

# CHAPTER 1

## INTRODUCTION

### **Background to the inquiry**

1.1 On 16 July 2004 the Senate resolved to appoint a Select Committee on the Administration of Indigenous Affairs, to report by 31 October 2004, into the following matters:

- (a) the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;
- (b) the proposed administration of indigenous programs and services by mainstream departments and agencies; and
- (c) related matters.

1.2 The Committee ceased activities upon the prorogation of the 40<sup>th</sup> Parliament in September 2004, and was reconstituted on 17 November 2004, with the terms of reference unchanged and a new reporting date of 8 March 2005. Amendments to membership took place on 18 November 2004, with Senator McLucas and Senator O'Brien replaced by Senator Carr and Senator Moore.

### **Overview of Government reforms to the administration of Indigenous affairs**

1.3 The Government's reforms fall within two categories: those requiring legislative change to the ATSIC Act, and administrative changes. These administrative changes represent much more than routine consequences of a legislative change. The majority, which have pre-empted the abolition of ATSIC in that they have already been effected, go to the 'mainstreaming' of programs previously operated under the aegis of ATSIC. They are driven by a government policy approach that has been termed by witnesses to the inquiry as "assimilationist": they involve the shifting of ATSIC's program responsibilities into larger, generalist Commonwealth departments. The Committee notes that this move is regarded by many as extremely controversial. A large amount of evidence was presented to the Committee on this issue, and is discussed at length and in detail in this report.

#### ***Aboriginal and Torres Strait Islander Commission Amendment Bill 2004***

1.4 The ATSIC Amendment Bill was first introduced into the Parliament on 27 May 2004, and following the election, was reintroduced largely unchanged onto the notice paper on 1 December 2004.

1.5 The ATSIC Amendment Bill repeals or amends large parts of the *ATSIC Act 1989*, as well as making consequential amendments to a range of other legislation. Its effect is essentially to do away with ATSIC as an elected representative body with

specific powers and responsibilities and to distribute its program functions among other Commonwealth departments. ATSIC's international representative role, in particular, is not replaced or paralleled in the new arrangements. The main provisions:

- effectively abolish ATSIC, repealing the sections governing its functions, constitution, administration and operations;
- leave the Torres Strait Regional Authority intact, but abolish the Torres Strait Islander Advisory Board (as there will no longer be an ATSIC for it to advise);
- transfer oversight of Regional Councils from ATSIC to the Minister, and provide for the abolition of Regional Councils from July 2005;
- preserve the Office of Evaluation and Audit, changing its functions to evaluate or audit 'relevant programs administered by Australian Government bodies; and ... the activities of any individual or organisation that has received funding under any relevant program'. Relevant programs are defined as those that use resources to further 'the social, economic or cultural development of Aboriginal persons or Torres Strait Islanders';
- transfer the Regional Land Fund to the Indigenous Land Corporation; and
- transfer the Housing Fund and Business Development Program to Indigenous Business Australia.

1.6 The Bill also contains consequential provisions that remove references to ATSIC from other legislation. More substantively, this includes:

- The transfer of the role of ATSIC under the *Native Title Act 1993* to DIMIA, giving the Government the power to both decide which Native Title organisations it will fund (and therefore which land claims will be funded), while also, through the Attorney-General's department, opposing such claims;
- ATSIC's right to be consulted pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* and the *Human Rights and Equal Opportunity Commission Act 1986*; and
- ATSIC's right to nominate an ATSIC member to the National Health and Medical Research Council under the *NHMRC Act 1992*, or for the Torres Strait Islander Advisory Board under the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*.

1.7 The main changes in the reintroduced Bill are:

- The date for the abolition of ATSIC has been changed from 1 July 2004 to a date to be proclaimed.
- The date of the abolition of the Regional Councils remains at 1 July 2005 unless the abolition of ATSIC occurs after that date in which case the Regional Councils would be abolished on the day after ATSIC is abolished.

