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Make or Break? A Background to the ATSIC Changes and the ATSIC Review

Australia's peak indigenous body, the Aboriginal and Torres Strait Islander Commission (ATSIC), has been the focus of a great deal of media, political and public attention in recent months largely as a result of the changes to ATSIC announced by the Minister for Indigenous Affairs, the Hon. Philip Ruddock, in April, and the broader review of ATSIC which is currently taking place. This paper discusses the recently announced ATSIC changes and the ATSIC review. It also provides a brief overview of ATSIC: including discussion of ATSIC's history, its functions and roles, its structure and governance, its funding arrangements, and its record in accountability.

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Contents

Executive Summary	1
Introduction	2
Precursors to ATSIC: the Administration of Aboriginal Affairs Since 1972	3
The Department of Aboriginal Affairs and the Policy of 'Self-Determination'	3
The NACC, NAC and the ADC	4
The Lead-Up to ATSIC's Establishment	5
The Consultation Process	6
Debates Around Public Accountability	6
The Passage of the ATSIC Legislation—November 1989	7
How Does ATSIC Work? What Does it Actually Do?	8
ATSIC's Functions and Roles	8
Public Servant or Public Advocate?	8
ATSIC Structure and Governance	9
The Elected Arm	9
The Administrative Arm	10
ATSIC's Funding	11
ATSIC's Budget	11
ATSIC and Total Identifiable Commonwealth Expenditure on Indigenous Affairs	12
Accountability	14
The Recent Changes to ATSIC	16
The Establishment of Aboriginal and Torres Strait Islander Services (ATSIS)	16
The ATSIC Review	17
Conclusion	18
Endnotes	19

Executive Summary

On 17 April 2003, the Minister for Immigration and Multicultural and Indigenous Affairs, Philip Ruddock, announced a series of changes to the funding arrangements of the Aboriginal and Torres Strait Islander Commission (ATSIC). According to the Minister, the changes, being introduced as part of the 2003 Commonwealth Budget, are designed to promote good governance and improve accountability in Australia's peak indigenous body. The announcement of the new measures came five months after Minister Ruddock commissioned a wide-ranging review into the role and functions of ATSIC, and just one month before the review panel was due to produce a public discussion paper in May 2003.

The changes announced by Minister Ruddock include the establishment of a new agency—Aboriginal and Torres Strait Islander Services (ATSIS)—to administer ATSIC's programs and make decisions about the allocation of ATSIC grants. In addition to the issues of accountability and good governance with which they are ostensibly concerned, the changes, and the timing of their announcement, raise several broader questions about the structure, functions, role, and future of ATSIC. These questions include:

- how does the new structure of ATSIC compare with those of some of its precursors in the administration of indigenous affairs? Does the new structure represent a major departure from ATSIC's original ideals?
- what will the changes mean for ATSIC's current operations? In particular, what will be the role of ATSIC's elected arm after the changes have been implemented?
- will the changes 'solve' the problems the Minister points to within ATSIC's administration? Will they create a series of new ones?
- what other issues can be expected to arise out of the broader ATSIC review?
- Have Minister Ruddock's changes to ATSIC pre-empted the review panel's findings?

When ATSIC was created, it was the boldest reform that the Commonwealth's administration of Aboriginal affairs had seen. Subsequently, it was highly controversial: at the time of its passage through the Parliament, the ATSIC legislation was the second-most amended piece of legislation since Federation. This paper contains a broad overview of this history, and of ATSIC's structure, functions and funding arrangements. This overview provides a background for the consideration of these and other questions raised by Minister Ruddock's recently announced changes and the broader ATSIC review. The paper suggests that at least some of ATSIC's 'problems'—in accountability, in transparency of decision-making, and in overall effectiveness—are perceived rather than actual. Therefore, one test of the effectiveness of any changes will be the extent to which they lead to a shift in public perceptions about ATSIC.

Introduction

In response to Minister Ruddock's April 2003 announcement of the establishment of a new agency, Aboriginal and Torres Strait Islander Services (ATSIS), to administer Aboriginal and Torres Strait Islander Commission (ATSIC) programs, ATSIC Chairman Geoff Clark described the changes to ATSIC's operations as effectively make or break. Potentially, Clark said, they could herald a new era in the organisation's development, by creating a 'real chance to achieve indigenous self-determination and effective governance, with open, transparent and accountable decision-making'.¹ If this was the case, Clark added that by addressing perceptions of poor accountability and transparency which have dogged ATSIC since its establishment, the changes could signal an end to what he described as the scape-goating of ATSIC for the failures of other levels of government in indigenous affairs. On the other hand, Clark was also wary of the possibility for a hark back to pre-ATSIC days, when the administration of indigenous affairs was mainly the domain of white bureaucrats.²

Some of Clark's colleagues on the ATSIC Board, and other commentators such as Democrats Senator Aden Ridgeway, have also expressed concerns about the effect of the changes and the motivations behind them. ATSIC commissioner for western NSW, Steve Gordon, for example, suggests the changes represent 'the start of the dismantling of the commission'.³ Queensland commissioner Robbie Williams argued that Minister Ruddock's changes 'seriously undermined [indigenous peoples'] right to self-determination and [Ruddock's] own review of ATSIC'.⁴ Senator Ridgeway described the changes as a 'retrograde step'.⁵

The announcement of the changes to ATSIC's operations came just one month before a broad review of ATSIC's roles and functions was due to release a public discussion paper. The review was established by Minister Ruddock in November 2002, and is being conducted by former Labor Senator and Minister, Bob Collins, former NSW Attorney-General John Hannaford, and Reconciliation Australia co-Chair Jackie Huggins.⁶

Minister Ruddock's announcement of the changes to ATSIC also came amidst months of bad news stories for the peak indigenous body—detailing allegations of fraud and serious conflicts of interest in decision making over ATSIC funding amongst some of the organisation's highest ranking officials,⁷ and the conviction on assault charges of Chairman Clark.⁸ ATSIC is no stranger to various kinds of controversy: the organisation has often been the subject of intense public scrutiny and vigorous public debate since it first opened its doors for business in 1990. Many different commentators have at different times expressed concern over ATSIC's effectiveness in meeting indigenous peoples' needs. Liberal backbencher Christopher Pyne, for example, told a meeting of the Victorian Liberal Speakers Group in March 2003 that ATSIC has not delivered 'any lasting improvement for Aboriginal people' in the thirteen years since it was established.⁹ Noel Pearson has suggested that ATSIC is hampered by a very centralised bureaucratic structure.¹⁰ As this paper will show, concerns have also been raised at various times about

the tension between ATSIC's dual roles of representation and service delivery, about the efficiency of the organisation's use of public funds, and about its processes of transparency and accountability.

So what exactly do the recently announced changes to ATSIC entail? How might they overcome some of the problems for which ATSIC has attracted criticism? What further issues can be expected to arise as a result of the broader ATSIC review? And where in all of this, might ATSIC's future lie?

Precursors to ATSIC: the Administration of Aboriginal Affairs Since 1972

When ATSIC commenced operations in March 1990, it was widely hailed as something of a revolution in Aboriginal affairs.¹¹ To understand why this is the case, and why some critics of the recently announced changes to ATSIC argue that they potentially constitute a radical break with ATSIC's original ideals, it is important to briefly review ATSIC's precursors in the administration of Aboriginal affairs.

After the 1967 referendum, the Commonwealth Government took over from the states some responsibility for policy-making in Aboriginal affairs.¹² There were some developments in Aboriginal affairs under the Coalition Government—including the establishment of an advisory Council for Aboriginal Affairs (CAA), headed by Dr H. C. 'Nugget' Coombs, and the creation of a small Office of Aboriginal Affairs (OAA) within the Department of the Prime Minister.¹³ However, it was the election of the Whitlam Labor Government in December 1972 which heralded a more significant level of Commonwealth activity in the portfolio.

