

# Chapter 4

## Accountability Requirements

4.1 This chapter discusses the accountability requirements of representative bodies in fulfilling their statutory functions. The chapter also reviews the progress made by NTRBs in developing their performance reporting and strategic planning processes. In addition, the chapter reviews the level of accountability and compliance required of representative bodies.

4.2 The *Native Title Act 1993* (NTA) requires NTRBs to be accountable to the Minister and to the persons they represent in a number of ways. These accountability requirements include the following features:

- a representative body must prepare a strategic plan;
- a representative body must maintain accounting records prescribed by the NTA;
- payments that are made by a representative body out of its monies must be correctly made and properly authorised;
- a representative body must prepare an annual report by 15 October each year (which is tabled in the Parliament); and
- ancillary provisions provide for the inspection and audit or investigation of a representative body.<sup>1</sup>

### Strategic plans/performance reporting

4.3 The OIPC stated that strategic plans are central to the prioritising, planning and reporting of activities of representative bodies. Each representative body is required by the NTA to prepare a strategic plan (s.203D). Strategic plans must cover a minimum of three years, and, without limiting the content of the plans, must include:

- a general financial plan;
- a general statement of the objectives of the body in relation to its representative body activities; and
- a general statement of the strategies and policies it proposes to adopt to achieve those objectives.<sup>2</sup>

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1 *Submissions* 1A, pp.30-31 (OIPC); 1, pp.4-6 (ATSIS); 16, pp.4-5 (AGs Department).

2 *Submission* 1A, pp.30-31 (OIPC).

4.4 Strategic plans must be prepared in consultation with the OIPC and are subject to approval by the Minister. These plans are the key means for the Minister to supervise the overall management of the representative body program and to ensure that representative bodies remain focussed on achieving the general purposes of the representative body regime.

4.5 The OIPC stated that strategic plans enable NTRBs to be proactive in the way they provide services to their constituents by maximising the use of funding and human resources and by establishing and documenting criteria by which funding allocations will be prioritised.

The objective sought is a culture of performance budgeting and reporting, based on the strategic planning process, and embedded in the allocation of funds on a transparent and objective basis relative to performance and requirements.<sup>3</sup>

4.6 Representative bodies indicated their support for the concept of strategic plans. The Carpentaria Land Council stated that strategic plans play a vital role in the prioritising, planning and reporting of its activities and welcomes the support provided by the OIPC in improving the quality of its strategic planning processes.<sup>4</sup> The ATSI Social Justice Commissioner also noted that the strategic planning process encourages the participation of Indigenous people in the native title process particularly as strategic plans must include a statement on the particular NTRBs' policies for consultation with Indigenous people about the NTA's operation.<sup>5</sup>

4.7 The first strategic plans developed under the amended NTA covered the period to the end of the 2003-04 financial year. All NTRBs have subsequently developed new plans for the period 2004-07 and these have been presented to the Minister.

4.8 The OIPC stated that it has worked closely with representative bodies to assist their planning processes, including developing templates to guide NTRBs in plan preparation. Workshops were held in 2003 by ATSIC and ATSI with NTRB managers and accountants to define the output and outcomes reporting framework, the theory of outputs/outcomes budgeting and linkages between operational and strategic plans and reporting requirements. To achieve consistency NTRBs were asked to prepare their 2004-05 operational plans and their 2004-07 strategic plans using the same outputs and outcomes framework. ATSI provided bodies with strategic and operational planning templates. The OIPC stated that representative bodies should continue to be supported in improving their strategic planning processes and

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3 *Submission 1A*, p.31 (OIPC).

4 *Submission 38*, p.14 (Carpentaria Land Council).

5 *Submission 15*, p.12 (ATSI Social Justice Commissioner).

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integrating strategic plans, operational plans and performance based budgeting and reporting.<sup>6</sup>

4.9 The Miller report made a number of recommendations to improve the funding process for representative bodies including requiring operational plans to be included in annual funding applications both to give effect to strategic plans and to provide much needed performance information. The report also recommended a continuation of the work done by ATSIC in developing an outputs/outcomes budgeting framework for representative bodies, and that the Capacity Building Program be used to assist in the implementation of the recommendations.<sup>7</sup>

4.10 OIPC stated that it has implemented a number of processes to meet the recommendations of the Miller report including:

- the development of representative body operational planning guidelines and template;
- the requirement that representative bodies prepare and submit an operational plan (this requirement commenced with 2003-04 funding applications);
- the requirement that representative bodies provide six-monthly performance reports (in addition to their existing annual reporting obligations); and
- the requirement that such operational plans and performance reports be based on an outputs/outcomes framework.<sup>8</sup>

4.11 While all NTRBs adopted the new reporting frameworks for 2003-04, the OIPC stated the task is only partly completed.

There is a considerable way to go before it is possible to be confident that the information from representative bodies concerning workloads, outputs and outcomes is sufficiently accurate and reliable to provide sound advice for certainty about the allocation of funds. OIPC wants to continue to move to output based funding.<sup>9</sup>

## **Annual reports**

4.12 As noted above, NTRBs are also required to submit annual reports which are tabled in the Parliament. ATSI commented that the annual reports are generally of a high standard, although it was conceded that the production of these reports is a resource-intensive exercise for many representative bodies.

