

HODGES, Mr Craig, Media and Communications Manager, National Congress of Australia's First Peoples

OLIVER, Mr Gary, Chief Executive Officer, National Congress of Australia's First Peoples

Committee met at 11:19

CHAIR (Senator Dodson): Thank you for coming and meeting with the committee today. I pass on apologies from the co-chair, Mr Leaser, and other members of our committee that aren't here today. The committee has been asked by the Commonwealth parliament to look into constitutional recognition relating to Aboriginal and Torres Strait Islander peoples. The resolution of appointment outlines in more detail aspects of the committee's consideration. As co-chairs of the committee we have made statements expressing our desire to hear more from First Nations peoples as we start our work. We've also explained that we will continue to receive submissions and hear more views around Australia in the coming months—this won't be our only meeting. We need to be sure that everyone present is aware of procedural considerations. Today the committee is taking a *Hansard* record of the proceedings, but they are not being broadcast. The committee may wish to make the *Hansard* record public at a later date, but we will seek your views on this matter before doing so. If you feel very strongly that you don't want your views recorded in any way, we will give consideration to that. When you provide information to a committee, you are covered by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage you on account of the evidence given, and such action may be taken by the parliament as a contempt. It is also a contempt for you to give false or misleading information. If you make an adverse comment about an individual or organisation, that individual or organisation will be made aware of the comment and be given a reasonable opportunity to respond to the committee. Would you like to now make a brief opening statement?

Mr Oliver: Before we commence, I acknowledge the Wurundjeri people of the Kulin nation, who are the traditional owners of the land we're meeting upon, but I also acknowledge the good senators and members of the Australian parliament who are here with us. We're honoured to be in front of you as the national congress, representing our 9,000 members and 140 Aboriginal organisations, one of which has a membership of 26,000 in its own right. We test the voice of national congress with our members as we work, and we acknowledge our own pedigree in the work we've done with the Referendum Council and other machinations of reports that have gone to government as well over the past few years in relation to the representation of Aboriginal people and a treaty for Aboriginal nations.

CHAIR: Would you like to say something, Mr Hodges?

Mr Hodges: Not at this point.

CHAIR: I note the apologies we've received from others who were invited: the Kimberley Land Council, Central Land Council, Ms Jill Gallagher as Victorian Treaty Advancement Commissioner and Dr Roger Thomas as South Australian Indigenous Treaty Commissioner.

Senator McCARTHY: Good morning. It's great to see you both here. Firstly the committee would like to understand on a number of levels where congress sits now with the conversations that have been happening. It's important for us to get a sense, because we want to navigate a way forward, and if we can be a little more conversational in this first instance, it will allow members and senators an opportunity to tick-tack back and forth, if that's okay.

Mr Oliver: That would be great. We've surveyed our members, and the priority for our work that our members have talked about is having a treaty process. Over the last six months we've done some investigative work on what treaties have been like in other countries—from New Zealand to Namibia and other places in the world—and what the impacts of those treaties have been, but it's important to note that one of the most important factors in the road towards a treaty has been the truth and justice telling. We've developed a paper which we would put to this committee around a truth and justice commission for Australia and the legislative warrant that body would need to enable it to do the work it will need to.

Senator McCARTHY: What particular commission models has congress seen that you can share with us?

Mr Oliver: We've had a look at the various time frames that some of these commissions have worked within, whether it was in South Africa, Ottawa in Canada, or New Zealand. Within the framework of our paper thus far we've learned some lessons about not rushing the work, but how do we bring along the 97 per cent of the population that isn't Indigenous? How do we change the fabric of the Australian people within a generation? Thinking about the paper that we've embarked upon, we've had a look at work that could possibly take ten years from enactment in some form of legislation, in every jurisdiction across the country, that would allow the conversation to happen with Aboriginal, Torres Strait Islander and non-Aboriginal people about the true effect of colonisation and what happened pre and post, as part of the story of Australia. That story in its own right would

also form the workings for the treaty conversation that may or may not need to occur within the concept of that region or that state. I say that because some states are embarking upon that work themselves, like Victoria and South Australia, and there's discussion in the Northern Territory about bringing together the framework in that place. Our discussion paper could be preceded by work already happening across the country, but in that case I don't think it should be discounted, because the achievement of that work isn't just about the voice. Over the past year national congress has been providing a level of service akin to the voice. We review legislation, participate in Senate committees and do other things that we would expect of a voice, but the most important factor is the bringing-together of the nation: Aboriginal and Torres Strait Islander people with the 97 per cent of people who aren't of our descent.

Senator McCARTHY: For the benefit of this committee, what fundamental principles within a truth and justice commission are you pursuing on behalf of your constituency of 9,000 members and 140 organisations?

