is the number (by ICC, if applicable)?

See above.

National Indigenous Council

34. When will the National Indigenous Council (NIC) be formed?

The composition of the NIC is currently being finalised.

35. What payments or entitlements will be paid to NIC members?

It is proposed that NIC members will receive remuneration and entitlements in line with current Remuneration Tribunal Determinations relating to *HOLDERS of Part-time Office* - for Offices not specified - and *Official Travel*, subject to the agreement of the Minister for Immigration and Multicultural and Indigenous Affairs.

36. What Budget will be provided to the NIC?

The composition of the NIC is yet to be finalised. The budget to support the NIC will be determined by the number of members, frequency of meetings and anticipated workload. A sufficient budget will be provided for its effective operation, commensurate with similar advisory bodies to government.

Performance pay

37 When announcing the government's intention to introduce new arrangements to deliver programmes, Senator Vanstone said "Improving performance will be written into performance agreements with Departmental heads."

Can you advise the Committee of the specific changes to performance agreements in relation to each head of a department or agency now delivering Indigenous programmes, please?

See below.

38. On what date was each change negotiated, by department or agency?

All Secretaries responsible for the delivery of services and programmes to indigenous Australians were informed in April 2004 by the Secretary of the Department of the Prime Minister and Cabinet that, in addition to existing areas of performance assessment, they will also be assessed on the extent to which they have worked in a collegiate fashion to deliver services and programmes to indigenous communities in a coordinated and flexible manner.



Agreement

in Relation to Various Matters between

ATSIC and the Commonwealth represented by ATSI

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PARTIES

This Agreement is made between and binds the following parties:

- 1 Commonwealth of Australia represented by Aboriginal & Torres Strait Islander Services (ATSIS)
- 2 Aboriginal & Torres Strait Islander Commission (ATSIC)

PREAMBLE

In implementing this Agreement, both ATSIC and ATSIS are committed to working together in the best interests of all Aboriginal and Torres Strait Islander peoples. This will be done to assist ATSIC to achieve its goal of self-determination and empowerment of all the indigenous peoples of Australia.

BACKGROUND

- A. By notice in the Gazette of 30 May 2003, Aboriginal and Torres Strait Islander Services was established as an executive agency as from 1 July 2003.
- B. ATSIS has been given a number of functions including, delivering programs for Aboriginal and Torres Strait Islanders and providing policy advice and advocacy support to ATSIC.
- C. ATSIC was established by Section 6 of the Aboriginal and Torres Strait Islander Commission Act 1989 (Cth.) (the Act).
- D. Some of the functions that ATSIC has to date carried out will from 1 July be performed by ATSIS and ATSIS will act as agent for ATSIC in relation to certain other functions of ATSIC.
- E. Certain employees of ATSIC will also be transferred to ATSIS pursuant to s.72 of the Public Service Act 1999.
- F. In order to enable these arrangements to be put into place smoothly and co-operatively, the parties have agreed to enter into this agreement which will set out both transitional arrangements and interim arrangements for the long term co-operation of both parties in relation to their functions.

OPERATIVE PROVISIONS

The parties agree as follows.

1 INTERPRETATION

1.1 Definitions

- 1.1.1 In this Agreement, unless the context indicates otherwise:

Act means the Aboriginal and Torres Strait Islander

Commission Act 1989.

Agreement Material	means any material in any form or medium: <ul style="list-style-type: none">a) created for the purposes of this agreement; orb) derived at any time from the material referred to in paragraph a.
ATSIC Material	means any material (excluding CEO Material) in any form or medium: <ul style="list-style-type: none">c) held by ATSIC either before or after the Commencement Date; andd) any material derived from the material referred to in c above.
CEO Related Material	means any material in any form or medium which has come into existence prior to the Commencement Date because of the role of the CEO in answering directly to the Minister, and includes such material as Cabinet documents, material relating to the management of staff under the <i>Public Service Act 1999</i> and documents relating to the administration of legislation.
Commencement Date	means 1 July 2003.
Director	means the Director of the Office of Evaluation and Audit appointed under s.77 of the Act to be head of the Office of Evaluation and Audit.
Existing	means existing immediately prior to Commencement Date.
Intellectual Property	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information.
Minister	means the Minister responsible for the Act and for ATSI.
Order	means the Order made on the 28 May 2003 by the Administrator of the Commonwealth of Australia and published in the Special Gazette of 30 May 2003, establishing ATSI as an executive agency.