The Department of Aboriginal Affairs and the Policy of 'Self-Determination'

The Department of Aboriginal Affairs (DAA) was established by the Whitlam Government in 1973 to exercise a coordinating role in the development of national policies for Aboriginal people. The DAA remained the central Commonwealth agency with responsibility for the Aboriginal affairs administration and programs until ATSIC commenced operations in March 1990.

The establishment of the DAA in 1973 was accompanied by the introduction of the policy of 'self-determination' as the underlying principle guiding the Government's approach to policy-making in Aboriginal affairs policy. This was the idea that Aboriginal people should be involved in the management of their own affairs.¹⁴ This idea has been pursued by Commonwealth governments ever since, albeit that different governments have had different ideas about what 'indigenous involvement in the management of their own affairs' means in practice.¹⁵

The NACC, NAC and the ADC

While the DAA was the central agency in Aboriginal affairs at the Commonwealth level, the policies of self-determination and self-management led to what academic Will Sanders describes as two 'early experiments in the creation of government-sponsored Aboriginal representative structures'.¹⁶ These were the National Aboriginal Consultative Committee (NACC), and its successor, the National Aboriginal Conference (NAC).

The NACC was established in early 1973 as an advisory body to the Minister. The NACC was an elected assembly of 40 Aboriginal and Torres Strait Islander people. Its first elections were held in November 1973. While there was some pressure—both from inside the NACC and from other commentators such as CAA Chair Coombs—to give the NACC some executive powers, it remained an advisory body.¹⁷

A review of the NACC commissioned by the Fraser Government after its election in 1975 found that the NACC had not been an effective mechanism for providing advice to the Minister, or for consulting with Aboriginal people.¹⁸ Subsequently, the NACC was disbanded and replaced in 1977 with another body, the NAC. The central difference between the two organisations was in their structure: the NACC was comprised of representatives from 41 electorates, which were intended to represent some 800 Aboriginal communities. The NAC structure included representatives elected to state branches, and from the state branches a ten-member national executive was elected.¹⁹ Unlike the NACC—which had had too little time to establish itself as a national indigenous political voice before the end of the Whitlam Government—the NAC took on a high profile role as advocate of indigenous political rights. For example, it was heavily involved in the treaty debates of the late 1970s and early 1980s.

In 1980, another important agency was established in the Aboriginal affairs portfolio: the Aboriginal Development Commission (ADC). The ADC was a statutory authority, run by a board of ten part-time Aboriginal commissioners appointed by the government. Charles Perkins was its first Chairperson. The ADC was charged with the task of managing a limited range of development-oriented Aboriginal affairs programs, including the administration of loans and grants for indigenous housing and business enterprises.²⁰

By the time the Hawke Government was elected in 1983, concerns had emerged from within Aboriginal communities about the representativeness of the NAC: NAC members were not always seen as being well-connected to their constituent communities.²¹ In response to these concerns, the Labor platform in the 1983 election included a commitment to restructuring the NAC 'in order to increase its effectiveness'.²² Consequently, shortly after his appointment as Minister for Aboriginal Affairs, Clyde Holding commissioned former CAA Chair Nugget Coombs to conduct a review of the NAC. Coombs' report to the government—tabled in the Parliament in February 1985—was highly critical of the NAC's structure and recommended radical changes. Coombs had found that the NAC was 'not a significant instrument of Aboriginal political influence and power', and recommended a major restructure of the body.²³

Shortly after the review's recommendations were made public, however, the NAC was embroiled in another controversy when an audit of its operations revealed serious deficiencies in the NAC's financial administration. As a result, Mr Holding announced the termination of the NAC in April 1985. At the same time, Mr Holding announced that following consultations with Aboriginal community groups and organisations, a new organisation to replace the NAC—but one 'more closely based on Aboriginal community aspirations'—would be established.²⁴

Each of these organisations: the NAC, the NACC and the ADC, and the policy of 'self-determination' to which they were supposed to give effect, were significant innovations in the administration of Aboriginal affairs. As such, each is important to the history of ATSIC. For instance, academics Michelle Ivanitz and Ken McPhail suggest that while the formation of the NACC (and later the NAC) signalled an important policy shift at the time, their purely advisory role 'indicated that the [policy of self-determination] was more symbolic and rhetorical than substantive'. As such, Ivanitz and McPhail suggest that the 'value shift' which would later be demonstrated in the formation of ATSIC 'was prefigured in the NACC and [NAC], but not yet realised'.²⁵

As Will Sanders points out, none of these 'experiments'—the NACC, the NAC, or the ADC—were especially successful or long-lived:

The NACC and NAC, while elected by Aborigines, were advisory bodies only. They suffered greatly from the criticism that they did not go far enough in giving decision-making power in Aboriginal affairs to Aborigines ... The ADC, while not coming under so much criticism from this quarter, acquired critics of another sort. By 1984, it was being criticised by a parliamentary committee for 'very significant weaknesses' in its grant assessment, administration and monitoring processes.²⁶

It was in this context that in 1987, the Hawke Government announced its intention to establish an Aboriginal and Torres Strait Islander Commission, which would combine both representative and executive roles, and 'so allay the criticism that decision-making power over Aboriginal affairs had never been fully given to Aborigines'.²⁷ In order to do this, the new commission would combine regional and national councils of elected Aboriginal people, with the program administration roles of the DAA and ADC.²⁸ As such, the creation of ATSIC would be the boldest reform that the administration of Aboriginal affairs had yet seen.

The Lead-Up to ATSIC's Establishment

The Hawke Government's intention to establish ATSIC was formally announced in December 1987 in a speech to the Parliament entitled 'Foundations for the Future', by the new Minister for Aboriginal Affairs, Gerry Hand.²⁹

The Consultation Process

In unveiling the Hawke Government's ATSIC proposal, Hand announced that ATSIC's establishment would be preceded by an extensive consultation process. For Hand, the effectiveness of the Government's ATSIC proposal would ultimately rest on it 'receiving a positive endorsement from the Aboriginal and Islander community of Australia'.³⁰

Subsequently, in the first half of 1988, Hand and Charles Perkins, by then the Secretary of the DAA, conducted an extensive round of consultations with Aboriginal people and organisations around the country. According to the account of the consultations Hand gave to the Parliament:

- in January 1988, more than 21 000 copies of the *Foundations of the Future* statement, and 1000 copies of a video were distributed to more than 1000 separate Aboriginal and Torres Strait Islander organisations and communities throughout Australia
- over 500 preliminary meetings involving some 14 500 people were held
- Hand himself visited and spoke with around 6 000 Aboriginal and Torres Strait Islander representatives
- an options paper was prepared which identified a range of alternative proposals based on suggestions and recommendations received as a consequence of Hand's consultations
- the options paper was widely circulated and was discussed at another round of meetings with several thousand indigenous people.³¹

Following the consultations, Hand drafted legislation, which he introduced into the Parliament on 24 August 1988. He would later describe the ATSIC consultations as the most extensive ever undertaken on a single piece of legislation in the Australian Parliament's history.³²

Debates Around Public Accountability

Not all of the indigenous people with whom Hand consulted responded positively to the ATSIC proposal. The ADC's Aboriginal commissioners, for example, opposed the proposal quite strongly, largely out of concern that welfare programs would be prioritised in an amalgamated body, at the expense of the development work then carried out by the ADC.³³ Not long after they made their opposition known, Hand dismissed eight of the ten ADC commissioners. This was widely assumed to be because of their opposition to the ATSIC proposal.³⁴ The Coalition and the Democrats combined in the Senate to establish a Select Committee inquiry into the ATSIC proposal and the ADC dismissals. Subsequently, the passage of the ATSIC legislation was delayed until after the Committee was due to report in early 1989.

Around the same time, the existing administration of Aboriginal affairs came under close scrutiny both in the Parliament, and as a result of several external reviews and inquiries: one conducted by the Auditor-General, one by the Public Service Commission, two by the Department of Finance, and one commissioned by the Department of Prime Minister and Cabinet.³⁵ The general focus of this attention was on public accountability and transparency in the financial administration of the existing Aboriginal affairs agencies.