Mr Oliver: The truth and justice commission will provide an opportunity to empower our people through honesty and to a point of self-determination. Without those conversations in some parts of Australia, we wouldn't have the impetus for self-determination and for Aboriginal people to be acknowledged. Without the work that has been done over the Myall Creek massacre—I know the Hon. Linda Burney has been to that acknowledgement in past years—Aboriginal and non-Aboriginal people wouldn't have come together to acknowledge that had happened and to empower the local Aboriginal groups, traditional owners and land councils within that area. I think truth-telling is not a negative position where we need to make people feel sorry for us as Aboriginal people, but we need to acknowledge the history of this country, the positives and the leaders that have preceded us as part of this conversation as well.

Senator McCARTHY: You spoke about bringing 97 per cent of Australians with you. What strategies is congress looking at in order to do that?

Mr Oliver: I think that's a bigger task than national congress, but we're looking at the development of the framework for the paper and coming up with a solution to how we engage the Australian population to work with the Aboriginal and Torres Strait Islander communities over a period of time. It's not something we could do in isolation, and we have to be mindful that some parts of the Australian population aren't ready for this conversation or will see it as a grab for the return of our lands. Other processes are used for the return of Aboriginal lands, and the truth and justice commission shouldn't be one in isolation.

Ms LEY: I'm interested in your response to the Prime Minister's statement about the Referendum Council's report on constitutional recognition. Given the committee very much want to find the things we agree upon as a nation, what ingredients can you point to that we might find agreement on?

Mr Oliver: We need to be mindful that the work done by this committee is for the parliament and people of Australia, not just for a single minister or the Prime Minister. National congress have been disappointed that it has taken so long for this conversation to come to a select committee, and yes, I think we've been vocal in the media about that as well, but we're excited that we have a Prime Minister at the moment that has used the catchcry of doing things with us, not to us, and we hope this committee process can be utilised to provide advice to parliament and the Prime Minister. We know other hurdles will need to be cleared if we are to achieve a voice enshrined in the Constitution, which doesn't seem to have impetus within the current government. We're saying, 'Let's not let that cloud our judgement or our work, because other important work could be captured from the Referendum Council's report as we proceed along.'

Ms LEY: Such as?

Mr Oliver: Such as the work we need to do about the Makarrata, truth-telling and empowering Aboriginal people to form governance groups of their own to lead the way to future representation within either a legislative or a constitutional framework. We think the constitutional one may be a high water mark. We know the current government doesn't have the appetite for that. Will we as Aboriginal people or groups accept a legislative one when we know legislation can be changed? Most recently they've tried to dismantle provisions of the old ATSIC Act. That is still sitting on the table at the moment. Legislation is there at the whim of government. If we as a people are to have a voice, we would like it to be enshrined in the Constitution. To do so could be seen as the redundancy of the National Congress of Australia's First Peoples, because we've done that. We've been a voice, monitored government, participated in select committees, commented on bills and so forth. That could definitely be a function for a voice if it's enshrined in the Constitution, but my co-chairs remind me that national congress will be around for many years. *Our future in our hands* prescribed that for the organisation as we stand today.

Ms LEY: I don't want to put words in your mouth, but are you suggesting the point in the future whose time you recognise has not yet come is one step along the way, and we have to go through those steps to get there?

Mr Oliver: Definitely. This process is not going to give us the automatic response we as an organisation or as a people would expect. We know it's a timelined process, and steps have to be taken along the way. Provisions of the reconciliation act are still in place, and those same steps had time lines as well. That work isn't finished; that work is continuing to reconcile this country.

Ms LEY: Senator McCarthy talked about your truth and justice reconciliation process. Would you see that as an extension of the coming-together following the national apology, or slightly different and a bit more formal?

Mr Oliver: I hope it would have a more formal impetus. When we've investigated what heads of power we could use to amend legislation or enact standalone legislation for such a process or body, I hope the euphoria felt at the time of the apology will be repeated with the truth and justice commission. I know some groups around the country—whether it be Myall Creek, Cherbourg or Yarrabah, the community I'm affiliated with—await the day that we have equality and an equal voice within this country.

Senator STOKER: Forgive me if I ask questions that are perhaps obvious to the others. I am impressed by the size of your membership and the consultation you've already done. Can you explain to me how you've gone about consulting that membership to come up with the proposals you've brought to us today?

Mr Oliver: Certainly. We've done some work with peak Aboriginal organisations, and also directly surveying our members. That's how we've come to our platform of work. We used to run national congress every year by bringing our delegates together and putting policy positions to them, but sadly the 2014 federal budget saw cuts to national congress, and we are not funded for our operations within congress. That's why we have to now use other means of communication with our members and such.

