

# Australian Democrats supplementary comments

## Introduction

The Australian Democrats support the majority findings of the report. Nevertheless, we are of the opinion that the findings and comments of the majority regarding the government's treatment of Indigenous Affairs and Indigenous Australians, require stronger recommendations. We therefore make the following comments and recommendations in addition to those contained within the majority report.

## Comments on the government's assimilation policy

The Australian Democrats are appalled at the Howard government's treatment of Indigenous people since 1996. The majority report does address this general topic and we are fully supportive of the majority findings, particularly the preface and chapter two. We wish to emphasise the disingenuous nature of government rhetoric in Indigenous affairs: the claim that 'equality' is delivered through the 'same treatment' of all Australians is fundamentally racist and has been proven to deliver extremely poor results for Indigenous people. No matter how cleverly the current policy is phrased, this government is committed to assimilation and is opposed to self-determination, as it has unashamedly stated on many occasions.<sup>1</sup> Cloaking this policy in the language of self-determination, for example describing it as a 'bottom up approach', as Dr Peter Shergold repeated in his evidence, and as Senator Vanstone has also repeatedly stated, cannot change the fact that decisions pertaining to mainstream Indigenous services are being made with *no prior consultation*. This is in fact the epitome of a paternalistic 'top down' approach. The fact that the government knows well enough to misrepresent their ideological agenda as a policy in which decision-making is in the hands of Indigenous people indicates that they well know it is the wrong direction in which to take Indigenous Affairs.

## Shared Responsibility Agreements ('SRAs')

The government's lynch pin of 'mutual obligation' – SRAs – only highlights the disarray of the current mainstreaming policy. From its beginnings as 'policy on the run', to the modelling of SRAs on unevaluated Council of Australian Government (COAG) trials, the government's mainstreaming policy is incomprehensibly poorly thought through. The Democrats conclude from evidence given to the committee that this government and its departments do not know how SRAs are going to function. No Minister or public servant has yet been able to give a clear outline of what SRAs actually are; it is clear from the evidence presented from many departments and from Ministerial statements that SRAs are *ad hoc* agreements to be applied in an *ad hoc* way. This bodes very badly for accountability and transparency of negotiations and outcomes and for the achievement of national benchmarks across all levels of government.

There are significant legal questions relating to SRAs which remain unanswered: Who is bound to an SRA as a contract? How will they be enforced so as not to disadvantage people who have not been a party to failed SRAs? Do they in fact breach international law?

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<sup>1</sup> See The Aboriginal and Torres Strait Islander Social Justice Commissioner, HREOC, Social Justice Report 2002, pp30-47.

Additionally, the Democrats believe the SRAs are self-serving for the government. The government is recognising some Indigenous representatives for the purpose of the government's own agreements (and hence for ensuring the blame for failure can be squarely laid on individuals and organisations) but they will not recognise Indigenous governance structures for purposes advocated by Indigenous people.

## **The abolition of ATSIC**

The Australian Democrats believe that the overwhelming body of evidence presented to the Committee is in favour of, and presents a strong case for, the continued existence of a national, elected, Indigenous representative body. In addition to the evidence presented to the Committee, we note that the Government commissioned ATSIC review report by Huggins, Collins and Hannaford, *In the Hands of the Regions – a New ATSIC* (2003) ("ATSIC Review Report") found, after significant consultations, that an elected Indigenous representative body at the national level is essential for self-determination and subsequent improvements in living standards and life opportunities.

In addition to what the Democrats see as the indisputable need for an elected national body, we are of the opinion that ATSIC is capable of being reformed along the lines recommended by the ATSIC Review Report. The litany of discarded Indigenous Affairs structures over the last thirty to forty years<sup>2</sup> is a pattern which must cease. If the body responsible for representing Indigenous peoples' interests is changed every ten or fifteen years it is inevitable that no body taking that role will ever be fully respected and understood by Indigenous people and will be less than fully effective in delivering outcomes as a result. Although we recognise that the government has already effectively disbanded ATSIC prior to the legal abolition of the ATSIC Board and that it is therefore highly unlikely that there will be any change in government direction, we are still of the opinion that ATSIC should be retained and reformed.

