



**Australian
Human Rights
Commission**

**Aboriginal and Torres Strait Islander
Social Justice Commissioner**

Mick Gooda

Our Ref: 2015/169

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Committee Secretary
Senate Finance and Public Administration Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fpa.sen@aph.gov.au

Dear Secretary

Inquiry into Commonwealth Indigenous Advancement Strategy tendering processes

Thank you for the opportunity to make a submission to this inquiry.

I have been monitoring the Indigenous Advancement Strategy (IAS) tendering processes as part of my obligations under section 46C(1)(a) of the *Australian Human Rights Commission Act 1986* (Cth).

I have included comments on this process in my *Social Justice and Native Title Report 2014*. These comments and suggestions were made to the Government after the proposed IAS measures were announced in the federal budget and are worth repeating in the context of this inquiry:

The transfer of approximately 150 programs and activities, along with 2000 staff means that PM&C is now dealing with about 1440 organisations and nearly 3040 current funding contracts.

It will take time to build the administrative systems, acclimatise staff in the new structure within PM&C, and for Aboriginal and Torres Strait Islander peoples, already cynical and fatigued by change, to have confidence in the competence of those implementing these new arrangements.¹

Restructuring programs and funding processes, which will affect around 1400 organisations with over 3000 funding contracts, is complex and stressful. It is also time consuming and calls for a highly skilled and culturally competent workforce that is cognisant of the magnitude of this task. It requires an effective communication

strategy and a transition process that is open, transparent and easily understood. Most importantly, it will require respectful engagement with Aboriginal and Torres Strait Islander peoples.

The government should be open to extending the transitional period in the event that the tasks outlined above present challenges that were not anticipated when the 12 month timeframe was set.²

(footnotes omitted)

In this letter, I identify some concerns about the IAS tendering processes of the Department of Prime Minister and Cabinet (PM&C) and the associated results, as they relate to the terms of reference (TOR) of the inquiry. I also provide some suggestions to the Committee about where clarity is needed.

Design of the IAS tendering processes and the roll out of the application process for the competitive funding round

These comments relate to TOR (a), (b), (c), (d), (i), (k) and (l).

I have attached the relevant excerpts of my report, noted above, for your reference (**Appendix A**).

In previous years, funding was mainly administered through a non-competitive process. The IAS process marked a shift to a competitive tender process. Many organisations did not anticipate this and were not prepared for this change of direction. Many organisations did not have the capacity or the resources to put together the kind of application required by the tender process. I am told some organisations spent significant funds hiring consultants to complete the application, but were still unsuccessful, while others were given assistance from PM&C.

The uncertainty led to some organisations deciding not to apply, assuming that they would not fit the criteria.

Respectful engagement with Aboriginal and Torres Strait Islander peoples regarding these significant changes was conspicuous by its absence; there was little or no input from Indigenous peoples, their leaders or their respective organisations into the design or the implementation of the tendering processes.

After the announcement of the IAS tendering process, I received many calls indicating widespread uncertainty and confusion amongst Aboriginal and Torres Strait Islander communities and organisations. Concern was expressed about the lack of detail on how the outcomes of this process would contribute to the aims of the IAS more generally, and how its impact would be measured.

These concerns indicated a lack of confidence that this competitive tender process was the most appropriate method of achieving optimal outcomes for Aboriginal and Torres Strait Islander peoples.

At the Senate Estimates hearing of 27 February 2015, PM&C advised:

At the regional level, prior to the round closing, we did a service footprint for every region, including what their needs were, what we currently fund and where the gaps were at the regional level.³

It is not clear how PM&C determined the 'needs' nationally, within each region, within areas across multiple regions and across States and Territories.

IAS tendering process: decision making and probity

These comments relate to TOR (a), (e), (j), (k), and (q).

Probity advice was provided to PM&C by Ernst & Young.⁴ My understanding is that probity advice is provided to oversee adherence to an already established process; in this case, the competitive tendering process.

The exact cost of this advice was not provided during Senate Estimates. My concern is that significant money is spent on probity advice, which is of limited assistance if there is an unsatisfactory process in place to begin with. The weaknesses in the tendering process are a likely result of the lack of engagement of its designers with Aboriginal and Torres Strait Islander peoples.

In addition, the decision making process has not been explained in detail: who made the preliminary and final recommendations and decisions, and against which criteria the applications were assessed and rated.

Outcomes of the IAS competitive grant round

These comments relate to TOR (f), (g), (i), (j), (k), (l) and (n).