Office	means the Office of Evaluation and Audit established within the Commission by s.75 of the Act.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Program	means one of the programs which ATSIC formulates and implements under s.7(1)(a) of the Act.
Protocol	means the protocol which is being developed between ATSIC and ATSSIS to govern various aspects of their relationship.
Specified Employees	means those employees of ATSSIS whom ATSSIS nominates as the employees who will carry out the functions and powers which ATSIC has authorised ATSSIS to perform under s.s.7(1A) of the Act or appointed ATSSIS as its agent to carry out under s.10 (2)(f) of the Act.
Transition End Date	means 31 October 2003.
Transition Period	means the period between 1 July and 31 October 2003 during which the parties will be effecting and completing the new arrangements.

1.2 Interpretation

1.2.1 In this Agreement, unless the contrary intention appears:

- a) words importing a gender include any other gender;
- b) words in the singular include the plural and words in the plural include the singular;
- c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d) words importing a person include a partnership and a body whether corporate or otherwise;
- e) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of such legislation or legislative provision;

- f) reference to a Schedule is a reference to a Schedule to this Agreement, including as amended or replaced from time to time by agreement in writing between the parties;
- g) where any conflict arises between any part of this Agreement and any part of a Schedule, the Agreement prevails.

1.3 Guidance on construction of this agreement

- 1.3.1 No variation of this Agreement is binding unless it is agreed in writing and signed by the parties.
- 1.3.2 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 1.3.3 This agreement is to be construed in accordance with the laws of the Australian Capital Territory.
- 1.3.4 This Agreement is formed and is dated as at the date it has been executed by both parties. The terms of this Agreement apply on and from the Commencement Date.

2 PURPOSE OF AGREEMENT

The purpose of this Agreement is to provide for the respective responsibilities of both ATSIC and ATSSIS in relation to the matters set out in the Agreement both during the Transition Period and thereafter.

3 ACKNOWLEDGEMENT

The parties acknowledge that as from the Commencement Date ATSSIS will carry out the functions given to ATSSIS by the Order and that the performance of those functions will not form part of the Agreement.

4 PERIOD OF THE AGREEMENT

The Agreement will continue until such time as the Minister determines otherwise or the Parliament passes legislation which deals otherwise with the matters the subject of the Agreement.

5 AGENCY APPOINTMENT AND AUTHORISATION OF ATSSIS

- 5.1.1 ATSIC hereby:
 - a) grants to ATSSIS an authorisation under s.7(1A) of the Act to perform any functions that are to be performed under s.7(1)(a) of the Act by ATSSIS under the Agreement; and
 - b) appoints ATSSIS as its agent under s.10(2)(f) of the Act to act on its behalf in relation to other functions and powers that ATSSIS is to perform on ATSIC's behalf in accordance with the Agreement.

- 5.1.2 The functions and powers which ATSSIS performs under the Agreement pursuant to an authorisation or appointment as agent in accordance with clause 5.1.1 will be performed by Specified Employees.

6 GENERAL POWERS AUTHORISATIONS AND OBLIGATIONS

- 6.1.1 ATSSIS must carry out all its functions and obligations under this Agreement in an efficient and timely manner and in accordance with the Protocols and act at all times in the best interests of ATSSIC.
- 6.1.2 ATSSIC agrees that it will not for the duration of the Agreement authorise any person or appoint any agent to carry out the functions which under the Agreement ATSSIS will carry out for ATSSIC other than under the Agreement.
- 6.1.3 ATSSIS will carry out all administration services necessary to perform all its functions and exercise all its powers under the Agreement and provide those administration services to ATSSIC including the processing of all transactions, and the operating of all ATSSIC bank accounts.
- 6.1.4 ATSSIS will carry out all other functions and activities such as research, advocacy and policy which were properly provided by the administrative arm of ATSSIC to the Elected Arm prior to the Commencement Date to a level previously provided and in accordance with the Protocols.
- 6.1.5 The contracts and assets listed in the Schedules are those that have been identified at the time of the Commencement Date. The parties agree that where other contracts and assets have not been identified and categorised before the Commencement Date, ATSSIS as part of its role under the Agreement of providing administrative services to ATSSIC will ensure that those assets and contracts are identified and categorised as soon as possible after Commencement Date and that each asset and contract is added to the appropriate Schedule.