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- A minor change has been made to a provision concerning secrecy of information to ensure that former ATSIC staff who transfer to other agencies can continue to pass on appropriate information in the course of their duties.
  - Minor changes have also been made to provisions governing the Office of Evaluation and Audit to allow the Minister for Finance and Administration to provide reports to other Ministers and to table them in Parliament.<sup>1</sup>

### *Mainstreaming of services*

1.8 The Australian Government implemented changes in the administration of Aboriginal and Torres Strait Islander affairs on 1 July 2004. The aim was to enable a 'whole of government' approach by building partnerships with Indigenous Australians at the local and regional level to tailor the delivery of government services.

1.9 More than \$1 billion of former ATSIC/ATSIS programs, including some 1300 staff, were transferred to mainstream Australian Government agencies. A Ministerial Taskforce on Indigenous Affairs was established to provide strategic direction and monitor outcomes of those mainstream agencies and will be supported by a Secretaries Group comprising the heads of the Commonwealth agencies responsible for program delivery. As noted, this move pre-empted the formal abolition of ATSIC by means of legislation and in effect created a *fait accompli* in policy terms. In taking these steps, the Government has acted precipitously to implement its policy agenda. The Committee, in the course of the current inquiry, heard evidence from representatives of many Indigenous organisations, as well as individuals, expressing dismay and anger at the manner in which the Government has sought to implement a set of radical changes in Indigenous affairs policy, representing a complete about-face in terms of overall policy approach from that which has obtained for the last twenty years.

1.10 Government will also be advised by the National Indigenous Council, an appointed body of Indigenous experts from various fields that will meet directly with the Taskforce up to four times yearly. This body, it must be stressed, is neither elected nor representative in any other sense, and is not formally answerable to Indigenous people. The Office of Indigenous Policy Coordination (OIPC) has been established within DIMIA to drive policy development and service delivery.

1.11 Thirty Indigenous Coordination Centres (ICC) have replaced the ATSIC/ATSIS offices in regional and remote areas, offering a whole of government response to issues identified by Indigenous communities. Service delivery will be guided by partnership agreements at the regional level and shared responsibility agreements at the local and community level. The ICCs will lead and coordinate the negotiation of these agreements.

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1 This information was supplied by OIPC.

1.12 The Regional Councils will remain in operation until July 2005, in anticipation of the passing of the ATSIC Amendment Bill. While the Government has asserted that it intends to invite Indigenous people and organisations to form representative bodies of some form or another, to perform the functions now carried out by ATSIC regional structures, no provisions relating to such an intention are contained in the legislation before the Parliament. Nor are there any other material signs of the Government's plans in this regard.

1.13 Below is a table illustrating the transfer of programs and funding to mainstream departments and agencies that occurred on 1 July 2004.

*Table 1.1 – Transfer of ATSI-ATSIC functions from 1 July 2004*

<b>Program</b>	<b>Portfolio</b>
Community Development and Employment (CDEP); Business development and assistance; Home ownership	Employment and Workplace Relations
Community Housing and Infrastructure; Indigenous women	Family and Community Services
Art, culture and language; Broadcasting services; Sport and recreation; Maintenance and protection of Indigenous heritage	Communication, Information Technology and the Arts
Legal and preventative; Family violence prevention legal services	Attorney-General
Access to effective family tracing and reunion services	Health and Ageing
Indigenous rights; International issues; Native title and land rights; Repatriation; Indigenous land fund; Community participation agreements; TSI on the mainland; Planning and partnership development; Public information	Immigration, Multicultural and Indigenous Affairs

<b>Bodies</b>	<b>Portfolio</b>
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Australian Institute of Aboriginal and Torres Strait Islander Studies	Communication, Information Technology and the Arts
Aboriginal Hostels limited	Family and Community Services
Indigenous Business Australia	Employment and Workplace Relations
Indigenous land Corporation; Torres Strait Regional Authority; Registrar of Aboriginal Corporations	Immigration, Multicultural and; Indigenous Affairs
Office of Evaluation and Audit	Finance

(Source: Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs & Minister Assisting the Prime Minister for Reconciliation, 'Australian Government Changes to Indigenous Affairs Services Commence Tomorrow', Media Release, 30 June 2004)