Senator STOKER: Are those surveys administered electronically?

Mr Oliver: Yes, they're done electronically.

Senator STOKER: How many responses do you get to your surveys giving us this input?

Mr Oliver: When we put to the membership things as interesting as the future needs of our people, we get a large response.

Mr Hodges: With national congress's resources and capabilities we are driven, in a sense, to use online polling. I draw to the committee's attention that that does limit which people you can engage with. Not everybody in our membership base has access to the internet or mobile phones, so this is an opt-in type of polling. We also survey members of the general community who are not members of national congress, plus members and what we call friends of national congress—that is, non Aboriginal and Torres Strait Islanders—so we capture quite a large cross-section of the Australian community.

Senator STOKER: That you get a large response is quite impressive. How is it distributed?

Mr Hodges: To give you an example of a poll we did recently, this year we did a survey on the issue of Australia Day, 26 January. That was conducted through a social media platform. The total number of respondents was 2,955, and the number of national congress members who responded was about 369, so probably less than 15 per cent, but we are confident that is reasonably reflective of our membership base for that single issue.

Mr Oliver: That single issue was changing the date of Australia Day. I think a lot of our people were busy in the lead-up to that day and so didn't participate in the survey.

Senator STOKER: Is the process different when consulting with the 140 organisations you're involved with?

Mr Oliver: Certainly. National congress is made up of three chambers: chamber 1 is our peak Aboriginal organisations, chamber 2 is our state peak representatives, and chamber 3 is 40 delegates nominated from around the country. We're dealing with our peaks on a quarterly basis at the moment through the provisions of the Redfern Statement alliance. We've brought people together to improve service delivery, and we made a policy platform prior to the previous election on what was required for the improvement of Aboriginal people's lives. Most of the peaks we're dealing with on that quarterly basis are involved with daily service provision to our people. We do a lot of testing with those peaks as well, but we also deal with the federation of native title bodies, including the Kimberley Land Council, for Senate committee reports and such.

Senator STOKER: The concept of Makarrata is something I want to understand fully, and I don't think I'm quite there yet. Can you explain to me what that means to you and your members?

Mr Oliver: In short it is the opportunity for two parties to sit down and come to an agreement. It could be a long, drawn-out process for us, but as an individual I'm fortunate to have worked on the repatriation of the Waitangi agreement with the Tuhoe people in New Zealand, so I've seen how those agreements can work for the benefit of indigenous people, and I'm jealous that we don't have that opportunity for our own mobs here in Australia, so I'm looking forward to the day that we do.

Ms McGOWAN: I don't understand what you just said. What are you jealous of?

Mr Oliver: I'm jealous because we are the only Commonwealth country that doesn't have a treaty, but our neighbouring country, New Zealand, has already gone through this, looking the at repatriation processes for breaches of the Waitangi agreement. I worked closely the Tuhoe in bringing their evidence to the tribunal. To see the response from a government to their first nations people was quite impressive and had me jealous that that could happen just overseas from us and not on our own shores.

Ms McGOWAN: What I've heard you say is they have a process, and we don't have a process.

Mr Oliver: Yes, that's correct.

Ms McGOWAN: And you were part of the process that worked well, and we could learn from that?

Mr Oliver: I was part of a group involved in some negotiations for the repatriation of some assets to Tuhoe people. They have a process enshrined in legislation, but within the Constitution of New Zealand a koroua or kaumatua sits in parliament to oversee the parliamentary process. That person's not always there or not always supported by a body, but there's a process that allows for that. I get excited when I sit up in the public gallery of the Senate or the House of Representatives and I see our Aboriginal parliamentarians. Nothing would be more exciting than to see one of our traditional owners actually sitting in a position where they could participate on the floor or oversee things that occur.

That's the process that they use in New Zealand. I know the process has been described differently here in Australia—through the voice of constitutional recognition and/or a voice throughout that process. That's only one model that should be looked at. There are other models as well, like the Canadian model. With the Canadian model, there has been a longer period of engaging with their mob around truth and justice and healing. They've been healing their people who have gone along the way.

Senator STOKER: Can I ask a further question to again help me to understand. What does the day-to-day work of a truth and justice commission involve?

Mr Oliver: It's about gathering evidence. It's about using some of the work that's been done through our native title bodies and our claim books—for example, if we look at the Nicholson River claim. We can look at the Nicholson River claim when we talk about the connection of people. I say the word 'muruji' because I'm talking about old Jack from Nicholson and his storyline. But it's also the storyline before him and how he was a jungayi and a story man for that country. That story actually lives on and spreads across the country.