### Recommendation 1

Therefore, the Democrats recommend that the ATSIC Bill as it stands be rejected and a new Bill be drafted which reflects the changes recommended by the ATSIC Review Report. The Democrats do not expect the government to accept this recommendation and so make further recommendations in the alternative and endorse those of the majority report.

## **Indigenous artwork and artefacts**

The Democrats are of the opinion that the Committee's recommendation 3.1 does not go far enough. Recommendation 3.1 and the preceding paragraphs (notably paras 3.8 and 3.9) do not clearly state the position of the committee regarding the assets of ATSIC.

The Democrats believe there is a potential conflict and certainly a lack of clarity in paras 3.8 and 3.9. Para 3.8 states that "[t]he Committee supports...that Indigenous people should formally have custody of Indigenous artworks and artefacts", while para 3.9 states that "the principles that should underlie any decision about the future ownership and location of the artworks and artefacts currently in the possession of ATSIC include...that Indigenous people and organisations be closely involved in, and approve, the location of the collection; and that the collection remains in public hands." If "public hands" means merely that the collection should be accessible to all Indigenous and non-Indigenous Australians in a public institution

<sup>2</sup> See Committee Report, chapter 2, pp.6-11.

(such as the National Gallery of Australia or AIATSIS) as opposed to a private organisation, then this may be reasonable, depending on the level of control Indigenous people retain over the collection. However, if it means that ownership will pass from Indigenous people to the Commonwealth and be maintained by the Commonwealth then this contradicts the previous paragraph and is not acceptable.

Additionally, the principle that “Indigenous people and organisations [should] approve of the location” for the collection will be difficult because the government has effectively destroyed the representative structure of ATSIC, including the withdrawal of Regional Council resources and staff, which would be capable of conducting the necessary consultations required for legitimate “approval”.

### Recommendation 2

The Democrats believe that the ‘underlying principles’ in para 3.8 should read:

- That the collection be maintained as a single coherent entity;
- That Indigenous people and organisations be closely involved in, and approve, the location of the collection;
- That the collection remains both formally and practically in Indigenous custody and control; and
- That the collection remains in public hands (meaning it is not to be given to a private organisation and is publicly accessible).

### Recommendation 3

The Democrats recommend that a working group be established, headed by the Australia Council Aboriginal and Torres Strait Islander Arts Board and with representatives from the National Gallery of Australia and AIATSIS, to consider and recommend the best way of protecting, preserving and displaying the artworks and artefacts, including the preferred location, in line with the above underlying principles. The government should provide adequate resources for this to be completed.

### **Other ATSIC assets**

Recommendation 3.1 is also unclear when it states “all assets controlled by ATSIC [should] continue to be applied to the benefit of Indigenous Australians...” This recommendation would apply to a range of ATSIC-held properties, including some which the Committee heard evidence about.<sup>3</sup> The Democrats believe that in addition to being “applied to the benefit of Indigenous Australians”, properties held by ATSIC must remain under the decision-making control of Indigenous people.

The Democrats believe that the government should recognise and publicly affirm that legitimate decisions made by ATSIC regarding assets which ATSIC owned or had an interest in are valid and will be honoured by the relevant government departments. Applications to ATSIC regarding property that were initiated prior to the distribution of ATSIC’s programs to government departments and agencies, should be continued with the same criteria. Properties purchased by ATSIC for particular purposes, or for a particular group of Indigenous people, should be transferred as soon as is practicable to a representative organisation of that group.

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<sup>3</sup> For example the Bowraville property which MiiMi Mothers Aboriginal Corporation had been granted ATSIC approval to acquire.