7 PROGRAMS TO BE ADMINISTERED BY ATSSIS

7.1 Termination of Existing Program Agreements

Where there are Existing agreements in relation to ATSSIC's Programs, ATSSIC will, except in relation to those agreements referred in clauses 7.2. and 8, give notice of termination of those agreements to take effect where possible from 30 June 2003 or such other time being no later than the Transition End Date, and ATSSIS will thereafter enter into new agreements in accordance with the Order. The agreements in relation to which termination notices have been or are in the process of being given are set out in Schedule 1.

7.2 Administration of Programs terminating before the Transition End Date and existing obligations under Programs

ATSSIC hereby authorises ATSSIS to administer Existing Programs where there are:

- a) Existing agreements which will come to an end on or before the Transition End Date; and
- b) Existing agreements which have terminated but still have Existing outstanding obligations under them.

7.3 Monies owing to ATSIC in relation to existing Programs

Where ATSSIS recovers monies that are owing to ATSIC under Existing Programs, ATSSIS must pay those moneys to an ATSIC bank account as nominated by ATSIC.

8 HOUSING FUND AND REGIONAL LAND FUND

ATSSIS will administer:

- a) the Housing Fund in accordance with s.67 of the Act including applying the funds in their absolute discretion in accordance with ss.67(3) and (5) of the Act and preparing budget estimates for the ATSIC in accordance with s.67(4) of the Act; and
- b) the Regional Land Fund in accordance with s.68 of the Act including making grants in accordance with s.68(3) of the Act.

In this clause “**to administer the Funds**” includes to operate the bank accounts, serve notices and commence recovery action.

9 BUSINESS LOANS

Where ATSIC has Existing business loans those loans will be administered by ATSSIS and ATSSIS will in administering those loans pay into an ATSIC bank account all moneys repaid under those loans.

10 GUARANTEES GIVEN BY ATSIC RELATE TO SOME EXTENT TO BUSINESS LOANS

ATSSIS will administer on behalf of ATSIC those Existing guarantees given by ATSIC under s.15 of the Act which are set out in Schedule 2.

11 TRUST FUNDS IN RELATION TO HOUSING AND INFRASTRUCTURE PROGRAMS

- 11.1.1 ATSSIS has carried out functions in relation to housing and infrastructure programs. A number of these programs have been administered through Grant arrangements where the Grantee has agreed to consultants contracts to ATSIC managing the Grant funds through Trust Accounts into which ATSIC has placed the Grant monies for the purposes of the project. In a number of cases, particularly the National Aboriginal Health Strategy (NAHS) program, ATSSIS is a joint beneficiary to the Trust Account to the extent that Grant monies are surplus to the project requirements and for any interest accruing on the Trust Account.
- 11.1.2 From the Commencement Date, ATSSIS will manage these housing and infrastructure programs on behalf of ATSIC and the parties agree that:

- a) AT SIS will be notified to the consultant/trustee as the contact point for all notices and reports etc under either the Housing and Infrastructure contract or the trust;
- b) where the Housing and Infrastructure projects have been completed and there are surplus Grant funds to be returned that those funds will be returned to AT SIC and that they will remain the property of AT SIC;
- c) where the Housing and Infrastructure projects are still in progress that the trust will remain as is and the Grant monies in the trust will continue to be applied for the purpose of the project;
- d) where further Grant monies are required to complete the project these Grant monies will be provided by AT SIS to the Trust Account;
- e) in respect of projects that AT SIS provides funds to the Trust Account AT SIC agrees that at the completion of the project any surplus funds will be returned to AT SIS;
- f) AT SIC agrees that any interest accruing on the Trust Accounts after 1 July 2003 will be forwarded to AT SIS for the furtherance of the respective Housing and Infrastructure program.

12 AT SIC ROLE UNDER THE NATIVE TITLE ACT 1993

Where AT SIC has roles and responsibilities granted to it under ss.203D-203DC of the *Native Title Act 1993*, AT SIS will perform those roles and responsibilities on behalf of AT SIC from the Commencement Date.