The truth and justice commission can help us celebrate that aspect of our culture and the continuation of our culture. When you have a look at the machinations of it or the commissioning of it, historians would need to be involved. There would need to be people who can gather the stories and present them to a tribunal as evidence as well, so that that evidence can be heard—not necessarily tested. It would be a change in the way that any judicial system would be processed, because it wouldn't be judging; it would be listening.

Senator STOKER: Something that's got an inquisitorial kind of process?

Mr Oliver: Yes, it would be like an inquiry.

Senator STOKER: But without something in the nature of a judgement at the end of it?

Mr Oliver: Yes, that's correct.

Senator STOKER: Okay. Thanks.

CHAIR: Ms Burney?

Ms BURNEY: Thank you, Gary and Craig, for coming in. I should state, Mr Chair, that, up until the defunding of congress, I was a card-carrying member of congress. There was a great little black membership card that we used to have. I'm very familiar with congress and its operations, and participated in a number of meetings of and was involved with congress prior to the defunding of the organisation by this government. In fact, I would go as far as to say that we may not have been having this inquiry had that defunding not taken place. I have a number of questions to you as the CEO. I think it would be really helpful for some members of the committee to understand the democratic nature of congress. Could you describe that.

Mr Oliver: I sure can. I've explained the chambers that make up congress: chambers 1, 2 and 3. We also have an ethics committee within congress. We do refer things to the ethics committee for their deliberations at times. Our constitution tells us that we must have a male and a female co-chair within the chambers but also at the peak of our organisation. Dr Jackie Huggins and Rod Little carry out the function for us.

We are not there to judge people on their Aboriginality for their membership, but people do nominate the countries that they come from, the lands that they come from, within the membership, and we have a process for

accepting the memberships there. Our national board is made up of two directors from each of the chambers. In our chamber that is made up of individuals, 40 individuals are nominated from a group of 9,000. When we were funded and saw governance of Aboriginal people coming together for one organisation—we did that at Sydney Olympic Park—it was quite empowering and Lowitja led us and called for things. We have two directors from each of the chambers. The peaks at the state level choose who is elevated to the national board, and so do the three chamber individuals. It truly is an opportunity for Aboriginal people to come and share their experience and participate in a governance setting where it isn't about having to be the shiniest peacock in the cage. It's about doing work and supporting the education policy, as the Hon. Linda Burney had done previously. There are experienced Aboriginal people all around the country who participate in the work of congress through our governance model and through some of the advocacy work that we do through service delivery as well.

Ms BURNEY: Part of the enormous challenge that we as a committee have is to recommend to the parliament a way forward on a whole range of areas, including economic development, constitutional recognition, agreement making and so forth. With the Makarrata Commission that you're talking about, leading onto the idea of a voice, how do you as an organisation line that up with the work of a decade of reconciliation that Australia went through? I think that's a really important thing that we need to tease out—what that did or didn't deliver and what the next iteration of that should be. I see it in that context.

Mr Oliver: We definitely see it in that context as well. We've been very interested in seeing that. There was legislation there that was dormant, which was the reconciliation act. How could it be used as part of a new vehicle for the next stage of reconciliation? That's what this is—the truth and justice commission, the decision-making and the agreement making are all part of a reconciliation for this country. We're changing the fabric of generations to come. We always say that, if we could have a Koori kid bring his Italian, Greek or Lebanese mate along and for those mates to go home and speak the words of that little Koori kid, we'd be making change. That's the change that we have embarked on and want to see, utilising the provisions of reconciliation groups from around the country that are still operational. We still have New South Wales Reconciliation Council and Reconciliation Queensland. We've actually written into our model the roles that those groups can play in helping coordinate activity on the ground as well. It's not just going to be about the formal process of presenting to a tribunal; it's going to be about activities to bring the community together along the journey as well. It's an important factor that the local or state reconciliation groups participate within this process as well.

Ms BURNEY: I think that's a very important point. Just picking up what on Senator Stoker has said, do you, from a congress perspective, see the Makarrata Commission as a place where people can express themselves and be heard but have no powers for recommending to the police or to any authorities people who may have transgressed mores and human rights abuses, for example? Is that right?

Mr Oliver: That's correct, yes. If we have a look at—

Ms BURNEY: Unlike the South Africans.

Mr Oliver: Unlike the South African one as well. I think South Africa is still feeling the pain from some of that work at the moment.

Ms LEY: Would it be more like the Northern Ireland one?

Mr Oliver: Yes, exactly.