Since the announcement of the first round funding results on 4 March 2015, I have been in ongoing discussions with PM&C about the IAS round, its results and process. The subject of these discussions is captured by the list of questions attached in **Appendix B**. I will report on the response to these questions in my forthcoming *Social Justice and Native Title Report 2015*. I am available, if necessary, to discuss this with the Committee.

Since the results were announced there has been widespread distress and uncertainty amongst the Aboriginal and Torres Strait Islander community. I cannot stress enough the anxiety that the funding announcements have caused.

At this stage it is not clear the amount of funding allocated to successful organisations, how this compared with the amount requested, the period of funding granted, how many organisations have been defunded and as a result will have to shut their doors (some after many years of service).

I am concerned that resulting gaps in services could lead to an increase in social disadvantage for Aboriginal and Torres Strait Islander peoples.

The impact of the competitive process is also uncertain, in particular, whether this process had a disproportionate negative impact on Indigenous-controlled organisations. The publicly available list of organisations recommended for funding indicates that a large number of non-Indigenous organisations were successful.⁵ This

inquiry needs to examine whether or not weighting was given to Aboriginal and Torres Strait Islander controlled service providers.

Adding to the confusion is the lack of clarity around whether another round will be held.⁶ The total IAS funding allocation to June 2018 was \$2.3b, reduced to \$2b,⁷ but only \$860m was announced in the recent funding round.⁸ It is unclear how much funding is available under the other three tendering processes detailed in the *Indigenous Advancement Strategy Guidelines*.⁹

If Aboriginal and Torres Strait Islander peoples are to have confidence in these outcomes, we must be able to understand the process.

Yours sincerely

Mick Gooda
**Aboriginal and Torres Strait Islander
Social Justice Commissioner**

¹ M Gooda, *Social Justice and Native Title Report 2014* (2014), p 18. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0>. (viewed 27 March 2015).

² M Gooda, *Social Justice and Native Title Report 2014* (2014), p 24. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0>. (viewed 27 March 2015).

³ Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p 42.

⁴ Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p 37.

⁵ Department of Prime Minister & Cabinet, *2014 IAS grant funding round – recommended orgs* (2015). At www.dpmpc.gov.au/sites/default/files/files/2014%20IAS%20grant%20funding%20round%20recommended%20orgs.xlsx (viewed 27 March 2015).

⁶ Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, p 39.

⁷ Commonwealth, *Finance and Public Administration Committee Estimates*, Senate, 27 February 2015, pp 38, 39, 40, 41.

⁸ Minister for Indigenous Affairs, '\$860 million investment through Indigenous Advancement Strategy Grants Round', (Media Release, 4 March 2015). At <http://minister.indigenous.gov.au/media/2015-03-04/860-million-investment-through-indigenous-advancement-strategy-grants-round> (viewed 27 March 2015).

⁹ Department of Prime Minister and Cabinet, *Indigenous Advancement Strategy Guidelines* (2014). At <http://www.dpmpc.gov.au/indigenous-affairs/publication/indigenous-advancement-strategy-guidelines-july-2014> (viewed 27 March 2015).

Appendix A – Excerpts from Social Justice and Native Title Report 2014

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1.2 Machinery of Government changes

The past year has seen a significant restructuring of Aboriginal and Torres Strait Islander policies, programs and service delivery at the federal level.

Prior to the election, eight federal government departments were primarily responsible for Indigenous Affairs:

- Department of Attorney-General
- Department of Broadband, Communications and the Digital Economy
- Department of Education, Employment and Workplace Relations
- Department Families, Housing, Community Services and Indigenous Affairs
- Department of Health and Ageing
- Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education
- Department of Regional Australia, Local Government, Arts and Sport
- Department of Sustainability, Environment, Water, Population and Communities.

These departments administered 26 programs, which drove more than 150 Indigenous-specific initiatives and services. Many of these departments have since been restructured and renamed.

The consolidation of these policies, programs and service delivery into PM&C seeks to streamline arrangements, reduce red tape and prioritise expenditure to achieve practical outcomes on the ground.¹

This move is intended to address some of the structural and logistical problems faced when Aboriginal and Torres Strait Islander programs and services are delivered through multiple agencies.

The transfer of the program delivery role to a 'central agency' such as PM&C, means a significant change in the way the department operates. I am informed that the bulk of Australian Government staff involved in delivering Indigenous programs and services, in regional and remote locations throughout Australia, will remain in their locations but will be part of PM&C. We now have a 'central agency' operating a regional network and all of its attendant issues.

¹ Australian Government, *Australian Government response to the Joint Committee of Public Accounts and Audit Report No 437 (2014)*, p 3. At http://www.dpmc.gov.au/publications/docs/gov_response_JCPAA_report.docx (viewed 1 October 2014).

