

Chapter 2

Commonwealth and state funding for Indigenous Tasmanians

2.1 This chapter provides an overview of expenditure by the Commonwealth and the Tasmanian Governments on Indigenous Tasmanians and eligibility for services and programs.

Commonwealth funding streams

2.2 Commonwealth funding is provided to Indigenous Australians using a number of funding methods. The funding can be direct—on services and payments provided to individuals, non-government service providers, or local governments—or indirect.¹

2.3 Mainstream funding, the first funding stream, is available to every Australian on the basis of need. This covers services including Newstart and access to health services.²

2.4 The second funding stream is where the Commonwealth contributes significant indirect expenditure to and through state and territory governments using methods such as the goods and services tax (GST), National Specific Purpose Payments and National Partnership Agreement payments. This indirect expenditure is reflected in state and territory government direct expenditure when the relevant services are provided.³ For the allocation of GST revenues, the Commonwealth uses Australian Bureau of Statistics (ABS) population estimates.⁴

2.5 The third funding stream is direct specific Indigenous funding which occurs through several Commonwealth agencies.⁵ Most funding is now with the Department of the Prime Minister and Cabinet (PM&C) which administers the Indigenous Advancement Strategy (IAS).⁶ PM&C confirmed that the IAS funding, which

1 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, p. 8.

2 Mr Troy Sloan, First Assistant Secretary, Policy, Analysis and Evaluation Division, PM&C, *Proof Committee Hansard*, 16 November 2016, p. 9; Department of Health, *Submission 2*, p. 1.

3 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, p. 23.

4 Mr Troy Sloan, *Proof Committee Hansard*, 16 November 2016, p. 9; PM&C, *Submission 13*, p. 1.

5 See Department of Health, *Submission 2*; Attorney-General's Department, *Submission 5*; Department of Social Services, *Submission 7*. Funding for programs and services for Indigenous Australians is also provided through PM&C's Indigenous agencies, Department of Education and Training as well as National Partnership Agreements administered by relevant Commonwealth agencies.

6 Mr Troy Sloan, *Proof Committee Hansard*, 16 November 2016, p. 9.

specifically targets Indigenous people outside mainstream programs, is provided on the basis of need, not numbers.⁷

Indigenous expenditure

2.6 The Productivity Commission (PC)⁸ estimated the total direct Indigenous expenditure (Australian Government plus State and Territory Governments) in 2012–13 to be \$30.3 billion or 6.1 per cent of all government direct expenditure.⁹ Of that total direct expenditure:

...The Australian Government accounted for \$14.1 billion (46.6 per cent) of direct Indigenous expenditure in 2012–13 (an increase of \$2.4 billion (20.3 per cent) in real terms from 2008–09) with the remaining \$16.2 billion (53.4 per cent) provided by State and Territory governments (an increase of \$2.6 billion (19.5 per cent) in real terms from 2008–09).¹⁰

2.7 The PC noted that as funding for Indigenous Australians is through mainstream as well as targeted services, a particular challenge is estimating the Indigenous component of expenditure on mainstream services.¹¹

2.8 The PC estimated that the Australian Government funded 62 per cent of total expenditure on Indigenous Australians in 2012–13 with mainstream services providing 81.4 per cent of overall Indigenous direct expenditure in 2012–13.¹²

Australian Government expenditure in Tasmania

2.9 At 30 June 2013, Aboriginal and Torres Strait Islander Australians made up 4.9 per cent of the Tasmanian population.¹³ The Tasmanian Government indicated that:

According to the 2011 Census, it is estimated that there were 24,165 people who identified as Aboriginal and/or Torres Strait Islander in Tasmania (4.7% of the population). Though small, the Tasmanian Indigenous

7 Mr Troy Sloan, *Proof Committee Hansard*, 16 November 2016, p. 9.

8 First commissioned by COAG in 2007, the Productivity Commission (PC) has produced three editions of the biennial Indigenous Expenditure Report for 2010, 2012 and 2014. Work on the fourth edition is underway.

9 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, p. 1. Note: Aboriginal and Torres Strait Islander Australians were up to 3.0 per cent of the population in 2013.

10 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, p. 1.