Ms BURNEY: I think that's a really important distinction. I suppose the other thing that I'd like to ask is—clearly, at the moment, when you look at the landscape, there is still the existence of the Prime Minister's Indigenous Advisory Council. Obviously, we'll be hearing from the co-chairs of that at some point. That group exists now. We've got congress, which has been defunded but is democratically elected. We've got big representative bodies across the country in terms of land councils. One of the enormous challenges this group will have, I suspect, is to look at what a representative body, or some sort of body, would look like down the track. I'd be interested in your views on that and where congress sits within that. I think that's a really important thing that we need to understand in relation to models, for example. But we've got months ahead of us. If you can't answer that now, we've got plenty of time.

Mr Oliver: When you look at the current context, you're right—national congress is the only democratically elected group as a voice for Aboriginal people.

Ms BURNEY: Nationally.

Mr Oliver: Yes. Some people want to throw rocks at us, but some people threw rocks at ATSIC as well. A lot of work went into the implementation of the national congress, so I'd hate to see the baby thrown out with the bathwater. It's something that we could work up together. The Indigenous advisory committee—we work closely with them; we've been to them for a number of things, including the Closing the Gap Refresh, before Mincore

and after COAG, to make sure that processes were right. And I dare say that it's the change in that group at the moment, through their leadership, through the co-chairs, that we were able to get some sense to the bureaucracy who were running programs around the Closing the Gap Refresh.

I would love to see the work of national congress elevated into the position of being the voice, if it wasn't a constitutionally recognised voice. We have more members than a certain political party that holds power in this country at the moment. Our co-chair had more primary votes than an elected member who leads us. We've got to note that, though we only have 9,000 members, we're working on increasing that; we've just increase it by a couple of thousand in the last 2½ years, whilst we haven't had funds. You could imagine, if we had operational funds, what we could do and where we could be within the footings of things. But it is a space we watch with much anticipation and a space that we will be making comment on in our written submission to the select committee.

Ms BURNEY: You've spoken about potential models of constitutional recognition, in some way, of First Nations voices, but you've also mentioned a legislative process. Could you talk through the pros and cons of that and where congress is sitting with those two models.

Mr Oliver: The legislative process is more of a legislative process that would give a head of power for the truth and justice committee to occur, so that would enact some legislation to give the enforcement that's needed for the truth and justice commission. I dare say that we could amend the Council for Aboriginal Reconciliation Act at the moment and we could achieve that out of the fragments that are left of the reconciliation act. I'm not sure if that got written off or not.

Ms BURNEY: I don't know.

Mr Oliver: I know it was due to be written off. We could use that legislation and reconfigure some component of it to allow that. That's the truth and justice commission. But it has to be a policy position of government of how far it would go with the truth and justice commission—if it would be permissible for that conversation to turn into treaty conversations and to be overseen by a voice to parliament. We've got the Human Rights Subcommittee. Can the voice to parliament take over that function by looking at legislation that impacts on Indigenous people across the country?

CHAIR: You raise the question of the capacity that congress has to interface with legislation and policy. Would you like to talk about that. Is that a formal invitation by the minister or is that simply an agency seeing some legislation then making a comment like any other organisation does, or are you formally invited to make submissions on policy and legislation that will impact First Nations people?

Mr Oliver: We do receive invitations. In recent times we received an invitation to make comment on a bill in relation to the ILC, the Indigenous Land Corporation. We've been invited to make some submissions in relation to that. Other times we see legislation going through processes and we choose to make comment on provisions of the legislation. We were invited to make a submission on the cashless card and we were invited to make a submission in relation to amendments to the Native Title Act, but, sadly, we weren't invited to do so for the Racial Discrimination Act, which impacts on our people. But we did make submissions—

CHAIR: Is that an invitation from a particular minister as opposed to the parliament or the Senate asking you to make comment?

Mr Oliver: It is just in relation to the Senate asking us to make comment.

CHAIR: Is that the minister or the Senate?

Mr Oliver: The Senate.

CHAIR: When you say 'the Senate'—

Mr Oliver: Sorry, Senate committees—a Senate committee like this committee has asked us to participate. There's no automatic process coming from a minister's office or either chamber of parliament that gives us the opportunity.

CHAIR: Again, going to the Prime Minister's comment but not into the detail, why is it deemed necessary for First Nations peoples to have their separate organisational structures to interface with the polity? You mentioned earlier that some parties in the parliament have members with fewer votes. Why aren't you a political party running your own candidates in the mainstream of politics?

Mr Oliver: We're bipartisan. We work with all sides of politics to ensure that the voice of Aboriginal people is heard and we work with Independents as well. I've had some weird and wonderful conversations with some Independents in both houses, but we stand aside from politics and we act as an independent, bipartisan group.

Ms McGOWAN: Can you explore that a bit more? Why have you got to that position? What's your thinking behind that?