Subsequently, when revised legislation was introduced into the Parliament in May 1989, it contained a series of measures aimed at ensuring that there would be rigorous processes of public accountability in the new commission. For example, the report of the Senate Select Committee on the Administration of Aboriginal Affairs had made over 40 recommendations for changes to the ATSIC legislation, most of which were geared towards strengthening the commission's accountability mechanisms.³⁶ The Government accepted the overwhelming majority of these recommendations and incorporated them into the revised legislation. It also included in the legislation a provision for the establishment of an Office of Evaluation and Audit within ATSIC, to conduct regular audits and evaluations of ATSIC's operations, and to report at least quarterly to the ATSIC Board and the Minister.³⁷ Hand described the revisions in the legislation as an attempt to 'balance the objective that Aboriginal and Torres Strait Islander people should have greater control over matters affecting them, with the principle of ministerial accountability for the correct and efficient use of public funds'.³⁸

The Passage of the ATSIC Legislation—November 1989

The enhanced accountability measures included when the revised ATSIC legislation was introduced into the Parliament in May 1989 did not guarantee its quick passage through the Parliament: over 90 amendments were made to the legislation in the following six months. At that time the ATSIC Bill was the second-most amended piece of legislation to have passed through the Parliament since Federation.

The Coalition was vehemently opposed to the ATSIC legislation: for example, Opposition members of the Senate Select Committee inquiry into the ATSIC legislation had recommended its withdrawal, and that the 'whole concept [the legislation] represents be reconsidered'.³⁹ Many saw ATSIC as a kind of 'black parliament', a concept to which they were staunchly opposed.⁴⁰ The Opposition was heavily involved in amending the legislation, and voted against its final passage. Conversely, the Australian Democrats were also heavily involved in amending the ATSIC Bill when it went to the Senate, however, their involvement seemed to be borne out of a desire to strengthen the ability of the legislation to give effect to the principles—including that of the policy of 'self-determination'—espoused in it.⁴¹

The *Aboriginal and Torres Strait Islander Commission Act 1989* was eventually passed by the Parliament on 2 November 1989, almost two years after Minister Hand had first outlined Labor's ATSIC proposal in December 1987.

How Does ATSIC Work? What Does it Actually Do?

When she was ATSIC Chairperson, Lowitja O'Donoghue argued that since its establishment, the commission had been forced to operate within a 'climate of criticism'. O'Donoghue stressed at the same time that ATSIC should not be immune from scrutiny—'it is after all a government-funded organisation and therefore publicly accountable'—but she did suggest that 'ignorance, resentment and impatience' were often factors in the attacks to which ATSIC was routinely subjected.⁴²

Almost a decade later, O'Donoghue's comments seem just as relevant: there are still many public misconceptions about ATSIC's funding, its structures and governance arrangements, and its role as deliverer of services to indigenous peoples. Accordingly, this section of the paper provides a brief outline of each of these areas.

ATSIC's Functions and Roles

The objectives of ATSIC, according to Section 3 of the Aboriginal and Torres Strait Islander Commission Act, are:

- to ensure maximum participation of Aboriginal and Torres Strait Islander people in government policy formulation and implementation
- to promote indigenous self-management and self-sufficiency
- to further indigenous economic, social and cultural development, and
- to ensure co-ordination of Commonwealth, state, territory and local government policy affecting indigenous people.⁴³

In order to achieve these objectives, ATSIC has three key functions or roles:

- it *advises* governments at all levels on indigenous issues
- it *advocates* the recognition of indigenous rights on behalf of indigenous peoples regionally, nationally and internationally
- it *delivers* and *monitors* some of the Commonwealth government's indigenous programs and services.⁴⁴

Public Servant or Public Advocate?

ATSIC's role as advocate of indigenous peoples' rights has been the source of some tension with the present Commonwealth Government, particularly since Geoff Clark's election to the ATSIC Chair in 1999 which heralded a discernable increase in ATSIC's activities in this area.⁴⁵ Clark's pursuit of the concept of a treaty, for example, has sometimes been at odds with the present government's 'practical reconciliation' focus on

Aboriginal health, education, and employment.⁴⁶ These sorts of conflicts highlight the potential that has always existed for tensions between ATSIC's advocacy and service delivery roles: while ATSIC is accountable to the government, particularly in its role as deliverer and overseer of some indigenous-specific government programs, it is also accountable to its indigenous constituency for its performance in advocating the recognition of indigenous rights.

ATSIC Structure and Governance

ATSIC's structure basically consists of two parts: a representative arm (office holders elected by Aboriginal and Torres Strait Islander people around Australia); and an administrative arm (people employed by ATSIC to manage ATSIC's programs). This part of the paper outlines how each of these parts of the ATSIC structure work.

The Elected Arm

The basis of ATSIC's representative structure are the 35 ATSIC regions across mainland Australia, each of which has a Regional Council. ATSIC electors vote for representatives on their Regional Councils.⁴⁷ Eight–twelve people are elected to each Regional Council, depending on the number of people who live in the region. Once the Regional Council members have been decided, a Regional Chairperson and Deputy Chairperson are elected from among the councillors.⁴⁸

The Regional Councils are grouped into 16 ATSIC zones.⁴⁹ Every elected councillor within a zone is entitled to vote for one full-time Commissioner to sit on the ATSIC Board. Another Commissioner is elected from the Torres Strait, which comprises its own zone.⁵⁰ From these 17 Commissioners, the ATSIC Chairperson is elected, and a new election then held for a Commissioner from his/her zone. Thus, the ATSIC Board comprises 18 national Commissioners in total.

One of the most significant changes which has occurred since ATSIC's establishment is the move from an appointed to an elected Chairperson: when ATSIC was first established, the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs appointed its Chairperson (and two other national Commissioners). A 1993 review of the ATSIC legislation by the ATSIC Board recommended the Act be amended to remove the power of the Minister to appoint the ATSIC Chairperson and two Commissioners, and thus that the ATSIC Chairperson be elected by Aboriginal and Torres Strait Islander people—an arrangement which, it was argued, would be more in line with the principle of 'self-determination' on which ATSIC was based.⁵¹ The Keating Government accepted this recommendation, but it was opposed by the Coalition opposition and the Democrats who joined forces to defeat the proposed amendment to the Act when it was first introduced to the Senate in early 1993.

The Democrats opposed the amendment because they held the view that the future of ATSIC, and the cause of Aboriginal 'self-determination' more generally, *at that stage in*

ATSIC's development would be best served by a Chairperson with a high level of experience and/or qualification in public administration and accountability. The election of a 'less than qualified' person would not help the cause of self-determination, but appropriately qualified indigenous people tended to be employed elsewhere, and subsequently, might often be reluctant to stand for election. The appointment of the Chairperson by the Minister would thus better ensure that a person well-schooled in the demands of public administration and accountability would occupy the role.⁵² The Opposition shared this view, and were also of the opinion that leaving the power to appoint the Commission Chairperson with the Minister would ensure greater accountability: appointed Commissioners would have a 'special sense of responsibility' to the Parliament by virtue of their being appointed by the Minister.⁵³ However, while the Government's proposed amendment to the ATSIC Act to allow for an elected Chairperson was defeated initially, it was reintroduced late in 1993 after a series of other changes to ATSIC's structure—particularly regarding the regional councils—had been made.⁵⁴ This time the amendment was passed with the Democrats' support, though it would not take effect until the ATSIC elections due to be held in 1996. Following the election of the Howard government, this was postponed until the 1999 elections, with the Minister retaining the power to appoint the Chairperson till that time. The Howard government subsequently appointed Gatjil Djerrkura to the position of ATSIC Chair in 1996. When the elected Chairperson amendments came into effect, Geoff Clark became ATSIC's first elected Chairperson in 1999.⁵⁵

ATSIC's elected officials are accountable to the Parliament through the Commonwealth Minister for Aboriginal Affairs, but by virtue of being elected, they are also accountable to their indigenous constituencies. This dual system of accountability—to two potentially very different sets of demands—has been a source of ongoing tension within the ATSIC structure since ATSIC's establishment.