Property which was purchased for ATSIC/ATSIS to deliver programs, such as staff houses, should be quarantined for Indigenous service delivery and only divested to Indigenous organisations or people, at no cost. The government should not be looking to recoup costs at the expense of Indigenous people's asset and resource base.

#### Case study – Mii Mi Mothers Aboriginal Corporation

The Democrats believe it is important to spell out exactly what is happening in communities as a result of the government reneging on decisions already made by ATSIC regarding the use of assets. The following is just one of numerous examples discussed in the Committee hearings, and one of many more for which request of assistance have been received by Committee Member Democrat Senator Aden Ridgeway.

MiiMi Mothers Aboriginal Corporation ("MiiMi Mothers") is an Indigenous community organisation in Bowraville – a community in northern NSW with significant poverty and social problems – which runs a variety of programs, including youth leadership and family violence support programs. They have had great success in recent years but have been restricted by a lack of independence as they are based in council premises. The property which they wish to move into (the "Bowraville property") was purchased by Aboriginal Housing Corporation with ATSIC funds for the purpose of Aboriginal housing. The premises are derelict and require \$100,000 worth of renovations to make it habitable. MiiMi Mothers have secured a commitment for the funding from the Department of Transport and Regional Services (DOTARS).

The Aboriginal Housing Corporation Board voted in early 2004 to divest the property to MiiMi Mothers. MiiMi Mothers then undertook a very lengthy process of application to ATSIC to have the caveat (administered by ATSIC) which requires that the premises be used for Aboriginal housing, lifted for MiiMi Mothers to acquire the property. ATSIC had taken the decision to lift the caveat (prior to any recent political debate concerning ATSIC assets) and allow MiiMi Mothers to acquire the property but had not finalised the process before ATSIC and ATSIS functions were dispersed to government departments. The Department of Family and Community Services (FACS) became responsible for the Indigenous Housing programs and assumed responsibility for the MiiMi Mothers' application. They reneged on the decision to lift the caveat, telling MiiMi Mothers over the phone, but never in writing, that they will not be getting the premises because it is needed for Indigenous housing.

Committee Member Democrat Senator Aden Ridgeway questioned FACS in Committee hearings, and has requested an explanation from Department of Prime Minister and Cabinet and from OPIC. Despite receiving an assurance that the government will reconsider their decision to ignore a previous legitimate ATSIC decision, the official response from FACS to the questioning was that they have rejected MiiMi Mothers' application and that 'FACS would be supportive of recommending disposal of the property if MMAC is able to purchase it at current market value...' Responses received by local National MP Luke Hartsuyker (8 February 2005) and the Disability business service located next door to the Bowraville property (dated 31 December 2004, received 10 February 2004) state respectively: 'only the CEO of the ATSIS can approve the disposal...[FACS] has agreed to provide a recommendation to an authorised person in ATSIS'; and 'negotiations are currently continuing with the AHC in relation to its request to dispose of the property.' As far as MiiMi Mothers are aware, negotiations with AHC are not continuing as they had already decided to divest the property. MiiMi Mothers also know nothing about the claim by FACS that 'FACS

is endeavouring to assist MMAC in brokering additional funds to be able to purchase this or another property.<sup>4</sup>

The Democrats are of the opinion that this experience by MiiMi Mothers epitomises the hypocrisy of the government's approach. On the one hand, the Prime Minister and Minister Vanstone and all the senior departmental officers are describing the 'new' arrangements as facilitating greater control of communities over their service provision. The government uses family violence as an example of why they need implement these 'new arrangements'. Yet on the other hand, it is clear from the experiences of community organisations and service providers that the opposite is in fact true: Indigenous communities are being disempowered and family violence is only a priority for the government when it suits.