Mr Oliver: Our thinking behind that is that it gives us longevity. We just need to go back a couple of years and note that the Democrats were in a position of influence in this country and they're no longer, and we see dwindling numbers of smaller parties that are trying to get up and running, like the Xenophon party or others. We are not in a position where we could use all of the votes of Aboriginal Australia to put us in a position of power within politics or parliament, but nor do we hope for that. All we would like to do is be the influencer of change.

CHAIR: On the question of the entrenchment of a power to set up such a body—the voice or an entity—I think you commented that if that were the case then congress may not exist any further. Did I hear you correctly?

Mr Oliver: You did hear me correctly. It depends on what the function of the voice would be. If it were set up in a way that it could truly be the voice of Aboriginal people and have a look at all the functions that we do, we would hate to see us being in a position of duplicating or challenging that process of the voice.

CHAIR: So would it be better for the parliament to contemplate legislating an entity into existence so that the public and the organisation would know exactly what its purpose and functions are by way of legislation or is it a better path to entrench a head of power and then use the head of power to legislate an entity into existence?

Mr Oliver: The process that was used in forming legislative bodies previously has failed us as Aboriginal people. There was a most audited organisation in this country called ATSIC, the Aboriginal and Torres Strait Islander Commission. It had more audits than any government department, yet it was abolished; it was made defunct. That commission offered empowerment for our mob. We had regional governance bodies that were set up under ATSIC. They all had portfolios. We had commissioners and we had a political process within ATSIC. A lot of people in a generation not too far distanced from mine cry for the days that we had ATSIC and wish to have it back in place. There were faults within that model and a review was done by our co-chair, Dr Jackie Huggins, for the Howard government at the time. I think it was easier for the government at the time to just abolish the Aboriginal and Torres Strait Islander Commission than work at implementing changes. Our fear would be that, if we had something that was enshrined in legislation, it would be at the whim of government and groups like those based on Hansonism could get in there and change it by doing deals with the government that's in power.

CHAIR: I'm sure you're not arguing against being accountable, transparent and audited?

Mr Oliver: No, we're not. Looking at the audit process that was in place for ATSIC, it was probably one of the most audited organisations, statutory bodies or government bodies in this country.

CHAIR: That takes me to my second point, which is that a head of power doesn't necessarily guarantee you existence. It's still subject to the parliament or the party of the government of the day to put in practice what that power enables it to do. So there'd still be no guarantee that you'd be in existence. You could have a head of power as you have under the Constitution—I think it's section 101. A committee was set up for railway line conformity. That existed for a short time and then passed away, but it still sits in the Constitution. You could end up like that as well.

Mr Oliver: That's correct.

CHAIR: So the romance about entrenchment isn't necessarily a guarantee that the political will of the party would be to enact what you would like to see. Do you think that's appreciated amongst people?

Mr Oliver: I think it is. Some of our members are in the sovereignty movement. They have never seceded their sovereignty and so don't see the Constitution as a legitimate tool to enshrine us. We're balancing on a tightrope to bring Aboriginal people along with us within this conversation. There's now a younger generation, as we've seen—and I've never seen as many young people marching at different events around the country as I have this year—that is screaming out that it would never secede sovereignty. So what will that mean to them? If we entrench a voice in the Constitution, is it going to keep that generation or their children happy? We're a very fertile mob; we've got a lot of young people under the age of 25 at the moment. So we've got to be mindful of even the language or the processes that we use for the representation of our people.

CHAIR: What was the operational cost? What were the costs when you were in favour with the government? What were the outlays that the government was putting in to maintain and run this organisation?

Mr Oliver: There was bipartisan support for a sinking fund or trust fund to be developed. An amount of \$200 million of government money was talked about to be put into a trust fund, with the national congress living off the interest. In fact, no new money has been attributed to the organisation or to the structure of the national congress.

It's sad to say that in the last years of the operational funding for the national congress the word of government was, 'Spend it or lose it.' So there had to be some work that was done that had longevity to it that couldn't have

been finished within that time frame. So 2014 was when we saw the drop off. The operational cost at that point for the national congress, which included some 40 staff—including the full operations of our board, which back then met monthly and also had an election cycle every three years—was around \$5 million.

CHAIR: What would you say were the deliverables for that kind of outlay? If you had to go along to the minister or to Senate estimates and say, 'This is what we have delivered for the First Nations people for the betterment of the country,' what would you be saying to them?