The Administrative Arm

At present, ATSIC's administrative arm consists of around 1250 Commonwealth public servants, employed under the *Public Service Act 1999*.⁵⁶ The administrative arm is headed by a Chief Executive Officer (CEO) appointed by the Minister. ATSIC's administrative arm supports the activities of the elected representatives and administers ATSIC's various programs, including the implementation of decisions taken by the elected arm about loan and grant applications and the direction of funding to particular service delivery organisations. The administrative arm of ATSIC reports to the Minister through the CEO, though takes direction from ATSIC's elected officials. The changes to ATSIC's governance structure recently announced by Minister Ruddock, which are discussed in more detail below, impinge directly on the current details of this arrangement. In the new structure the elected officials will determine policy priorities and objectives, but will no longer make decisions about individual loans, grants and program funding.

Academics John Chesterman and Brian Galligan describe ATSIC's combination of an elected arm and an administrative arm as 'something of an amalgam'.⁵⁷ This combination

is unique, which helps to explain why the creation of ATSIC was seen as a bold innovation in Aboriginal affairs, and in Australian public administration more generally: ATSIC is both the peak indigenous body in Australia, but at the same time, its program delivery role means that the organisation also functions as a government department (indeed, this was part of the rationale in ATSIC replacing the DAA).

Michelle Ivanitz and Ken McPhail suggest that the tensions between these two quite separate functions, in addition to the tensions between two different sets of accountability mentioned above, have been the basis of some fundamental problems for ATSIC since its establishment:

While this structure may be innovative in that it attempts to combine both representative and executive responsibilities and functions, ATSIC's dual role is problematic as principles of representative democracy, group autonomy and ministerial responsibility conflict. The representative arm is accountable to the Minister and the Aboriginal communities, however, the administrative arm is accountable to the government. We contend that the structure of ATSIC with its conflicting systems of accountability, not only means that it will struggle to achieve its stated aims of Aboriginal empowerment but may actually be pushing it perilously close to a crisis of legitimacy.⁵⁸

The stated aim of the changes recently announced by Minister Ruddock is to 'promote good governance and accountability by removing the potential for conflicts of interest in decision-making over funding'.⁵⁹ However, Ivanitz and McPhail suggest that ATSIC's problems run much deeper than conflict of interest in individual decisions about funding. Thus, while an important test of the changes will be the extent to which they are seen to overcome concerns about accountability, this may prove a very difficult test to pass.

ATSIC's Funding

Much of the criticism which ATSIC has faced has focused on its expenditure of government funds. At the same time, how much funding ATSIC receives—and what it can and cannot do with the money—is one of the central misconceptions surrounding ATSIC. As the peak indigenous body in the country, ATSIC is often the prime target of jibes such as that 'there's too much money thrown at indigenous affairs'.⁶⁰ As Lowitja O'Donoghue puts it, 'out there in tabloid land, [ATSIC] has become the icon of that mischievous construct "the Aboriginal industry"'.⁶¹

The issue of funding is also the focal point for debate about ATSIC's effectiveness: while it is not the primary service provider in many portfolio areas—including primary health care and education—it is often blamed when not enough is seen to be done in these areas. This part of the paper provides a brief overview of ATSIC's current funding arrangements.

ATSIC's Budget

ATSIC currently receives about \$1.1 billion in funding from the Commonwealth government each year.⁶² As the table below shows, the majority of this money—usually

around half of ATSIC's total budget—is spent on economic development programs, including Community Development Employment Projects (CDEP). CDEP is an employment, training, and community-development program which began in 1977, and which provides work and training opportunities for unemployed indigenous people in community-based and community-managed activities. In June 2002, there were over 270 indigenous community organisations and 34 182 indigenous people participating in CDEP nationally.⁶³ Participation in CDEP accounts for around twenty-five per cent of indigenous employment.⁶⁴

ATSIC's second-biggest area of expenditure—usually around one-third of ATSIC's total budget—is on programs geared towards the improvement of indigenous peoples' social and physical wellbeing, including the Community Housing and Infrastructure Program (CHIP). This program funds a variety of projects, ranging from the construction and acquisition of appropriate rental housing for indigenous people, to providing adequate water, power and sewerage supplies to rural and remote indigenous communities. The services provided with CHIP funding vary depending on the community's location and the mainstream services already available.⁶⁵

ATSIC's remaining funding—around one-fifth, or twenty per cent of its total budget—is spent on a range of programs. These include programs geared towards the preservation and promotion of indigenous culture and heritage, and the advancement of indigenous rights and equity.⁶⁶

Table 1: ATSIC expenditure by program⁶⁷

Program	Expenditure (\$000)	% of total expenditure
Economic development (including CDEP)	574 430	50
Improvement of Social and Physical wellbeing (including CHIP)	361 078	32
Advancement of Indigenous Rights and Equity	89 174	8
Promotion of Cultural Authority	66 006	6
Capacity Building and Quality Assurance	11 982	1
Other*	31 616	3

* Includes royalties from mining and development on Aboriginal land under the *Aboriginal Land Rights (NT) Act 1976* administered by ATSIC.

ATSIC and Total Identifiable Commonwealth Expenditure on Indigenous Affairs

One of the particular misconceptions about ATSIC's funding is that it is responsible for all Commonwealth spending on indigenous affairs, when this is not, and never really has been, the case. ATSIC has only ever administered around half of the Commonwealth's total identifiable expenditure on indigenous affairs.⁶⁸ The other half—in the order of \$1.3 billion in 2002–03—is spent through various agencies in other areas, in particular the employment, education and training, social security, and health portfolios.⁶⁹ In recent years, ATSIC's share of the total indigenous funding pie has slightly decreased.⁷⁰ This has

been interpreted by some commentators as a 'mainstreaming' of indigenous-specific programs at ATSIC's expense.⁷¹

When the Coalition government came to office in 1996, ATSIC's overall funding was reduced in the 1996 Federal Budget by around 11 per cent.⁷² At the same time, large proportions of ATSIC's budget were quarantined by the Government: that is, ATSIC was required to maintain certain levels of expenditure on particular programs (including CDEP and CHIP).⁷³ At the time, this forced the closure of many of ATSIC's smaller programs, particularly those that had been established in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.⁷⁴ What this means is that the proportion of ATSIC's spending which is actually at its own discretion, that is, not predetermined by the Commonwealth government, is relatively small. The size of ATSIC's 'discretionary' budget as a proportion of total identifiable Commonwealth indigenous affairs expenditure is smaller still, as Figures 1 and 2 demonstrate.