13 ASSISTANCE TO THE DIRECTOR

- 13.1.1 The Director will continue after the Commencement Date to head the Office which will continue to perform the functions set out in s.76 of the Act.
- 13.1.2 Where AT SIS makes its employees available to AT SIC for the purposes of assisting the Director to carry out the statutory functions of the Office, AT SIS will ensure that those employees whom it makes available to assist the Director, carry out their roles in accordance with the directions of the Director.

14 AT SIC ASSETS

14.1 Definitions

14.1.1 AT SIC's assets are divided into:

- a) **Buildings** such as houses and offices, including all fixtures within those Buildings;

- b) **Other Tangible Assets** which are non fixed assets owned by ATISC which are located within or associated with the buildings including the artwork owned or leased by ATISC;
- c) **Other Assets** such as Intellectual Property, and shares in companies.

Each of the above categories can be further divided into ATISC **Owned Assets** and **ATISC Leased Assets**.

14.2 General Principle

14.2.1 The general principle that will apply in relation to ATISC assets is that:

- a) **Buildings and Other Tangible Assets**
 - A) where ATISC owns Buildings and Other Tangible Assets, it will retain ownership. Where the Buildings and Other Tangible Assets are to be used by ATISC, ATISC will allow ATISC exclusive use and possession in the manner set out in clause 15 below; and
 - B) where ATISC leases Buildings (and reference to the lease of a Building includes reference to the lease of part of a Building) and Other Tangible Assets, those leased Buildings and Other Tangible Assets will be dealt with in accordance with clause 19 below
- b) **Other Assets**

These will be dealt with in the manner set out in clause 20 below

15 ATISC OWNED ASSETS

15.1 ATISC Owned Buildings

15.1.1 ATISC owns certain Buildings as listed in Schedule 3A for the purposes of:

- a) providing housing for its employees and Elected Arm; and
- b) Office Buildings.

15.1.2 In addition to the Buildings referred to in clause 15.1.1, ATISC owns other Buildings which ATISC will manage for ATISC. These Buildings are listed in Schedule 3B.

16 ATISC OWNED HOUSING FOR EMPLOYEES AND ELECTED ARM

16.1.1 Where ATISC owns houses for its employees and Elected Arm and Other Tangible Assets associated with those houses, ATISC will continue to own those houses and Other Tangible Assets whether from the Commencement Date the tenants of those houses are employees of ATISC or of ATISC.

16.1.2 ATISC agrees that ATISC will:

- a) manage these houses on its behalf and take responsibility for paying all costs and liabilities incurred in maintaining those houses and Other Tangible Assets associated with those houses;
- b) as part of its responsibilities of managing the houses, collect all rents and other payments owing by the tenants and use those monies to meet all costs of managing the houses including all repair, replacements insurance and other outgoings.

17 BUILDINGS OWNED BY ATSIC FOR OFFICE USE

Where ATSIC owns offices for the purpose of carrying out its functions it will continue to own those offices and hereby grants to ATSSIS exclusive occupation and use of so much of the offices as are occupied by ATSSIS employees.

18 ATSIC LEASED BUILDINGS

- 1.1.1 Where ATSIC has leased Buildings and those leases will expire on or before the Transition End Date ATSIC will grant exclusive occupation to ATSSIS of so much of the Building as ATSSIS determines it requires to carry out its functions and will obtain forthwith all consents necessary from the owner in order to achieve this.
- 1.1.2 Where ATSIC has given notice that it will exercise its option to renew any of its leased Buildings and the date for renewal is on or after the Commencement Date, ATSSIS will enter into the new leases pursuant to the option to renew.
- 1.1.3 Where ATSIC has leased a Building and the lease expires after the Transition End Date, ATSIC will do all things necessary (including, where required, obtaining the consent of the owner) to assign the lease to ATSSIS.
- 1.1.4 ATSSIS will upon being assigned any leases in accordance with clause 18.1.3 immediately grant to ATSIC at no cost a sub-lease of so much of the Building as is necessary for ATSIC to carry out its functions.

19 OTHER TANGIBLE ASSETS ASSOCIATED WITH ATSIC OWNED AND LEASED OFFICES

19.1 ATSIC retains ownership

- 19.1.1 All of the Other Tangible Assets as listed in Schedule 3C within or associated with Buildings which ATSIC owned or leased for use as offices immediately before Commencement Date will remain in the ownership of ATSIC.
- 19.1.2 Clause 19.1.1 will apply to Other Tangible Assets within or associated with all buildings which ATSIC owns or leased immediately before Commencement Date, even if after Commencement Date ATSIC assigns or subleases the building or part thereof to ATSSIS or ATSSIS renews a lease in the name of ATSSIS on the expiry of an ATSIC lease.