11 *Frequently Asked Questions*, 2014 Indigenous Expenditure Report, available at: <http://www.pc.gov.au/research/ongoing/indigenous-expenditure-report/indigenous-expenditure-report-2014/ier-2014-faqs.pdf> (accessed 25 October 2016), p. 2.

12 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, p. 46.

13 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, Factsheet for Tasmania, p. 2.

population as a proportion of the total population, is the second highest of all states and territories, after the Northern Territory.¹⁴

2.10 PM&C advised:

Aboriginal and Torres Strait Islander people living in Tasmania receive the benefit of Commonwealth funding on the same basis as in other Australian jurisdictions. Where total or Indigenous population is relevant to Commonwealth funding – for example, allocation of GST revenues – the Commonwealth accepts ABS population estimates.¹⁵

2.11 In 2012–13, in Tasmania, the Australian Government accounted for \$499 million (62 per cent) of direct Indigenous expenditure, with the remaining \$302 million (38 per cent) provided by the Tasmanian Government.¹⁶ Mainstream services accounted for \$731 million (91 per cent) of direct indigenous expenditure with the remaining 70 million (9 per cent) provided through Indigenous specific services.¹⁷

Commonwealth eligibility and access to services and programs

2.12 In relation to the Commonwealth criteria for identification as Indigenous, PM&C advised that:

The Commonwealth Government typically applies a three-part definition to determine whether a person meets the criteria for identification as an Indigenous Australian and is eligible for certain programmes and benefits. A person is considered Indigenous if he/she:

- is of Aboriginal or Torres Strait Islander descent;
- identifies as an Aboriginal or Torres Strait Islander; and
- is accepted as such by the Indigenous community in which he/she resides or has resided.¹⁸

2.13 PM&C noted that the definition 'must not be applied rigidly and requires neither archival nor historical records'. The test can be described as 'self-identification' and people who self-identify have been able to access indigenous-specific Commonwealth programs including:

- specific Medicare entitlements or aged care entitlements;
- primary health care and broader health services;
- ABSTUDY;¹⁹

14 *Submission 12*, p. 2. See also *PM&C Submission 13*, p. 2.

15 *Submission 13*, p. 1.

16 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, Factsheet for Tasmania, p. 1.

17 Commonwealth of Australia, *Steering Committee for the Review of Government Service Provision, 2014 Indigenous Expenditure Report*, Factsheet for Tasmania, p. 1.

18 *Submission 13*, p. 1.

19 See Department of Social Services, *Submission 7*.

- access to Aboriginal hostels; and
- business and housing finance services through Indigenous Business Australia.²⁰

2.14 PM&C noted that the Commonwealth three-part test has been applied over a significant period of time. PM&C informed the committee that the issue of whether Indigenous racial or ethnic identity can be determined was considered by the Australian Law Reform Commission (ALRC) resulting in its 2003 report, *Essentially Yours: The Protection of Human Genetic Information in Australia*.²¹ Mr Leonard Hill, Assistant Secretary, Indigenous Culture Branch, PM&C, summarised the findings:

The ALRC heard in consultations that the three-part definition works well enough in most circumstances and made no recommendations for change.

The ALRC also looked into the legal definitions of aboriginality both here in Australia and overseas and concluded that none of the other tests used internationally resulted in more just, scientific or effective outcomes in respect of this issue. The ALRC also suggested that, if any change was to take place in respect to this issue, with the sensitivity around it this matter would be best determined by Indigenous people themselves working through their own communities, institutions and consultative processes.²²

2.15 Mr Hill added:

The other point that I would make in respect of the Commonwealth test is that an individual can identify as being either Aboriginal or Torres Strait Islander, but the confirmation of Aboriginality is a separate process that is undertaken by Aboriginal people themselves within their own communities and by Aboriginal community organisations.²³

Department of the Prime Minister and Cabinet

2.16 The IAS is the strategy through which the Australian Government funds and delivers a range of programs and services specifically for Indigenous Australians. Under the IAS, from July 2014 to November 2016, \$33 million has been provided for grants and services in Tasmania:

Fifty-four IAS activities, with a total value of \$29 million are currently being delivered by 27 organisations, of which 10 are Indigenous.²⁴

20 *Submission 13*, p. 1. Note: Eligibility for some programs requires documentary evidence. A statutory declaration is an alternative to confirmation of Aboriginal or Torres Strait Islander heritage from an Indigenous organisation.