Figure 1: Total ATSIC expenditure⁷⁵

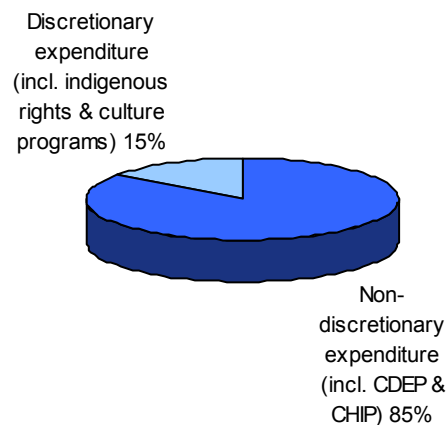
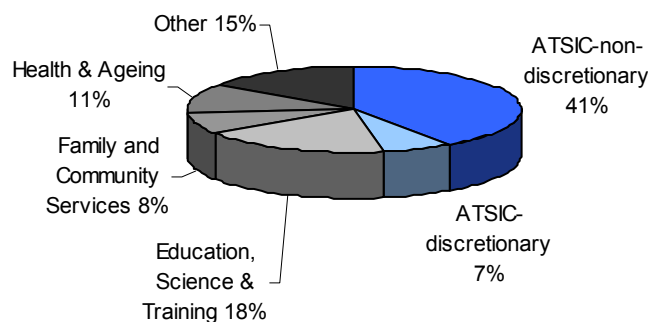


Figure 2: Total identifiable Commonwealth expenditure on indigenous programs⁷⁶



In this context it is also important to point out that ATSIC does not have responsibility for many of the areas for which its 'performance' is often criticised. For instance, ATSIC has

not had responsibility for primary indigenous health care since the Keating Government transferred responsibility for health from ATSIC to the Department of Human Services and Health (as it was then known) in 1995.⁷⁷ Yet, perhaps because of its unique amalgam of executive and representative functions, and the \$1 billion of Commonwealth funding that it does control, ATSIC has become an easily identifiable symbol of the perceived failure of government spending on indigenous specific programs to yield big, quick results. An editorial in *The Australian* in March of this year, for example, which discussed the 'intensifying health crisis for remote Aboriginal Australians', said that it was ATSIC—and not the Department of Health—that 'has failed these people'.⁷⁸

Another issue which has been refracted through broader debates about ATSIC funding is the question of whether ATSIC's services and programs should be a supplement to, or delivered instead of, 'mainstream' services. That is, whether ATSIC's programs should *complement* and add to mainstream services so that they meet the specific needs of Aboriginal and Torres Strait Islander people, or whether they should *replace* them. This has been a perennial source of debate since ATSIC's inception.

ATSIC argues that its programs are only designed to supplement funding and programs provided by other Commonwealth, state and territory agencies.⁷⁹ However, there is often a gap, particularly in rural and remote Aboriginal communities, between what *should* be provided to indigenous peoples through mainstream service delivery agencies, and what is actually the case. ATSIC is often left to fill the gaps left by mainstream service delivery agencies. For example, part of ATSIC's expenditure through CHIP goes towards the provision of basic services such as running water and electricity in remote indigenous communities.⁸⁰ Subsequently, as a recent Commonwealth Grants Commission report commented, the 'failure of mainstream programs to effectively address needs of indigenous peoples means that Indigenous-specific programs are expected to do more than they were designed for'.⁸¹ It is for this reason that Geoff Clark and his fellow commissioners, and others before them, have complained that ATSIC has too often been a scapegoat for the inadequacies of *all* levels of government in indigenous affairs.⁸²

Accountability

'Accountability' has been a long-running theme in debates about ATSIC since its inception, as the discussion about the lead-up to ATSIC's establishment above attests. It is often assumed that ATSIC is unaccountable, that its processes are not transparent, that its funds are subject to mismanagement, and subsequently, that ATSIC is both inefficient and incompetent. For example, in his speech to the Victorian Liberal Speakers Group in March 2003, Christopher Pyne said that most Australians would have some level of awareness that ATSIC is 'inefficient', that it is 'not held to account in the same way as non-Indigenous government bodies', and that its culture is one of 'waste, corruption and nepotism'.⁸³

Recent media reports about ATSIC Chairman Geoff Clark's wife going on a taxpayer funded trip to Ireland in 2002,⁸⁴ and allegations about fraud and corruption in Queensland Aboriginal organisations associated with ATSIC Deputy Chair Ray Robinson,⁸⁵ have

helped to reinforce these perceptions. In light of this renewed focus on accountability, it is useful to review ATSIC's track record in accountability since its establishment.

As discussed above, when Gerry Hand reintroduced the ATSIC legislation to the Parliament in May 1989, its strengthened accountability mechanisms included the creation of an internal Office of Evaluation and Audit, which regularly monitors ATSIC's programs. ATSIC is the only Commonwealth statutory authority or department that has its own internal audit office.⁸⁶ Another organisation which operates under the ATSIC Act—the Registrar of Aboriginal Corporations—monitors funds distributed by ATSIC to Aboriginal corporations.

Additionally, ATSIC has been the subject of several external reviews and inquiries since it commenced operations in 1990. For example, one of the Howard Government's first actions in Aboriginal affairs upon coming to government was the appointment of a special auditor to examine accountability within ATSIC (and TSRA) funded organisations to determine whether or not the organisations were 'fit and proper' bodies to receive public funds. This was ostensibly in response to 'community concern' about an apparent 'haemorrhaging of public funds'.⁸⁷ The audit, conducted by accounting firm KPMG, found that 95 per cent of the 1122 organisations reviewed were cleared for further funding, while 60 organisations (five per cent) were not.⁸⁸ Lowitja O'Donoghue points out that the audit 'uncovered no instances of fraud, but it did discover a system of grant administration that was so detailed as to make breaches of grant conditions almost inevitable'.⁸⁹ The report recommended training for administrators of Aboriginal organisations—for example, in financial management expertise—but noted that budget cuts imposed on ATSIC in the 1996–1997 Commonwealth budget had resulted in the termination of the Community Training Program, significantly reducing 'the capacity of ATSIC to fund management training in organisations'.⁹⁰

Many commentators argue that ATSIC is subject to more onerous accountability requirements than many other government departments and agencies. For example, according to O'Donoghue, 'if there is an "industry" in Aboriginal affairs, it is an accountability industry'.⁹¹ Ivanitz and McPhail also suggest that the 'portrayal of ATSIC as lacking accountability' has historically been used as 'symbolic justification for removing power from Aboriginal people rather than seriously addressing the issue of how to substantively empower Aboriginal people'.⁹² This comment is especially current in light of the changes to ATSIC recently announced by Minister Ruddock, discussed below. Ivanitz and McPhail make the further point that ATSIC has had to struggle constantly in a contest between two conflicting sets of 'accountability': accountability to the Parliament for expenditure of public monies, but also accountability to the indigenous groups and communities who elect ATSIC's office bearers, as mentioned above.⁹³

The Recent Changes to ATSIC

Until now, ATSIC's programs and service delivery have been administered by its administrative arm, as discussed above. On 17 April 2003 the Minister for Indigenous Affairs, Philip Ruddock, announced the establishment of a new executive agency, Aboriginal and Torres Strait Islander Services (ATSIS), to administer ATSIC's programs and make individual decisions about grant and other funding to Aboriginal organisations.⁹⁴

The Establishment of Aboriginal and Torres Strait Islander Services (ATSIS)

ATSIS will be headed by ATSIC's CEO, who will remain CEO of both organisations. ATSIS will be staffed by existing members of ATSIC's administrative arm. It will take broad direction on policy and priorities from ATSIC's elected officials: the national ATSIC Board and Regional Councils. ATSIS will, however, be accountable directly to the Minister. The changes will take effect, and thus ATSIS will come into existence, from 1 July 2003.⁹⁵

In announcing these changes, Minister Ruddock emphasised that the establishment of ATSIS did not entail a 'mainstreaming' of ATSIC's proposals, nor their transfer to a government department. Rather, the Minister said that the aim of the establishment of ATSIS is to separate the roles of decision-making about and development of policy (to remain with ATSIC) from that of its implementation (to be done by the new agency). This 'separation of powers' will be akin to the usual separation between the functions of a Minister and his/her Department. Minister Ruddock said that he had decided to introduce the changes, as an 'interim measure', to address perceptions of and potential for conflict of interest in decision-making about ATSIC funding.⁹⁶

Effectively, the changes mean that ATSIC's elected arm will no longer have direct control over the Commission's budget. The removal of the control of funding from ATSIC's elected arm, and the 'separation of powers' justification for it, has been welcomed in some quarters. Lowitja O'Donoghue, for example, suggested the changes were the only way to end the 'pork-barrelling' and 'nepotism' which she suggests is currently rife within ATSIC (O'Donoghue has been a vocal critic of both the current Chairman Geoff Clark and his Deputy Ray Robinson).⁹⁷ Others, however, have interpreted them as a move backwards. Democrat Senator Aden Ridgeway, for example, described the changes as a 'retrograde step' which disenfranchises the ATSIC Board, and which 'takes Indigenous affairs back to a model similar to the old National Aboriginal Conference model from the 1970s'.⁹⁸