Mr Oliver: We delivered some great things. Have a look at the list of our achievements for the first couple of years of the national congress informing the organisation and bringing people together. We couldn't really put a value on that. But at the same time some of the feel-good work was done there was still some operational work that was done in providing submissions against the intervention that was happening to the people of the Northern Territory and then providing submissions in relation to the reduction of provisions of legislation when the Labor Party got in. I think what happened when the Abbott government was in place was that it saw some of the advocacy work and didn't see it in a positive light. Anecdotally, I have been told that it was that work that actually saw the demise in the funding model for the national congress. But the funding model was never truly lived where there was bipartisan support for the national congress to have a sinking fund and live off the interest. It's not too different to what happens with the fund that the New South Wales Aboriginal Land Council have to operate. They have celebrated 40 years of operating within the context of that fund.

CHAIR: My last question probably goes a bit more to reference (b) in our terms of reference. How effective is the consultation with First Nations peoples by various ministers? I am not singling out the Minister for Indigenous Affairs, particularly. But how effective is the consultation? Is that consultation leading to greater capacity for self-determination, economic improvement and a better quality-of-life outcome for First Nations people?

Mr Oliver: I can say from the experience we have had recently on the Closing the Gap Refresh there needs to be more done around the consultation. There were two locations picked in every state for consultations to occur and select people were invited. So we haven't had a true opportunity for consultation. I believe that in Broome, Senator Dodson, as a traditional owner you yourself were excluded from the consultations on the Closing the Gap Refresh that occurred.

CHAIR: I almost feel like Moses! Thank you. So there is room to improve the consultation?

Mr Oliver: There certainly is.

CHAIR: But if there were improvements would that lead to a better relationship between First Nations people and government and to resolving some of those perennial issues we see that *Closing the gap* talks about?

Mr Oliver: I think it would. It wouldn't have to be the test case of government navel-gazing and going out to communities and enjoying a cup of tea. Let's hear some real factors and things that are impacting on Aboriginal people. Going out to communities pre-armed with some of the statistics of those areas would be important as well. We have been to places and, to refresh *Closing the gap*, we know that the incarceration rates have been the highest in some of these areas, but we have talked about economic prosperity. How can we do that? How can we challenge people to start a business and employ their cousin, brother or sister when we haven't got an equal platform to start from in any case? I dare say that the consultation process, whether it was refreshing *Closing the gap* or another consultation process around referendum reform, needs to be more open and transparent. We could actually learn and lead from some of the work that has been done here in Victoria with the Victorian Treaty Advancement Commission and actually their community, their federation.

Ms McGOWAN: Again, this is a really ignorant question and I should know the answer; but I do not, so I'll try asking it. Can you tell me what happened with ATSIC? I wasn't paying attention to politics then. Could you just give me a little bit of a story about what was going on and why it was abolished? If you got a sense of the politics of it, what was that about?

Mr Oliver: We had some leaders at the time that weren't politically palatable. They were more in the public light and caused some damage to the organisation. There was a review on it that was ordered through the Howard government at the time. The review came up with some recommendations for improvements, but the government decided just to abolish the organisation.

Ms McGOWAN: What was its reasoning?

Mr Oliver: There were a lot of things in the media at the time. We had a new politician who had red hair and came from Queensland. We call it Hansonism now. At the time, Pauline Hanson was talking about the expenditure for Aboriginal people and the waste of money and so forth. The model of governance and the local decision-making saw that expenditure actually targeted to local programs. We talk now about expenditure, and the Australian government and the Productivity Commission's reporting of \$33 billion being spent on Aboriginal

people. Did you know that just three per cent of the defence budget is attributed to that \$33 billion, because we as Aboriginal people are only three per cent? I would question that.

Ms McGOWAN: I will check again that I have understood what you've said: basically, you think the ATSIC model was a reasonably good model and there was a lot of about it that we could go back to and learn from?

Mr Oliver: It certainly was a model of self-determination. We know that, in a modern concept now, that things would be different if ATSIC had evolved over time. It didn't last for very long, but we've had the legal services that have lasted 40 years and we've had the land council networks that have lasted 40 years. ATSIC only had a lifespan of less than 12 years when it was in place. It wasn't allowed to evolve as a self-governance model for Aboriginal people. Time would have told us that it would have changed and, taking the words and wisdom of others, it would have changed from a boys' club to be an equal opportunity type of organisation.

Senator STOKER: Mr Oliver, am I right to understand that the return to a body like that would be something that was palatable?

Mr Oliver: The majority of Aboriginal people that we speak to on the ground see localised service delivery and localised decisions as the palatable response. Whether it would be within something like ATSIC would need to be tested, but local decision-making, local responses and local services is the way to go. We've been stripped from those things. Since the abolishment of ATSIC, we have had the Indigenous Advancement Strategy. In 2014, when that came into play, we saw \$585 million stripped from the Indigenous budget and parked elsewhere. We have seen a reduction in services, not an increase in services. At the Redfern Statement Alliance, we talk about how we have some national bodies now that are providing services to the most local and remote areas although have never had the experience to do that. We have got some large NGOs—they are commonly known as 'care bears' in our sector—that have won contracts to deliver services at Papunya, for example, but they have never been to Papunya. They then ring organisations like ours or others and ask, 'How do we engage with the mob? What's the best that we can do?' These are non-Indigenous NGOs.