21 See Commonwealth of Australia, Australian Law Reform Commission Report 96, *Essentially Yours: The Protection of Human Genetic Information in Australia*, 30 May 2003, Chapter 36, available: <http://www.alrc.gov.au/publications/report-96> (accessed 17 November 2016).

22 *Proof Committee Hansard*, 16 November 2016, pp 8–9.

23 *Proof Committee Hansard*, 16 November 2016, p. 9.

24 *Submission 13*, p. 3.

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2.17 Eligibility criteria are contained in the IAS Grant Guidelines.²⁵ PM&C stressed that funding is provided to organisations on the basis of need²⁶ which means funding can be geographically focussed for a locally identified need.²⁷ Organisations need to apply for grants under the IAS Grant Guidelines which are assessed 'based on their being able to meet need in the specific program areas'.²⁸

Performance assessment

2.18 Mrs Marie Taylor, First Assistant Secretary, Housing, Land and Culture Division, PM&C, indicated that the performance of organisations providing services is monitored and key performance indicators are set for each project.²⁹ Mr Stuart Turnbull, Assistant Secretary, Performance, Compliance and Capability Branch, PM&C, provided further detail:

In terms of what we ask our providers, they have to do a six-monthly performance report and they report against a series of KPIs every six months. There are a couple of mandatory KPIs around Indigenous employment and their compliance with project terms and conditions. But there are also specific KPIs related to that particular project that they report against, which can include things like participation rates, satisfaction with the services et cetera. So we do ask for some of that information on a six-monthly basis.³⁰

2.19 Mrs Taylor told the committee that IAS remains open to any organisation in Tasmania that would like to submit an application, adding:

25 Australian Government, Indigenous Advancement Strategy, Grant Guidelines, March 2016, pp 13–14.

26 Mrs Marie Taylor, First Assistant Secretary, Housing, Land and Culture Division, PM&C, *Proof Committee Hansard*, 16 November 2016, pp 8, 10, 14; Mr Troy Sloan, *Proof Committee Hansard*, 16 November 2016, p. 9.

27 Mrs Marie Taylor, Department of the Prime Minister and Cabinet, *Proof Committee Hansard*, 16 November 2016, p. 10.

28 Mr Stuart Turnbull, Assistant Secretary, Performance, Compliance and Capability Branch, PM&C, *Proof Committee Hansard*, 16 November 2016, p. 9. The five broad program streams are: Jobs, Land and the Economy; Children and Schooling; Safety and Wellbeing; Culture and Capability; and Remote Australia Strategies. See <https://www.dpmc.gov.au/indigenous-affairs/indigenous-advancement-strategy> (accessed 18 November 2016). The IAS Grant Guidelines state that the department uses assessment criteria to answer two questions: Will a proposed activity lead to improved outcomes within the target community or group that would not occur without the grant?; and Do the intended outcomes represent value for money, that is, do the intended outcomes justify the government providing the requested amount of grant funding? See Australian Government, Indigenous Advancement Strategy, Grant Guidelines, March 2016, p. 16.

29 *Proof Committee Hansard*, 16 November 2016, p. 10.

30 *Proof Committee Hansard*, 16 November 2016, p. 12.

If there is a concern that there is a group of Indigenous Tasmanians that are not receiving services and feel that there is a need for those services to be provided, the IAS remains open.³¹

Attorney-General's Department

2.20 The Attorney-General's Department (AGD) advised that the Commonwealth is the primary funder of Indigenous legal assistance providers, contributing 100 per cent of the base funding for Indigenous legal assistance services. The Commonwealth currently funds eight Indigenous legal assistance providers.³²

2.21 AGD reported that in Tasmania an open grants round for the delivery of Indigenous legal services was undertaken in 2015 and the Tasmanian Aboriginal Community Legal Service, under the auspices of the Victorian Aboriginal Legal Service was successful. Prior to that the Tasmanian Aboriginal Centre had been funded to provide Indigenous legal assistance in Tasmania.³³