19.2 AT SIC gives AT SIS exclusive right to use Other Tangible Assets

AT SIC hereby grants to AT SIS a right to the exclusive use of all the Other Tangible Assets which are situated within or associated with any building or part thereof which AT SIS leases or sub-leases from AT SIC, or the lease of which AT SIS has taken over from AT SIC either by assignment or by renewal in the name of AT SIS.

19.3 AT SIS responsibility in relation to buildings it leases and Other Tangible and Other Tangible Assets

During the period during which AT SIS leases a Building or part thereof from AT SIC or while it has exclusive use of AT SIC's Other Tangible Assets, AT SIS will:

- a) accept all risk associated with such occupation or use;
- b) obtain adequate insurance cover for all risks no less than that held by AT SIC as at 30 June 2003;
- c) be responsible for all maintenance and repair including structural repairs;
- d) have the right to carry out any work (including structural work) required including removing or altering partitions and fixtures.

20 OTHER ASSETS

20.1 Management and Schedule of Other Assets

20.1.1 The class of Other Assets is described in clause 14.1.1c.

20.1.2 The parties will co-operate to ensure that they make all appropriate arrangement for ownership or management, whichever is appropriate of all Other Assets and that these are listed in Schedule 4 with a clear statement of what is to be done with each.

20.2 Domain names, websites etc

AT SIC and AT SIS agree that AT SIC will retain its current website and AT SIS will manage and maintain the website for AT SIC.

21 CORPORATE FUNCTIONS

21.1.1 This clause provides for AT SIS to carry out all corporate functions for AT SIC and sets out the parties' intention in relation to Existing contracts for services.

21.1.2 These contracts are divided into 3 categories:

- a) those that will remain with AT SIC because they are for services which AT SIC will continue to require eg supplier costs including those relating to banking, motor vehicles for AT SIC employees, consumables, entertainment and travel;
- b) those which it is appropriate to assign, novate or terminate and enter into new arrangements to AT SIS because the services will be ones that will be used predominantly or exclusively by AT SIS; and

- c) those that will remain with ATSIC but which will have ATSSIS added as a party which benefits from the contract.

22 ADMINISTRATION OF CORPORATE FUNCTIONS

- 22.1.1 All corporate functions of ATSIC will be administered and managed from the Commencement Date by ATSSIS.
- 22.1.2 Where ATSSIS is administering and managing corporate functions for ATSIC it will use ATSIC moneys in relation all consumables required and all costs and outgoings incurred in the administration and management of the corporate functions, except as provided for in clause 22.1.3.
- 22.1.3 The use of ATSIC money in accordance with clause 22.1.2 will not be used for the salary costs of ATSSIS staff.

23 TREATMENT OF CONTRACTS RELATING TO CORPORATE FUNCTIONS

23.1 Contracts that will remain with ATSIC

- 23.1.1 Contracts in the category described in clause 21.1.2.a are set out in Schedule 5.
- 23.1.2 In administering those contracts, ATSSIS will pay all monies that are required to be paid on ATSIC's behalf out of moneys that have been appropriated to ATSIC.

23.2 Contracts that will be assigned to ATSSIS

- 23.2.1 Contracts in the category described in clause 21.1.2.b are set out in Schedule 6.
- 23.2.2 ATSIC and ATSSIS will co-operate to ensure that all contracts that fit within the category are assigned, novated or terminated and renewed in the name of ATSSIS.
- 23.2.3 In relation to these contracts, ATSSIS will, where it is appropriate to do so arrange for new contracts to be entered into by ATSIC and administer these contracts for ATSIC.
- 23.2.4 In administering those contracts, ATSSIS will pay all monies that are required to be paid on ATSIC's behalf out of moneys that have been appropriated to ATSIC insofar as payments required to be made under these contracts are made on behalf of or for the benefit of ATSIC.