### **Criticism of government processes**

1.14 In the context of the introduction of the report, it is appropriate to make several comments on the process by which the Government has effected what are the most significant changes to Aboriginal affairs in a decade. Leaving aside the merits of these changes, which are the subject of the remainder of this report, the Committee is critical of the speed with which the Government has forced through these changes. The Committee also shares the concerns of the many Indigenous organisations which have expressed grave disquiet about the complete lack of consultation with Indigenous people about the changes. They have been effected without adequate information being provided to Aboriginal and Torres Strait Islander people.

1.15 Professor Mick Dodson referred to this lack of consultation during evidence given to the Committee in Canberra. Professor Dodson made the comment that the decisions were made as if Indigenous people were 'invisible':

It was like we did not exist. ... political figures ... talking about our future without any reference to us ... seemed to deal with us as totally irrelevant and to ignore us.<sup>2</sup>

1.16 His colleague reinforced this sentiment, saying that:

...the people who have most to lose out of this process are the ones who have greatest corporate knowledge ... [but] they are being ... deliberately left out of the process. Yet the documents provided publicly that describe the process sets them up as primary participants in the process.<sup>3</sup>

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2 Professor Dodson, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 33.

3 Mr Glanville, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 35.

1.17 Continuing his criticism, Professor Dodson paused to explain the difference between what the Government means by consultation and what Indigenous people expect it to be:

In my experience, what the Government means by consultation is, 'We, the government, have an agenda. Let's go out and run that agenda past the Indigenous community organisation.' ... In that model, there is no place for Indigenous decision making. It [government consultation] is a process by which the government or bureaucratic agenda gets some sort of legitimisation.<sup>4</sup>

1.18 Commissioner Quartermaine, then Acting Chairman of ATSIC, made the following observation, which was consistent with other feedback collected during the Inquiry:

...[T]he Government's decision announced on 15 April 2004 to abolish ATSIC was devoid of any consultation with those who would be affected; Aboriginal and Torres Strait Islander peoples. In making the decision, the Prime Minister blatantly ignored the findings of his own Government's report [the ATSIC Review] and the views of the Indigenous people who had contributed to its findings.<sup>5</sup>

1.19 Firstly, and a major source of resentment for many in the Indigenous community, is the fact that having commissioned the ATSIC Review, which presented the Government with a model to reform ATSIC based on extensive consultation, the Government suddenly announced the complete abolition of ATSIC.<sup>6</sup> This was done with limited explanation and no discussion. A large number of people, organisations and communities participated in this review in good faith, with a commitment to a process of honest critique and reform. Abolition of ATSIC was never mentioned: rather, there was a legitimate expectation that the Government would proceed with at least the general direction of the Review's findings.

1.20 The Government, having decided to radically depart from the Review findings, should have provided some opportunity for comment. In his opening statement to the Committee in February 2005, the ATSIC Review Panel Convenor, Hon John Hannaford, made the following comment, which clearly questions the integrity of the Government's intent with the Review findings. Mr Hannaford addressed the Committee, saying:

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4 Professor Dodson, *Proof Committee Hansard*, Canberra, 3 February 2005, p. 41.

5 ATSIC, *Submission 202*, p. 17.

6 See for example: Ms Logan, *Submission 6*, p. 1; Pat Andruchow, *Submission 14*, p. 1; Ms Hines, *Submission 36*, p. 2; Uniting Aboriginal and Islander Christian Congress, *Submission 99*, p. 1.

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Thank you very much for the opportunity to speak to you. This is the first opportunity I have had to speak to anyone in government about the report.<sup>7</sup>

1.21 The Chair later clarified this point with Mr Hannaford, asking whether, since handing the report to the Minister in November 2003, he had been given a chance to debrief the Minister; Mr Hannaford responded:

I have spoken to no-one since then.<sup>8</sup>

1.22 Rather than hold even perfunctory consultations with the Review Panel, the Government adopted what can only be described as a 'crash-through' approach to reform, using surprise and momentum to carry through changes it knew would be unpopular. Furthermore, in so doing, it ignored the major findings of the ATSIC Review – an exercise which, according to the Government's own admission has cost the taxpayer \$1.4 million.