...every rep body has tabled an annual report....it has been late in some cases, but when you think that we are dealing here with community based

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6 *Submission 1A*, p.32 (OIPC).

7 B Miller, *Review of Native Title Representative Body System at the Request of the Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs*, October 2002, pp.30-35.

8 *Submission 1A*, p.24 (OIPC).

9 *Submission 1A*, pp.24-25 (OIPC).

organisations that, in many cases, do not have long histories and are operating in remote parts of Australia, to ultimately produce annual reports that meet the same standards that a government department does is a pretty good job.<sup>10</sup>

### **Level of accountability**

4.13 Evidence from representative bodies acknowledged that they, that like all recipients of public moneys, should be accountable for the way they spend funds provided by the Commonwealth. Several submissions from representative bodies and other evidence complained, however, about the level and extent of accountability requirements expected of NTRBs.

4.14 The ATSI Social Justice Commissioner argued that NTRB funding is more highly regulated and controlled than other areas of government funding: 'the NTA contains a range of other provisions in relation to what NTRBs must do, both in their substantive work and in their procedures'. The Commissioner also argued that the degree of accountability required of NTRBs should be the same as that required of other parties in the native title system in receipt of public funds.<sup>11</sup>

4.15 The Goldfields Land and Sea Council (GLSC) also noted that 'while funding shrinks relative to our workload, accountability and compliance requirements increase'. The Council added:

The current system causes many additional and unnecessary problems, and places enormous stress and pressures on NTRBs. Much improvement could be achieved to improve the arrangements without cost to government. It is probable that more reasonable, consistent, streamlined and predictable arrangements would result in savings that could be reallocated to assist NTRBs better satisfy the requirements of the *Native Title Act*.<sup>12</sup>

4.16 The GLSC described the amount of 'red tape' required as "'meta-work": work about work, rather than work about getting out and trying to win claims...it takes up considerable resources and energy, and can be quite distressing'. The Council enumerated in some detail the various compliance requirements imposed on representative bodies:

We have faced the considerable and increasingly rigorous requirements of the Commonwealth...There are considerable requirements on rep bodies in terms of governance. There is the annual report, which we have tendered and which we have to file in parliament. There is a strategic plan under the act. That is approved by the minister. Now there is a thing called an "operational plan" that, under the grants agreement, needs to be approved

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10 *Committee Hansard* 12 May 2004, p.23 (ATSI).

11 *Submission* 15, p.14 (ATSI Social Justice Commissioner).

12 *Submission* 12, p.8 (GLSC).

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by OIPC. That is the minutiae of operational matters of the workings of the land council, which are, after all, statutory functions.<sup>13</sup>

4.17 One submission noted that there are, however, compelling reasons for stringent oversight of representative bodies, although the level of oversight was questioned:

Because they [NTRBs] are, to a large extent, bodies comprised of (or including) existing and potential claimants, there is a real potential for conflicts of interest and corrupt practices. No doubt because of these dangers, the *Native Title Act* (and other legislation) subjects representative bodies to high (even extraordinary) levels of oversight and regulation.<sup>14</sup>

4.18 The submission further noted, however, that every dollar of public money spent on oversight and regulation 'is money which might otherwise provide a direct benefit to Aboriginal Australians'.<sup>15</sup>

4.19 A similar argument was made by the ATSI Social Justice Commissioner who argued that the need for accountability should be balanced against the objectives of representative bodies in providing services to their client base.

This submission is not advocating that NTRB funding be free of conditions or government scrutiny. In the situation of limited funding, clearly some systems need to be put in place to ensure equitable use of those funds between NTRBs around the country. But in applying these conditions funding bodies need to ensure the conditions are not impeding the very purposes for which funding is provided.<sup>16</sup>

### **Conclusion**

4.20 The Committee welcomes the continuing development of performance reporting by representative bodies through the implementation of strategic plans and other performance-based operational plans. Further, the Committee supports the continued efforts of the OIPC to improve representative bodies' strategic planning processes.

4.21 The Committee believes that rigorous accountability mechanisms need to be in place to ensure that the considerable public moneys expended on NTRBs is spent appropriately. Both the Indigenous constituency of representative bodies and the public in general must have confidence in the accountability and compliance processes.

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13 *Committee Hansard* 19 July 2005, p.73 (GLSC).

14 *Submission* 11, p.5 (Mr J Basten QC).

15 *Submission* 11, p.5 (Mr J Basten QC).

16 *Submission* 15, p.14 (ATSI Social Justice Commissioner).

4.22 Evidence to the inquiry indicates, however, that the administrative demands in connection with compliance activities pose a considerable burden on representative bodies. Time spent complying with excessive documentation can significantly affect the time spent on the representative bodies' core activities relating to native title applications – the very purposes for which the funding is provided. The Committee believes that the OIPC, in conjunction with representative bodies, should review the current accountability requirements with the aim of streamlining the requirements where possible without compromising the essential accountability requirements of representative bodies.

#### **Recommendation 15**

**4.23 The Committee recommends that the OIPC continue to support NTRBs in improving the quality of their strategic planning processes and especially in integrating strategic plans, operational plans and performance based budgeting and reporting.**

#### **Recommendation 16**

**4.24 The Committee recommends that the OIPC, in consultation with representative bodies, review the current compliance and accountability requirements placed on NTRBs with a view to reducing unnecessary duplication of reporting and streamlining reporting procedures.**