23.3 Contracts which will remain with ATSIC with ATSSIS added as a party

- 23.3.1 Contracts in the category described in clause 21.1.2.c are set out in Schedule 7.
- 23.3.2 Where it is appropriate that contracts remain with ATSIC but with ATSSIS added as a party, ATSSIS will administer these contracts for ATSIC insofar as they relate to ATSIC matters.
- 23.3.3 In administering these contracts, ATSSIS will ensure that payments relating to the activities of ATSSIS and those relating to the activities of ATSIC are clearly separated and that all moneys received and paid are properly recorded in the books of the relevant party.

23.3.4 In administering these contracts AT SIS will pay all monies that are required to be paid on AT SIC's behalf out of moneys that have been appropriated to AT SIC insofar as payments required to be made under these contracts are made on behalf of or for the benefit of AT SIC and will pay all monies that are required to be paid on AT SIS behalf out of AT SIS moneys.

24 LEGAL SERVICES IN RELATION TO MATTERS UNDER THIS AGREEMENT

24.1.1 AT SIS will provide, without cost to AT SIC all legal services which in the opinion of the CEO of AT SIS it requires to properly carry out its functions under this Agreement.

24.1.2 Where there is a conflict of interest which cannot be resolved in a reasonable time, then AT SIC may obtain its own legal advice which the CEO of AT SIC will commission on their behalf."

25 PRIVACY

Both parties are subject to the *Privacy Act 1988* and acknowledge their obligations in relation to the Privacy Principles set out in that Act in relation to all personal information which they handle.

26 CONFIDENTIALITY

The parties acknowledge their obligation as employees under the Public Service Act in relation to confidentiality and proper use of AT SIC documents and information and agree to act at all times in accordance with those obligations.

27 MATERIAL

27.1 AT SIC Material

AT SIC will retain ownership of Existing AT SIC Material and AT SIS hereby grants to AT SIS the right to:

- a) access at all times; and
- b) retain copies of,

all AT SIC Material for its own records and grants or will procure a royalty-free, non-exclusive licence for AT SIS to use, reproduce and adapt the AT SIC Material.

27.1A Other Material

AT SIS will retain ownership of all material brought into existence after the Commencement Date for the purpose of advising AT SIC on its policies and priorities and AT SIS hereby grants to AT SIC the right to access that material at all times.

Nothing in this agreement shall be taken to override obligations of confidence imposed by law on AT SIS.

27.2 Agreement Material

ATSIC will own all Agreement Material and ATSIC hereby grants to ATSSIS the right to:

- a) access at all times; and
- b) retain copies of,

all Agreement Material for its own records and grants or will procure a royalty-free, non-exclusive licence for ATSSIS to use, reproduce and adapt the ATSIC Material.

27.3 CEO Related Material

ATSSIS will own CEO Related Material from the Commencement Date.

28 INDEMNITY

28.1 Indemnity by ATSSIS

28.1.1 ATSSIS agrees to indemnify ATSIC from and against any:

- a) loss incurred by ATSIC as a result of any claim against it including legal costs and expenses on a solicitor/own client basis; and
- b) any damages awarded against ATSIC,

in relation to any matter arising prior to Commencement Date.

28.1.2 The indemnity of ATSSIS under clause 28.1.1 shall not apply if there are sufficient funds available in ATSIC to cover the liability.

28.1.3 Where a loss occurs after the Commencement Date in relation to any matter the subject of this Agreement, including any loss as a result of a claim made against ATSIC, ATSSIS in its role of acting on behalf of ATSIC and administering the affairs of ATSIC will meet all such losses unless money has been appropriated to ATSIC to cover the loss.

29 DISPUTE RESOLUTION

29.1 Procedure for Dispute Resolution

The following steps apply in the following order for resolution of any dispute which arises in relation to this Agreement. For each step, the next step may be taken if the dispute has not been resolved within the time indicated for that step, which runs from the time the initial consultation is required by the party:

The first step is:

- a) consultation between the Group Manager, Corporate in ATSSIS and the Senior Executive Service Officer in ATSIC within 7 days; and
- b) where the dispute is not settled under clause 29.1 consultation between the CEO of ATSSIS and the Chairperson of ATSIC within 14 days commencing at the end of the 7 day period.

29.2 Consideration in Good Faith of Alternative Dispute Resolution

Where the procedure in sub-clause 29.1 does not lead to the resolution of a dispute, the parties must each consider in good faith whether any other dispute resolution mechanism such as mediation would be of benefit in resolving the dispute.