Certainly there are some analogies between the NAC and ATSIC post-1 July: as discussed above, the NAC was an advisory body with no budget or executive control. The difference is that the ATSIC Board of Commissioners will retain the role of determining ATSIC's budget priorities and policy guidelines and objectives. This is a role which was never undertaken by the NAC. There are, however, a number of other issues and questions which the establishment of ATSIS raises:

- Is it possible for one person to be the CEO of both ATSIC and ATSIIS without creating an inherent conflict of interest? ATSIC's Commissioners have pointed out that under the ATSIC Act, the ATSIC CEO can be directed by the ATSIC Board in all of his or her functions. Currently the CEO reports to the ATSIC Board. As head of ATSIIS, however, the CEO will also report directly to the Minister, thus potentially creating what ATSIC Commissioners suggest could be an 'impossible' conflict of interest.⁹⁹
- How effectively will ATSIC be in its role of policy development and direction if the overwhelming majority of current ATSIC staff—presumably including those presently in policy-development roles—are being transferred to ATSIIS?¹⁰⁰
- What will be the specific role of the ATSIC Regional Councils in the new structure? According to the most recent budget statements for the indigenous affairs portfolio, which spell out some of the detail about the new structure, the Regional Councils will be able to focus more on 'regional-level planning and the coordination of services across the various levels of national, state/territory and local governments'.¹⁰¹ But according to ATSIC's most recent Annual Report, ATSIC's Regional Councils have had a significant role in the administration of ATSIC's biggest program, CDEP. For example, the Regional Councils 'approve individual project budgets and allocate on-cost funds and participant numbers to organisations'.¹⁰² Presumably this function will be transferred to ATSIIS when the changes take effect. Thus, given the role that the Regional Councils have hitherto played in the administration of ATSIC's biggest program, does the transfer of this function to ATSIIS represent a significant reduction in the responsibilities of the Regional Councils?
- This raises a related question: will the establishment of ATSIIS lead to a *de facto* centralisation of the ATSIC bureaucracy, by removing the Regional Councils as a level of decision-making?

Perhaps the key test for the effectiveness of the new arrangements, however, will be whether or not they lead to significant changes in public perceptions of ATSIC. As Minister Ruddock's press release announcing the changes said, the new measures were designed to address *perceptions of* conflict of interest, as well as the potential for *actual* conflicts. The difficulty in achieving this sort of change, however, would be that public perceptions of ATSIC are often heavily influenced by *misconception*, as the discussion above suggests.

The ATSIC Review

The broader review into ATSIC's roles and functions commissioned by Minister Ruddock last November is due to report at the end of May. The review panel – John Hannaford, Jackie Huggins, and Bob Collins – has been asked to 'examine and make recommendations to government on how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth

policies and programmes to assist them'.¹⁰³ In doing so, the panel was asked to look at the current roles and functions of ATSIC, including its roles in providing:

- a) advocacy and representation of the views of Aboriginal and Torres Strait Islander people
- b) programmes and services to Aboriginal and Torres Strait Islander people, and
- c) advice on implementation of legislation

In particular, the Minister asked the review panel to consider the 'appropriate role for Regional Councils in ensuring the delivery of appropriate government programmes and services to indigenous people'.¹⁰⁴

Broadly speaking, it is probably unlikely that the May discussion paper will recommend a further devolution of ATSIC's powers, but beyond that, it is difficult to predict what the outcomes of the review might be. While the substantive issues with which Minister Ruddock's changes and the broader review are concerned differ somewhat, the recent changes seem to have pre-empted the review panel's discussion paper to at least some extent.

As the most recent budget statements for the indigenous affairs portfolio point out, the formation of ATSIIS, 'while an interim measure, represents a significant change in the management and administration of [ATSIC's] program funds'.¹⁰⁵ However, the review panel's discussion paper may help to clarify some of the issues raised by the establishment of ATSIIS, discussed above. On the other hand, Minister Ruddock's decision to act so soon before the review panel is due to report may create the perception that ATSIC's 'problems' have now been dealt with, subsequently reduce the clout of the review team's forthcoming discussion paper, at least symbolically, and thus reduce public pressure for the government to act on it.

Conclusion

This paper has sought to provide an overview of some of the issues currently facing Australia's peak indigenous body. It has also provided a brief history of ATSIC, focusing on some of the areas which are sources of current debate and are likely to continue to be so, including accountability, governance, and funding. It has also focused on areas where debates about ATSIC have tended to be heavily influenced by misconception, such as ATSIC's role in service delivery.

Perhaps as a result of its unique structure and combination of roles and responsibilities, and because of its highly visible presence in a policy area where 'success' is difficult to define and thus hard to achieve, ATSIC has operated in a very challenging environment ever since its establishment. Debate about ATSIC is likely to continue within the Parliament, in the pages of the newspapers, and across the airwaves for some time to come. Where ATSIC's future lies amidst all of this is unclear. What is clear is that

ATSIC—and the new agency which will deliver its programs, ATSI—will be subject to continued public and political scrutiny. This will particularly be the case as the recently announced changes take effect, and when the ATSIC review panel releases its discussion paper in May. How ATSIC responds to this scrutiny may well prove to be the peak body's greatest test yet.

Endnotes

1. ATSIC, 'A Bump in the Road to Self-Determination', [Media Release](#), 17 April 2003.
2. *ibid.*
3. Debra Jopson, 'ATSIC's Disappearing Act: 1300 Staff to 20', *Sydney Morning Herald*, 25 April 2003, p. 3.
4. ATSIC, 'Please Explain, Minister', [Media Release](#), 30 April 2003.
5. Senator Aden Ridgeway, 'Indigenous Affairs Needs a Full-Time Minister', [Media Release](#), 17 April 2003.
6. The Hon. Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, 'ATSIC Review Panel Announced', [Media Release](#), 12 November 2002.
7. See, for example, Stuart Rintoul and Misha Schubert, 'Federal Police Raid Sugar Ray's Office', *The Australian*, 2 April 2003, p. 14.
8. At the time of writing, Clark was awaiting the outcome of an appeal against the conviction.
9. Christopher Pyne, 'Why the ATSIC Gravy Train Must be Derailed', *The Age*, 12 March 2003. See also Christopher Pyne, 'Dismantling the ATSIC Monopoly', *Options*, no. 16, April 2003, pp. 8–10; Warren Entsch, 'ATSIC and the Need for Reform', *Options*, no. 16, April 2003, pp. 11–12.
10. Debra Jopson, 'Pearson Calls for Reform of ATSIC', *The Sydney Morning Herald*, 11 November 2002. See also Noel Pearson, 'Major Changes to ATSIC Are Not the Answer', *Options*, no. 16, April 2003, pp. 5–7.
11. Tim Rowse, 'The Revolution in Aboriginal Affairs', *Australian Society*, March 1990, pp. 15–18.
12. The 1967 referendum is popularly thought to be the time when Indigenous people in Australia gained 'citizenship rights', and/or when they were first allowed to vote. This is incorrect: the overwhelming (over 90 per cent) 'yes' vote in the 1967 referendum changed sections of the Australian constitution which had previously excluded Indigenous people from being counted in Australian census figures, and which had prevented the Commonwealth government from making special laws for Aboriginal people except in the Territories. For further information, see John Gardiner-Garden, 'The Origin of Commonwealth Involvement in Indigenous Affairs and the 1967 Referendum', *Background Paper no. 11*, Department of the Parliamentary Library, 1996–97: <http://www.aph.gov.au/library/pubs/bp/1996-97/97bp11.htm>.
13. The OAA was transferred in March 1971 to the Department of the Vice-President of the Executive Council, and a few months later to the new Department of the Environment, Aborigines and the Arts. 'Office of Aboriginal Affairs', *Encyclopaedia of Aboriginal Australia CD-Rom*, Aboriginal Studies Press, 1994.