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2.22 AGD explained that under their funding agreements, Indigenous Legal assistance providers must use the Commonwealth definition of Aboriginality/Indigeneity. As with PM&C, again it was stressed that the test must not be applied rigidly and does not require archival or other historical records.³⁴

Performance assessment

2.23 AGD indicated that there is regular performance management of all the programs as well as a range of audits into the operation of organisations and organisational health checks.³⁵

Tasmanian government funding

2.24 In addition to the Commonwealth funding outlined above, the Tasmanian Government advised that it funds Indigenous specific service programs across a range of areas, including the education, health, housing, recreation and culture sectors.³⁶

2.25 In the 2016–17 Budget the Tasmanian Government provided more than \$22 million over the forward estimates for Indigenous specific programs and service delivery:

31 *Proof Committee Hansard*, 16 November 2016, p. 14.

32 *Submission 5*, p. 2.

33 *Submission 5*, p. 2. See also Ms Kathleen Denley, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department, *Proof Committee Hansard*, 16 November 2016, pp 10–11.

34 *Submission 5*, pp 3–4.

35 Ms Kathleen Denley, Attorney-General's Department and Mr Adam Nott, Director, Indigenous Legal Services, Legal Assistance Branch, Attorney-General's Department, *Proof Committee Hansard*, 16 November 2016, p. 11. See McGrathNicol TAC Report dated 22 January 2015 provided as answer to question on notice from AGD, received 21 November 2016.

36 *Submission 12*, p. 3.

This includes funding for family violence services, education, sport and recreation, housing, health services, heritage, arts and culture, infrastructure in remote areas, parks and land management.³⁷

2.26 In the 2016–17 Budget, the Tasmanian Government provided almost \$3 million over four years in new funding including:

- \$333,000 over three years for culturally appropriate services for children and women experiencing family violence;
- \$661,306 over four years to employ two Aboriginal Liaison Officers as part of Strong Families, Safe Kids - the Tasmanian Government's commitment to improving the child protection system;
- \$520,000 over two years to work with the Aboriginal community to focus on Tasmanian Aboriginals in the history and culture component of the Australian Curriculum taught in Tasmanian schools;
- \$800,000 over four years to help ensure that the extraordinary Aboriginal cultural values of the TWWHA [Tasmanian Wilderness World Heritage Area] are appropriately recognised; and
- \$666,660 over four years to train and employ two additional Aboriginal Rangers.³⁸

2.27 While the Tasmanian Government continues to support and fund Indigenous specific programs, it submitted that due to Tasmania's population and geography:

...the most efficient and effective approach to meeting the needs of Tasmania's Indigenous community is generally by providing services through mainstream programs, including those that are designed to address disadvantage in the wider community.³⁹

2.28 In addition:

Mainstream programs in Tasmania are continuing to adopt practices that consider cultural appropriateness – such as cultural competency training, cultural awareness training and the establishment of Indigenous advisory committees and groups. Mainstream services are complemented in Tasmania by Indigenous specific programs and services in some areas.⁴⁰

Tasmanian Government eligibility and access to services and programs

2.29 On 1 July 2016, the Tasmanian Government changed its approach for determining eligibility for its Indigenous programs and services to be more consistent with the Australian Government's approach. Under its previous policy for determining eligibility:

37 *Submission 12*, p. 7.

38 *Submission 12*, p. 7.

39 *Submission 12*, p. 3.

40 Tasmanian Government, *Submission 12*, p. 3.

...documentary evidence was sometimes required in relation to the three part test (such as archival or historical records). This requirement excluded people who identified as Aboriginal or Torres Strait Islander but were unable to provide verifiable documentary evidence of their ancestry. As that policy was inconsistent with Australian Government processes for determining eligibility, it also meant that some Tasmanians were eligible for Australian Government Indigenous specific programs and services, but not Tasmanian Government programs and services.⁴¹

2.30 However, the Tasmanian Government noted that:

...in practice, from February 2012 Tasmanian Government agencies applied the previous policy flexibly and developed varying requirements for meeting the three part test, including self-identification, letters of communal recognition, and in some cases, sighting archival or historical records.⁴²

2.31 The Tasmanian Government outlined the new approach to eligibility:

...from July 1 2016, a new approach has been implemented for determining eligibility for Tasmanian Government Aboriginal and Torres Strait Islander programs and services that does not require archival or historical evidence of descent. The new approach relates to how the Tasmanian Government applies and administers the three part test and how an applicant is required to meet the three part test, rather than changing the three part test criteria.⁴³