29.3 Continued Performance during Disputes

Except as expressly provided in this Agreement, the parties shall continue to perform this Agreement even if a dispute occurs.

29.4 Condition Precedent to Legal Action

It is a condition precedent to the commencement of any legal proceedings by either party relating to any dispute that that party has taken, or used its best efforts to take, all or any steps in the disputes procedure in relation to that dispute.

30 USE OF SEAL

Where the common seal is used on documents under this Agreement it must be used in accordance with the resolution of the ATSIIC dated 2003.

31 POWER OF ATTORNEY

ATSIIC hereby appoints the CEO [others listed such as legal counsel etc] of ATSIIS as its attorney to sign all documents necessary for ATSIIS to sign in carrying out its functions under this Agreement and ATSIIC will upon the signing of this Agreement provide the CEO with an executed power of attorney in the form set out in the attachment.

32 CONDUCT OF ATSIIC LITIGATION

32.1.1 ATSIIS will conduct all civil proceedings on behalf of ATSIIC.

32.1.2 ATSIIC agrees that the Commissioners and its employees provide all assistance, including if requested the execution and signing of documents, reasonably required by ATSIIS in relation to the conduct of the proceedings or settlement thereof or in relation to any relevant appeal or review process.

33 VARIATION OF AGREEMENT

The parties agree to co-operate to vary this Agreement to reflect any different arrangement which both parties consider during the course of this Agreement to be more appropriate.

34 FURTHER ASSURANCES

The parties will do all things and sign all documents required to give effect to the purpose and intentions of this Agreement.

35 NOTICE

35.1.1 Any notice under this Agreement is only effective if it is in writing, and addressed as follows:

a) if given by ATSSIS to ATSSIC – addressed to the Chairperson of ATSSIC or the Senior Executive Service Officer in ATSSIC at the address specified below or as otherwise notified by ATSSIC:

or

b) if given by ATSSIC to ATSSIS – given by the Chairperson of ATSSIC or the Senior Executive Service Office in ATSSIC and addressed as specified below or as otherwise notified by ATSSIS:

35.1.2 A notice is to be:

- a) signed by the person giving the notice and delivered by hand; or
- b) signed by the person giving the notice and sent by pre-paid post; or
- c) transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

35.1.3 A notice is deemed to be effected:

- a) if delivered by hand – upon delivery to the relevant address;
- b) if sent by post – upon delivery to the relevant address;
- c) if transmitted electronically – upon actual receipt by the addressee.

35.1.4 A notice received:

- a) on a day that is not a Business Day,
- b) is deemed to be effected on the next Business Day.

SIGNED for and on behalf of by:)
)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SIGNED for and on behalf of by:)
)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

Attachment B

INDIGENOUS COORDINATION CENTRE (ICC) STAFF (as at 1 July 2004)

ICCs	AGD	ATSI	DEH	DEWR	DOHA	DIMIA	DCITA	FACS	TOTAL
Adelaide	2	2		7		9	2	7	29
Alice Springs	1	1		6		9	6	7	30
Bourke	1			5		8	1	1	16
Brisbane	2	4		7	1	10	4	5	33
Broome				5		7	2	4	18
Cairns	1			16	1	11	4	11	44
Ceduna				5		5	1	3	14
Coffs Harbour	1	1		8		4	1		15
Darwin	1	3		8		9	5	11	37
Derby				6		5	2	4	17
Geraldton	1			5		6	2	3	17
Kalgoorlie				6		9	4	6	25
Katherine	1			4		4	3	3	15
Kununurra				7		6	1	4	18
Melbourne	1	3	1	8		8	4	7	32
Mount Isa	1			3		6	2	4	16
Nhulunbuy			1	6		5	1	3	16
Perth	2	3		8		11	4	2	30
Port Augusta				4		8	2	7	21
Queanbeyan	1			3		6	2	2	14
Rockhampton	1	3		4		5	3	3	19
Roma	1			3		6	2	4	16
South Hedland				3		6	1	4	14
Sydney	3	4		7		8	4	4	30
Tamworth	1	2		6		5	1	2	17
Tasmania*		1	1	2	1	6	2	4	17
Tennant Creek				3		5	1	4	13
Townsville	1	5		2		7	2	3	20
Wagga Wagga	2	3		11		7	1	1	25
TOTAL	25	35	3	168	3	201	70	123	628

• includes both State Office and ICC staff