1.23 Secondly, as indicated, the Committee is critical of the manner in which the Government acted immediately to give effect to its revised administrative arrangements well before the Parliament had actually abolished ATSIC. While the abolition of ATSIC was announced by the Minister on 15 April 2004, the majority of ATSIC/ATSIS programs and services were transferred to mainstream departments on 1 July 2004.<sup>9</sup> In addition, most of ATSIC's resources, including staff, budgets and travel entitlements were removed, leaving elected ATSIC officials with only the barest statutory entitlements.

1.24 The extent of this process is evidenced by the fact that both the Chairman and Deputy Chairman of ATSIC were even refused funding by the Minister to travel to Canberra to give evidence to this Committee. Mr Geoff Clarke was also refused permission to obtain legal advice under the terms of the ATSIC/ATSIS agreements.<sup>10</sup> In the view of this Committee, this was quite inappropriate. ATSIC officials were legitimately elected under an Act that is still in force, and should retain their full entitlements including staff – not just the bare minimum of pay and conditions – until the ATSIC Act is amended.

1.25 Instead, this hasty change was implemented arbitrarily, evicting duly elected Commissioners and Regional Councillors in the midst of their three-year term. These people were elected with the reasonable expectation of serving their constituents for the usual three year term, and being paid and supported to do so, as any elected official or parliamentarian would anticipate. They have been denied their expectation

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7 Hon John Hannaford, Convenor, ATSIC Review Panel, *Proof Committee Hansard*, Canberra, 18 February 2005, p. 22.

8 *ibid*, p. 36.

9 OIPC, *Submission* 128, p. 10.

10 For details of this difficulty, see Mr Clarke, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 2. See also documents tabled by Mr Clarke.

that any plans and aspirations they were in the midst of implementing would be allowed their natural course of time.

**1.26** Further, the decisions formally made by ATSIC since 1 July 2004, until ATSIC is actually abolished, must be recognised by the Government as legitimate and legally binding.

### **Recommendation 1.1**

**1.27** **The Committee accordingly recommends that the government affirms formally that ATSIC's powers remain in force until the date of proclamation of the relevant legislation, and that decisions taken in accordance with the law up to that date are recognised and implemented.**

1.28 The Secretary of the Department of the Prime Minister and Cabinet, Dr Shergold defended the Government's approach:

Do I think that commissioners should only be paid what is actually necessary to undertake their role? The answer, I have to say, is yes. And the role of commissioners now is extraordinarily limited compared with the role that they had in the past.<sup>11</sup>

1.29 It is certainly the case that the removal of the program delivery functions from ATSIC certainly reduced the role of the ATSIC Commissioners. However, at a time of such significant changes in Indigenous policy, and a time at which the Government itself had sought the advice of ATSIC in devising new representative organisations, the work of the full-time ATSIC Commissioners in their core role of consultation with their Indigenous communities has perhaps never been greater – especially given the limited capacity of the part-time Regional Councillors to perform this role. The changes have created major uncertainty and confusion in many communities, and instead of the Government treating the ATSIC Board as an obstruction, it would have been more appropriate to enlist their assistance in managing a constructive transition.

1.30 Thirdly, the Committee is strongly of the view that the actions of the Government have pre-empted Parliament's decision on the future of ATSIC. ATSIC was created through a lengthy and thorough debate in the Parliament. ATSIC is a creation of Parliament, and as such, it is for Parliament to decide what, if any, changes are to be made to it. As the Government pointed out, the immediate changes were administrative in nature and did not require legislative amendment by Parliament. However whilst legally accurate, this is disingenuous, since the Government's changes dismantled ATSIC in all but name.

1.31 Not content with these actions, the Minister repeatedly criticised the Senate for delays in passing the Government's Bill and the wastage of taxpayers' money

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11 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 32.