The transfer of approximately 150 programs and activities, along with 2000 staff means that PM&C is now dealing with about 1440 organisations and nearly 3040 current funding contracts.²

It will take time to build the administrative systems, acclimatise staff in the new structure within PM&C, and for Aboriginal and Torres Strait Islander peoples, already cynical and fatigued by change, to have confidence in the competence of those implementing these new arrangements.

Information on the transfer arrangements has been scant with minimal involvement of Aboriginal and Torres Strait Islander peoples. There was little or no consultation with those working on the ground about which programs and activities were best kept together, or which departments were best placed to administer them.

There were significant negotiations between departments before these arrangements were finalised. As it stands, it is difficult to understand the logic behind the basis for the transfer of some programs and activities. For example, the Office of Aboriginal and Torres Strait Islander Health will remain with the Department of Health, however, petrol sniffing initiatives previously funded in that department have been transferred to PM&C.

The process of transferring those 150 programs and activities into PM&C has caused immense anxiety amongst Aboriginal and Torres Strait Islander communities. This, in part, can be attributed to the uncertainty of which programs would be transferred and who would be administering them.

In the *Social Justice and Native Title Report 2013*, I reflected on the 20 years of work by Aboriginal and Torres Strait Islander Social Justice Commissioners and I was reminded how circular and repetitive approaches to Indigenous Affairs can be.

In 2004, upon the abolition of Aboriginal and Torres Strait Islander Commission, the Coalition Government implemented a complex set of reforms, which became known as the 'new arrangements for the administration of Indigenous Affairs' and included:

- transferring responsibility for the delivery of all Aboriginal and Torres Strait Islander specific programs to mainstream government departments
- the adoption of whole-of-government approaches, with a greater emphasis on regional service delivery

² Department of Prime Minister and Cabinet, Briefing on the transition to the Indigenous Advancement Strategy and restructuring of Indigenous programs and services to Aboriginal and Torres Strait Islander Social Justice Commissioner & National Congress of Australia's First Peoples, 20 June 2014.

- the establishment of new structures, such as the Office of Indigenous Policy Coordination (OIPC) to coordinate policy nationally and Indigenous Coordination Centres (ICCs) at the regional level
- a process of negotiating agreements at the local and regional level through Shared Responsibility Agreements (SRAs) and Regional Partnership Agreements (RPAs).³

At the launch of the *Social Justice Report 2005* my predecessor, Dr Tom Calma remarked:

One of the most basic problems of the new arrangements – a lack of information delivered down to the local level for both bureaucrats who are supposed to be implementing the new approach and most crucially for communities.⁴

Sadly, the words spoken above by Dr Calma are as relevant to the 2014 machinery of government changes as they were nearly ten years ago.

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(a) *Indigenous Advancement Strategy – some challenges*

The move to rationalise 150 programs and activities to five is to be applauded.

I believe that streamlining 150 small programs into five large programs provides greater flexibility for communities. It could provide more scope to develop on the ground responses to the issues that confront our communities on a daily basis. In other words, it is the first step away from a 'one size fits all' mentality that has, for so long, confounded our people.

If done right, this move to a smaller number of programs has the potential to achieve the Australian Government's stated aims of reducing red tape and cutting wasteful spending on bureaucracy. This, in turn, could also translate to a greater share of funds being provided on the ground.

However, the challenges are wide and varied. Bringing about budget cuts in the order of \$400 million over the next four years will be an immense undertaking. This figure alone tells us it is likely many organisations will be defunded through this process, with corresponding loss of services to the community. These losses will be even more severe if any new services or activities are funded during this time.

There is widespread concern amongst Aboriginal and Torres Strait Islander communities and organisations about the lack of detail on how the proposed measures will be implemented and what their impact will be.

³ W Jonas, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission (2005), ch 3. At <http://www.humanrights.gov.au/publications/social-justice-report-2004> (viewed 1 October 2014).

⁴ T Calma, *Launch of the Social Justice Report 2005 and Native Title Report 2005* (Speech delivered at Launch of the Social Justice and Native Title Reports 2005, Museum of Sydney, 31 March 2006). At <http://www.humanrights.gov.au/news/speeches/site-navigation-30> (viewed 1 October 2014).

Restructuring programs and funding processes, which will affect around 1400 organisations with over 3000 funding contracts, is complex and stressful. It is also time consuming and calls for a highly skilled and culturally competent workforce that is cognisant of the magnitude of this task. It requires an effective communication strategy and a transition process that is open, transparent and easily understood. Most importantly, it will require respectful engagement with Aboriginal and Torres Strait Islander peoples.