14. Tim Rowse, *Obliged to be Difficult: Nugget Coombs' Legacy in Indigenous Affairs*, Cambridge University Press, 2000, p. 107.
15. Will Sanders, 'Reconciling Public Accountability and Aboriginal Self-Determination/Self-Management: Is ATSIC Succeeding?', *Australian Journal of Public Administration*, vol. 53, no. 4, December 1994, p. 487.
16. *ibid.*, p. 475.
17. Tim Rowse, 2000, *op. cit.*, p. 120.
18. Department of Aboriginal Affairs, *The Role of the National Aboriginal Consultative Committee – Report of the Committee of Inquiry*, AGPS, 1976, p. viii.
19. 'National Aboriginal Consultative Committee' and 'National Aboriginal Conference', *Encyclopaedia of Aboriginal Australia CD-Rom*, Aboriginal Studies Press, 1994.
20. Will Sanders, *op. cit.*, p. 475; 'Aboriginal Development Commission', *Encyclopaedia of Aboriginal Australia CD-Rom*, Aboriginal Studies Press, 1994.
21. Tim Rowse, 2000, *op. cit.*, p. 185.
22. Senator Susan Ryan, 'Summary of the ALP's Election Commitments to Aboriginal Affairs', 10 February 1983, Parliamentary Library collection.
23. H. C. Coombs, *The Role of the National Aboriginal Conference: Report to the Hon. Clyde Holding, Minister for Aboriginal Affairs*, Department of Aboriginal Affairs, 1984, p. 14.
24. The Hon. A. C. Holding, 'Ministerial Statement: National Aboriginal Conference', House of Representatives, *Hansard*, 17 April 1985, p. 1266.
25. Michele Ivanitz and Ken McPhail, 'ATSIC: Autonomy or Accountability?', in Ian Holland and Jenny Fleming (eds), *Government Reformed: Values and New Political Institutions*, Aldershot, 2003, pp. 185–201.
26. Will Sanders, *op. cit.*, p. 475.
27. *ibid.*
28. *ibid.*, p. 476.
29. The Hon. G. L. Hand, 'Speech: Foundations for the Future', House of Representatives, *Hansard*, 10 December 1985, p. 3152.
30. *ibid.*
31. The Hon. G. L. Hand, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1988: Second Reading', House of Representatives, *Hansard*, 24 August 1988, p. 251.
32. The Hon. G. L. Hand, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1989: Second Reading', House of Representatives, *Hansard*, 4 May 1989, p. 1994.
33. Shirley McPherson and Lenore Nicklin, '"No, Minister" Says Black Bureaucrat', *Bulletin with Newsweek*, vol. 110, no. 5620, 24 May 1988, pp. 140–143.
34. Will Sanders, *op. cit.*, pp. 475–476.
35. Australian Audit Office, *Special Audit Report: The Aboriginal Development Commission and the Department of Aboriginal Affairs*, AGPS, 1989; Public Service Commission, *Report on Allegations about Personnel Management in the Department of Aboriginal Affairs*, AGPS, 1989; Department of Finance, *Report on Certain Staff Classification Matters in the Department of Aboriginal Affairs*, AGPS, 1989; Department of Finance, *Report on the*

- Financial Management of the Aboriginal Development Commission*, AGPS, 1989; A. C. C. Menzies, *Inquiry into Allegations as to the Administration of Aboriginal Affairs: Final Report*, Department of the Prime Minister and Cabinet, 1989.
36. Senate Select Committee on the Administration of Aboriginal Affairs, *Administration of Aboriginal Affairs*, Parliament of the Commonwealth of Australia, 1989.
 37. The Hon. G. L. Hand, 4 May 1989, op. cit., p. 1994.
 38. *ibid.*
 39. Senator the Hon. M. C. Tate, 'Speech: Report of Senate Select Committee on the Administration of Aboriginal Affairs: Government's Response', Senate, *Hansard*, 11 April 1989, p. 1334.
 40. See, for example, Senator J. R. Short, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1989: Second Reading', Senate, *Hansard*, 18 August 1989, p. 392; Senator F. I. Bjelke-Peterson, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1989: Second Reading', Senate, *Hansard*, 30 August 1989, p. 639.
 41. Senator J. R. Coulter, 'Speech: Aboriginal and Torres Strait Islander Commission Bill 1989: Second Reading', Senate, *Hansard*, 17 August 1989, p. 251.
 42. ATSIC, *Annual Report 1993–1994*, p. 27.
 43. *The Aboriginal and Torres Strait Islander Commission Act 1989*, Section 3.
 44. ATSIC, 'ATSIC at a Glance', http://www.atsic.gov.au/about_atsic/atsic_at_a_glance/default.asp.
 45. For example, under Clark's leadership ATSIC has supported the establishment of a National Treaty Support Group, which convened a national treaty conference in August 2002. See the National Treaty Support Group website: <http://www.treatynow.org/default.asp>.
 46. See, for example, 'Agreement-making, not Treaty, the Way Forward: Ruddock', *National Indigenous Times*, vol. 1, no. 15, 11 September 2002, p. 20.
 47. To be eligible to vote ATSIC electors must be on the Commonwealth electoral roll, with the exception of the Tasmanian Regional Council elections in 2002 where a separate Indigenous electoral roll was trialled. For further information on the situation in Tasmania, see John Gardiner-Garden, 'Defining Aboriginality in Australia', *Current Issues Brief no. 10*, Department of the Parliamentary Library, 2002–03: <http://www.aph.gov.au/library/pubs/CIB/2002-03/03cib10.htm>.
 48. Some regions are divided into wards for electoral purposes to ensure that smaller communities within each region are able to have a representative on their Council.
 49. Maps of the ATSIC regions and zones can be viewed on the ATSIC website: http://www.atsic.gov.au/About_ATSIC/Board_and_Regional_Councillors/Regional_Councils/default.asp.
 50. The Torres Strait Regional Authority (TSRA) is a separate body, but operates under the auspices of the ATSIC Act.
 51. ATSIC, *Aboriginal and Torres Strait Islander Commission Act 1989 – Review of the operation of the Act – Report to the Minister for Aboriginal and Torres Strait Islander Affairs – section 26 of the Aboriginal and Torres Strait Islander Act 1989*, AGPS, 1993.