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associated with the salaries and entitlements of the ATSIC Board members.<sup>12</sup> Dr Shergold told the Committee:

It is certainly true that the government is understandably frustrated that there is continued significant payment for commissioners – money that could otherwise be directed to other programs.<sup>13</sup>

1.32 The Committee rejects this view, which is based on the agreement by the then Leader of the Opposition to the abolition of ATSIC. An important caveat to Mr Latham's agreement was that were ATSIC to be abolished, it should be replaced by a national Indigenous representative organisation of some form yet to be decided. On these grounds, ATSIC should not be dismantled until consideration of a replacement is decided. To do so is likely to risk the loss of much that has been achieved by ATSIC, and to complicate the creation of its successor.

### **Conduct of the inquiry**

1.33 During the life of the inquiry during both the 40<sup>th</sup> and 41<sup>st</sup> Parliaments, the Committee published over two hundred and forty submissions (a full list of submissions is at Appendix 1).

1.34 Prior to the Federal election, the Committee conducted public hearings in Alice Springs, Broome, Darwin, Gove, Thursday Island and Cairns and also received a briefing from the Department of Immigration, Multicultural and Indigenous Affairs, prior to tabling an Interim report on 31 August 2004.

1.35 After its reconstitution by the 41<sup>st</sup> Parliament, the Committee held further public hearings in Brisbane, Moree, Sydney and Canberra, full details of which are listed in Appendix 2.

1.36 The Committee is mindful that due to the tight reporting deadline, it has not been able to consult as widely as it might have wished. In particular, the Committee regrets that it had to cancel its planned hearing in Melbourne, and was unable to meet with communities in locations such as Adelaide, Perth, Geraldton, Kalgoorlie or Tasmania. The Committee regrets that the tight reporting timeframe has also allowed limited opportunity to discuss the new arrangements with the various State and Territory governments. This is especially regrettable in the light of the importance placed on 'whole of government' responses, and that changes to the Australia-wide consultative arrangements have considerable implications for these governments.

### **Structure of the report**

1.37 Chapter two of the report provides a brief background to the history of the administration of Aboriginal and Torres Strait Islander affairs in Australia, followed

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12 See, for example, the Second Reading Speeches.

13 Dr Shergold, *Proof Committee Hansard*, Canberra, 8 February 2005, p. 32.

by a description of the proposed amendments to the ATSIC Act. The chapter concludes with an examination of the effectiveness of ATSIC over its ten years of existence and whether it can be said to have 'failed'.

1.38 Chapter three deals with a number of administrative issues contained in the Bill, including the removal of statutory consultation mechanisms contained in a range of other Commonwealth legislation, as well as changes to the operation of the Indigenous Land Corporation and Indigenous Business Australia.

1.39 Chapter four discusses the issue of Indigenous representative mechanisms, including their role at local, regional, national and international level. In the context of this discussion, the chapter considers how these representational functions will operate under the Government's new arrangements. In particular, this discussion addresses the central questions of whether representative bodies should be legislated or funded by government.

1.40 Chapter five then examines the policy of 'mainstreaming' of Indigenous programs and services. It examines the theory of what the Government sees as a new style of 'mainstreaming' that focuses on whole of government integration of services, with mainstream departments delivering Indigenous specific programs.

### **Assistance with the inquiry**

1.41 In the course of the Inquiry, the Committee received a large number of submissions from a range of organisations and private individuals, often accompanied by supporting documentation. Others gave freely of their time in appearing before the Committee in public hearings, and in many cases undertook additional work to provide follow up information to the Committee in response to questions raised during the discussions. Officers from the Office of Indigenous Coordination were kept particularly busy with requests from the Committee, and their efforts are appreciated.

1.42 The Committee wishes to thank the Parliamentary Library, particularly Scott Bennett, Jennifer Norberry and Dr Angela Pratt, for providing advice and for allowing the Committee to draw extensively on Library publications relevant to ATSIC.

1.43 Finally, the Committee would like to thank the officers of the Secretariat team who administered the Inquiry, and assisted with the research and drafting of the report.