The government should be open to extending the transitional period in the event that the tasks outlined above present challenges that were not anticipated when the 12 month timeframe was set.

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(b) Future engagement

In general terms, the absence of clarity about how the proposed budget measures will be implemented, and the consequent impact on Aboriginal and Torres Strait Islander peoples, services and organisations, is a matter of considerable concern.

While the targeting of inefficient programs is to be welcomed, the cuts and the radical overhaul of both Indigenous specific and mainstream programs and services were planned with little or no input from Aboriginal and Torres Strait Islander peoples, their leaders or their respective organisations.

As I said, following the Budget announcements:

The Aboriginal leadership is now mature enough to understand if cuts are needed, we're willing to put our shoulder in, but there needs to be proper engagement with our mob.⁵

This means respectful engagement with the Aboriginal and Torres Strait Islander community, particularly with the sector leadership, including in the areas of criminal justice, employment, education, early childhood and economic development.

Such engagement has been conspicuous by its absence before and after the announcement of the Budget. This should be rectified as a matter of urgency.

⁵ 'Cuts will hit indigenous people hard', *The Australian*, 14 May 2014. At <http://www.theaustralian.com.au/news/latest-news/cuts-will-hit-indigenous-people-hard/story-fn3dxiwe-1226917894155> (viewed 1 October 2014).

Appendix B – Questions on the Indigenous Advancement Strategy

1. The IAS funding round closed on 17 October 2014 with outcomes being conveyed to applicants in the first week of March 2015. From responses to questions at Senate Estimates on 27 February 2015, the following information was provided:

Number of applications: 2,472

Number of projects applied for: 4,948

Number of organisations: 2,345

Non-compliant applications: 1,233

1.1. Can you confirm these figures?

1.2. How many of these organisations were funded/not funded?

1.3. Of the organisations not funded please provide the following details:

- a) Name of the applicant organisation
- b) Whether the organisation is:
 - i. Indigenous/non-Indigenous controlled
 - ii. Commonwealth/State/ Territory Government
 - iii. Local Government
- c) Location by State/Territory and Region
- d) Total amount applied for
- e) The number of projects applied for
- f) The specific IAS program stream under which funding for each project/s was sought

1.4. Please provide the following details for each of the funded organisations:

- a) Name of the funded organisation
- b) Whether the organisation is:
 - i. Indigenous/non-Indigenous controlled
 - ii. Commonwealth/State/ Territory Government
 - iii. Local Government

- c) Location by State/Territory and Region
 - d) Total amount applied for
 - e) Total amount funded
 - f) The number of projects funded
 - g) The specific IAS program stream under which each project/s was funded
 - h) Period of funding
2. Please outline the assessment process for the first funding round, specifically:
- 2.1. Steps taken internally to assess the applications.
 - 2.2. Were communities consulted on their priorities during the assessment process?
 - 2.3. If so, how?
 - 2.4. At the Senate Estimate hearing of 27 February it was stated:
'At the regional level, prior to the round closing, we did a service footprint for every region, including what their needs were, what we currently fund and where the gaps were at the regional level.'
- How were the 'needs' of each region determined?
- What was the process for determining the 'needs' and service delivery over multiple regions, across States/Territories and nationally?
3. The *Indigenous Advancement Strategy Guidelines* issued in July 2014 outlined the following processes that may be used to access IAS funding:
- open competitive grant rounds
 - targeted or restricted grant rounds
 - direct grant allocation process
 - a demand-driven process
- 3.1. How many applications have been received outside of the open competitive grant round?
 - 3.2. Of those, how many were successful?
 - 3.3. Please provide the following details of the successful applications:
 - a) Name of the funded organisation
 - b) Whether the organisation is:
 - i. Indigenous/non-Indigenous controlled
 - ii. State/ Territory Government

- iii. Local Government
 - c) Location by State/Territory and Region
 - d) Total amount applied for
 - e) Total amount funded
 - f) The number of projects funded
 - g) The specific IAS program stream under which each project/s was funded
 - h) Period of funding
- 4. At the Senate Estimate hearing of 27 February it was stated that the total IAS funding allocation to June 2018 was \$2.3b. This amount was reduced to \$2b because of the six month contract extensions made to account for the delay in the assessment process.

On 4 March 2015 the Minister for Indigenous Affairs announced this current IAS funding round allocated a total of \$860m.

How will the remaining \$1.14b be allocated up to June 2018?