2.32 Under the new approach:

- Programs and services which previously only required a person to self-identify as an Indigenous person continue to only require self-identification;⁴⁴ and
- Other Tasmanian Government Indigenous specific programs, services and permits now use a confirmation of eligibility form. The form includes a statutory declaration that the applicant meets the three part test and a statement of communal recognition from an incorporated Aboriginal organisation. No other archival or historical records are required.⁴⁵

41 Tasmanian Government, *Submission 12*, p. 6.

42 Tasmanian Government, *Submission 12*, p. 6.

43 *Submission 12*, p. 6.

44 Note: This includes programs provided in schools, the health system, the prison system, sport and recreation programs. See Tasmanian Government, answers to questions on notice, received 21 November 2016.

45 Tasmanian Government, *Submission 12*, pp 6-7. Note: Programs that have in the past required additional documentation include Aboriginal housing and employment for an Indigenous specific position in the Tasmanian Government such as an Aboriginal Trainee Ranger. From 1 July 2016 only a statutory declaration and a statement of communal recognition is required with no further requirement to provide archival or historical records. See Tasmanian Government, answers to questions on notice, received 21 November 2016.

2.33 Communal recognition statements are accepted from organisations registered under the *Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006*⁴⁶ and Aboriginal organisations incorporated under the *Tasmanian Corporations (Tasmania) Act 1990*⁴⁷ or from the Tasmanian Aboriginal Centre, the Tasmanian Aboriginal Child Care Association, the Flinders Island Aboriginal Association or the Cape Barren Island Aboriginal Association.⁴⁸

2.34 It was noted that there is a need for ongoing discussions on some elements of eligibility:

Eligibility to participate in the use and management of Aboriginal land under the *Aboriginal Lands Act 1995* will be considered at a later stage through the broader review of the land return model.⁴⁹

2.35 In answers to questions on notice the Tasmanian Government provided some further detail on this aspect:

The Aboriginal Lands Act 1995 allows a grant of land to be held in trust for the Aboriginal community in perpetuity by the Aboriginal Land Council of Tasmania (ALCT). The Act provides for the establishment of the ALCT, election of members to the Council and the return of land to the Tasmanian Aboriginal community.

Under the Act, to vote or to stand for election to the ALCT, a person must have their name entered on Electors Roll. To be eligible to be listed on the Roll, a person must be Aboriginal, as defined under the Act as being a person who satisfies all of the following requirements:

- 1) Aboriginal ancestry;
- 2) self-identification as an Aboriginal person;
- 3) communal recognition by members of the Aboriginal community.

As outlined in our submission to the Inquiry, the Tasmanian Government is currently investigating the Aboriginal land return model. This investigation will consider the process for determining eligibility to be included on the Electors Roll for the ALCT.⁵⁰

2.36 In the Premier's 2016 Australia Day Address, Mr Will Hodgman MP, Premier of Tasmania stated that addressing the issue of eligibility in Tasmania is the single most important thing the government can do to advance reconciliation, adding:

46 The relevant organisations are listed on listed at the Office of the Registrar of Indigenous Corporations, available at <http://www.oric.gov.au/>.

47 Tasmanian Government, *Submission 12*, p. 7.

48 Tasmanian Government, Department of Premier and Cabinet, *Aboriginal Eligibility Policy and Processes*, http://www.dpac.tas.gov.au/divisions/csr/oa/eligibility_policy, (accessed 11 November 2016).

49 Tasmanian Government, *Submission 12*, p. 7.

50 Tasmanian Government, answers to questions on notice, received 21 November 2016.

...Tasmanian Aboriginals will finally be given a choice to access support and engage cultural activities they had been locked out from.

...it will unlock longstanding traditions like fishing or harvesting mutton birds for generations to come.⁵¹

51 Mr Will Hodgman MP, Premier of Tasmania, The Premier's 2016 Australia Day Address, 21 January 2016, *Media Release*, available at: http://www.premier.tas.gov.au/speeches/the_premiers_2016_australia_day_address, (accessed 20 October 2016).