52. Senator C. Kernot, 'Speech: Aboriginal and Torres Strait Islander Commission Amendment Bill 1993, Aboriginal Land Rights (Northern Territory) Amendment Bill 1993: Second Reading', Senate, *Hansard*, 19 May 1993, p. 824.
53. Senator B. C. Teague, 'Speech: Aboriginal and Torres Strait Islander Commission Amendment Bill 1993 Aboriginal Land Rights (Northern Territory) Amendment Bill 1993: Second Reading', Senate, *Hansard*, 19 May 1993, p. 821.
54. The 1993 review recommended other changes to ATSIC's structure which were agreed to by the Senate when the Government introduced the first package of amendments to the ATSIC Act into the Parliament in 1993. These included a reduction in the number of ATSIC Regional Councils from 60 to 35. D. Melham, 'Aboriginal and Torres Strait Islander Commission Amendment Bill (No.1) 1999: Second Reading', House of Representatives, *Hansard*, 2 September 1999, pp. 9887–8. See also 'Sweeping Changes for ATSIC', *ATSIC News*, vol. 3, no. 2, Autumn 1993, pp. 3–4.
55. These changes included removing from the Minister the power to appoint two other national Commissioners, thus reducing the total number of Commissioners on the ATSIC Board from the original 20 to the current number of 18.
56. ATSIC, *Annual Report 2001–2002*, p. 12. See also Jopson, 2003, op. cit.
57. John Chesterman and Brian Galligan, *Citizens without Rights*, Cambridge University Press, 1997, p. 213.
58. Michelle Ivanitz and Ken McPhail, op. cit., p. 193.
59. The Hon. Philip Ruddock, Minister for Immigration and Multicultural and Indigenous Affairs, 'Good Governance and Conflicts of Interest in ATSIC', [Media Release](#), 17 April 2003.
60. ATSIC, *As a Matter of Fact*, ATSIC Office of Public Affairs, 1998, p. 14.
61. Lowitja O'Donoghue, 'The Uses and Abuses of Accountability', *ATSIC News*, August 1998, pp. 12–13.
62. *Indigenous Affairs 2002–2003*, op. cit., p. 1.
63. ATSIC, *Annual Report 2001–2002*, p. 166. See also Ian Spicer, *Independent Review of the Community Development Employment Projects (CDEP) Scheme*, ATSIC, 1997.
64. M.C. Gray and B.H. Hunter, 'A Cohort Analysis of the Determinants of Employment and Labour Force Participation: Indigenous and Non-Indigenous Australians, 1981 to 1996', *The Australian Economic Review*, vol.35, no.4, pp. 391–404.
65. ATSIC, *Annual Report 2001–2002*, p. 122.
66. *Indigenous Affairs 2002–2003*, op. cit., p. 33.
67. *ibid.* This is estimated actual expenditure in 2001–02.
68. 'Total identifiable Commonwealth expenditure on Indigenous affairs' refers to all Commonwealth programs which are Indigenous-specific.
69. Note that expenditure in the social security (now family and community services) portfolio does not include 'mainstream' social security payments made to Indigenous people (that is, payments for which non-Indigenous people are also eligible).
70. John Gardiner-Garden, 'Identifiable Commonwealth Expenditure on Aboriginal and Torres Strait Islander Affairs', *Current Issues Brief no.18*, 1997–98, Department of the Parliamentary Library, pp. 2–3: <http://www.aph.gov.au/library/pubs/CIB/1997-98/98cib18.htm>.

71. See, for example, Larissa Behrendt, 'Blood from a Stone', *Arena Magazine*, no. 60, August–September 2002, pp. 32–34.
72. *Portfolio Budget Statements 1996–97—Aboriginal and Torres Strait Islander Commission, Budget Related Paper No. 1.13B*, pp. 7,13. See also *ATSIC Annual Report 1996–1997*, p. 6.
73. *Portfolio Budget Statements 1996–97—Aboriginal and Torres Strait Islander Commission, Budget Related Paper No.1.13B*, p.7. While the ATSIC Board determines broad budget priorities and prepares ATSIC's draft budget, section 63 of the ATSIC Act requires the Board to submit draft budgets to the Minister for approval. Further, the Minister has a power to issue general directions to the commission and directions about the administration of ATSIC's finances, which the Commission must comply with (*ATSIC Annual Report 1996–1997*, p. 6). It is through this power that the Minister is able to quarantine parts of ATSIC's budget to be spent on particular programs.
74. *ATSIC, Annual Report 1995–1996*, p. 23.
75. Notes to graph: percentages are calculated using 2001–02 estimated actual expenditure, as outlined in *Indigenous Affairs 2002–2003*, op. cit., p. 33. The outputs included in the calculation of ATSIC's 'non-discretionary expenditure' are improvement of social and physical wellbeing programs (including CHIP), economic development programs (including CDEP), and payments made under the *Aboriginal Land Rights (NT) Act 1976* (ATSIC administers these payments on behalf of the Northern Territory Aboriginal land councils). While CHIP and CDEP do not account for *all* expenditure in the improvement of social and physical wellbeing and economic development outputs respectively, they make up the *majority* of expenditure in each output. Thus, for the purposes of the graph, the total expenditure on each of these outputs is included in ATSIC's 'non-discretionary' expenditure. The outputs included in the calculation of ATSIC's 'discretionary' expenditure are promotion of cultural authority, advancement of Indigenous rights and equity, and capacity building and quality assurance programs.
76. Notes to graph: percentages are calculated using 2001–02 estimated actual expenditure, as outlined in *Indigenous Affairs 2002–2003*, op. cit., pp. 33–39. The 'other' category includes all Commonwealth Indigenous-specific programs other than those conducted under the auspices of ATSIC, and the education, science and training, family and community services, and health and ageing portfolios.
77. When ATSIC began operations in 1990, it took over responsibility for Indigenous health from the DAA (which in turn had taken over responsibility for Indigenous health from the Department of Health in 1984).
78. 'Clark and ATSIC Board have Failed', *The Australian*, 31 March 2003, p. 8.
79. Geoff Clark, 'White Out in the Land of the Oz', *ATSIC News*, Summer 2002, pp. 6–7.
80. See *ATSIC, Annual Report 2001–2002*, pp. 121–122.
81. Commonwealth Grants Commission, *Report on Indigenous Funding*, The Commission, Canberra, 2001, p. xvii.
82. See, for example: Geoff Clark, 'ATSIC is Not a Native Title for Scapegoat', *The Courier-Mail*, 28 March 2003, p. 19.
83. Christopher Pyne, March 2003, op. cit. See also Debra Jopson, 'Coalition's attack dog sinks teeth into ATSIC', *The Sydney Morning Herald*, March 11 2003, p. 5.

84. See, for example: Michael McKinnon, Stuart Rintoul and Misha Schubert, 'ATSIIC Chief's Wife Runs Up \$25,000 Travel Bill', *The Australian*, 14 April 2003, p. 5.
85. See, for example: Stuart Rintoul and Misha Schubert, 'Federal Police Raid Sugar Ray's Office', *The Australian*, 2 April 2003, p. 14.
86. Michele Ivanitz, 'The Demise of ATSIIC? Accountability and the Coalition Government', *Australian Journal of Public Administration*, vol. 59, no. 1, March 2000, pp. 3–12.
87. Lowitja O'Donoghue 1998, op. cit., p. 12–13.
88. KPMG, *Report of the Special Auditor*, Department of the Prime Minister and Cabinet, Canberra, 1996.
89. Lowitja O'Donoghue, op. cit.
90. KPMG, op. cit.
91. Lowitja O'Donoghue, op. cit., p. 7.
92. Michelle Ivanitz and Ken McPhail, op. cit. See also Ivanitz op. cit.
93. Michelle Ivanitz and Ken McPhail, op. cit., pp. 186–187.
94. Ruddock, 17 April 2003, op. cit.
95. *ibid.* ATSIIS will be established as an executive agency under the *Public Service Act 1999*. This is an administrative measure and thus does not require the enactment of new legislation, or change to the ATSIIC Act. ATSIIC's administrative budget will be appropriated to ATSIIS under the *Financial Management and Accountability Act 1997*. *Portfolio Budget Statements 2003–04—Immigration and Multicultural Affairs Portfolio—Budget Related Paper No. 112*, p. 173.
96. The Hon. Philip Ruddock, 17 April 2004, op. cit.
97. Stuart Rintoul and Misha Schubert, 'O'Donoghue Backs ATSIIC Budget Move', *Weekend Australian*, 19 April 2003, p. 6.
98. Rod McGuirk, op. cit.; Rintoul and Schubert, 19 April 2003, op. cit. See also 'ATSIIC Split Labelled "a Backward Step"', *ABC Online*, 15 May 2003.
99. Rod McGuirk, 'ATSIIC Commissioners to Challenge Govt Overhaul', *AAP Wire Service*, 7 May 2003.
100. See, for example, Jopson, 25 April 2003, op. cit.
101. *Portfolio Budget Statements 2003–04—Immigration and Multicultural and Indigenous Affairs Portfolio*, op. cit., p. 17.
102. ATSIIC, *Annual Report 2001–2002*, p. 166.
103. Ruddock, 12 November 2002, op. cit.
104. *ibid.*
105. *Portfolio Budget Statements 2003–04—Immigration and Multicultural and Indigenous Affairs Portfolio*, op. cit., p. 17.