Senator STOKER: Do you see a return to a more effective ATSIC model as being something that might be effective—and I'm looking at our second term of reference—in providing local decision-making, economic advancement and improved social outcomes?

Mr Oliver: I definitely do. We lost a lot of jobs when ATSIC was abolished. I'm not talking about the public sector jobs. I'm talking about the community organisations that were delivering services to the mob. A lot of jobs were lost in that space. When we have a look at economic empowerment, it starts by having a job, and we disadvantage people when they are in the country. Swiftly following the demise of ATSIC—sorry if I'm giving a history lesson here—we also suffered the demise of the Community Development Employment Projects, CDEP. The Intervention in the Northern Territory saw the assets of CDEPs turned into what was meant to be an economic opportunity through super shires. The mob that had access to machinery to cover road or fix a road then had to find money to hire the machinery off the super shire to do work in their community. Both of those policies, the abolishment of ATSIC and the delivering of the Intervention with the abolishment of the CDEP, have put Aboriginal people at a disadvantage for the last 20 years.

Senator STOKER: Just so I understand, did the local service delivery that you've explained was a product of the ATSIC model have flow-on effects for private sector jobs or are you talking about jobs that were the direct result of the funding coming from government for service delivery?

Mr Oliver: It was a twofold. The private sector jobs certainly did evolve out of the funding delivery to organisations. Primarily, I will talk about an organisation on the Mid North Coast of New South Wales that ran a large medical centre. Some of that large medical centre's offshoots were supporting and purchasing from other businesses in that town. There were direct offshoots from the Aboriginal employment was happening at the medical centre and the general employment that was happening through the procurement of services and/or goods within that town as well. That budget has probably been cut in half for that Aboriginal organisation and it has been suggested that people go to superclinics instead of culturally appropriate service providers where they were getting better health outcomes for Aboriginal people.

CHAIR: Any final comments or statements?

Senator McCARTHY: Or any advice?

CHAIR: Advice is always a stand-by.

Mr Oliver: I'm still a small boy in my community, so there will be no advice from me. We would like to thank the committee for the opportunity to come and have this meeting today. We do look forward to presenting our paper to the committee. We are testing it with a few people as well to make sure that we have not got it too far from the mark with the thinking of our members and thinking of the Aboriginal communities within this country.

When we have a look and talk about our communities, there are 300 languages within our nations. We do want to make sure that the voices of those language groups and the voices of those mobs are part of this new storyline that we want to develop for Australia and the storyline will be developed and threaded through the fabric of the country. We thank you for the opportunity today and we look forward to some more engagement. We would like to say that the National Congress of Australia's First Peoples is here to support the process so we can have this conversation across the whole country as well.

Ms McGOWAN: Before we finish, will I ask a question—and 'no' is a really good answer to this question. We have talked a little bit about structure and organisations. I have been on the web and had a look at your web page. It would be really useful thing for us to have, as we get underway with this, a bit of a model of how it works. That is, how the current representative democracy that we have got, or as near as possible to it, works.

Mr Oliver: On the National Congress of Australia's First Peoples, I could actually leave you with a new brochure. I must apologise for our website—

Ms McGOWAN: No, you don't have to do that.

Mr Oliver: because it is quite antiquated and we haven't had the funds to rejig it. I'm dealing with a pro bono group that's going to look after it.

Ms McGOWAN: That's okay. I was just looking for a structure, because that helps me.

Mr Oliver: We've got a brochure that we can leave with you on the current structure of National Congress of Australia's First Peoples. The National Congress of Australia's First Peoples was born out of a discussion with Aboriginal Australia when ATSIC was abolished and we had consultation around Our Future, Our Voice, as it was called. I have come in to the national congress when we were at a pretty low position within the organisations. I worked for six months for nothing, for no wages, so we could continue this model. We are at a point that we are continuing the model and we can keep going for the next few years, but we are dealing with Philanthropy Australia and others to ensure that the model will continue.

CHAIR: We look forward to you passing on those other documents you also mentioned that you are working on and also anything on the New Zealand experience. I wasn't aware that there was some recognition of a head being within the precinct of the parliament as some kind of recognition of the First Peoples and the Maori of New Zealand. We look forward to any data on that as well. I thank you both, and we will suspend the sitting.

Proceedings suspended from 12:28 to 13:23