#### Recommendation 4

Further to the Committee's Recommendations 1.1 and 3.1, the Democrats recommend:

- That all assets controlled by ATSIC continue to be applied to the benefit of Indigenous Australians (existing recommendation);
- That all property purchased by ATSIC or ATSIC's predecessors for Indigenous people stay the property of Indigenous people and be controlled by Indigenous organisations such as Indigenous Business Australia or Indigenous Land Corporation;
- That any decisions made by ATSIC or ATSIS regarding the transferral of title to such a property, including decisions to lift any conditions, restrictions, caveats, etc. be respected and enforced by the controlling agencies;
- That any applications made according to ATSIC/ATSIS criteria and/or convention be furthered in accordance with the same criteria and/or convention;
- That all property and assets controlled by ATSIC and purchased for the purpose of delivering Indigenous services, such as staff housing and office equipment, be quarantined for the delivery of Indigenous services and any divestment should only occur for the benefit of Indigenous people, to Indigenous organisations, at no cost to Indigenous people.

### **Native Title**

The Democrats are extremely concerned with the government's plans for the funding of Native Title Representative Bodies. We do not believe that the government has demonstrated in any way that it can function as funding body for both opposing parties in a native title claim and not disadvantage the claimant.

#### Recommendation 5

The Democrats recommend that the funding of Native Title Representative Bodies, previously administered by ATSIC, be administered by a statutory body no less independent from the government than ATSIC was. Consideration should be given by government for transfer of these responsibilities to the Indigenous Land Corporation.

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<sup>4</sup> FACS, answer to questions on notice, 4 February 2005.

## **Indigenous Business Australia (IBA)**

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The Democrats note the majority report's findings that IBA will have its independence from the Minister further limited now that they are obliged to follow general Ministerial directions in relation to their entire business conduct.<sup>5</sup> The Democrats agree with the majority report that this has the very real potential to damage the effectiveness of such a successful organisation.

In addition, the evidence presented to the hearing regarding the new impositions of Ministerial power indicates that there has been little if any consideration to the liability of the Minister as a pseudo-Director. Given that the Directors of IBA are personally liable like any other company Directors, the Democrats are of the opinion that Ministerial directions which could, and presumably will, impact the way IBA does business should be at least considered from this perspective. The Committee has not been privy to any advice which indicates that this issue has been explored.

### **Recommendation 6**

The Democrats recommend that Ministerial directions be limited to the new functions which IBA has or will acquire from ATSIC, to the degree that such Ministerial directions were allowed to be applied to the functions when they were with ATSIC, and specifically that it not extend to IBA's whole operations.

## **Conclusion**

The Australian Democrats support the findings and the recommendations of the majority report. However, in our opinion, the findings of the Committee require stronger comments and recommendations in the areas of representation, asset retention and program administrative arrangements, as described. It would be a far more appropriate course for the government to take to accept the work of the ATSIC Review Report in pursuing a reformed Indigenous representative body with greater regional participation and control in a context of respect and recognition of Indigenous Australians. At the very least, the Australian Democrats would strongly support the retention of regional councils in a renewed form, as discussed in the ATSIC Review Report.

Government statements that this process of mainstreaming is a 'bottom up' approach reflect only that the right rhetoric is being disseminated to hide the lack of substance in the plans. This lack of substance is clear from the utter chaos which reigns in the area of Shared Responsibility Agreements.

It is unconscionable that yet again, the least resourced groups in our society are being called upon to subsidise government neglect. The Regional Councils are still performing heroically to cushion the impact of mainstreaming as best they can with no recognition of the role they play. Indeed, it was a poignant moment when, at the Sydney hearing, Sydney Regional Council Chairperson, Marcia Ella-Duncan, described a conversation with a senior bureaucrat in OIPC. Ms Ella-Duncan said '[t]he chairs wanted to know where the resources were to allow them to continue to do their jobs. The response from a senior bureaucrat was, "What do you do?"'

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<sup>5</sup> See paras 3.20 to 3.38.

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The abolition of ATSIC will happen; it already effectively has. The government has shown characteristic contempt of both Indigenous people and the Parliament in implementing the abolition to the full degree possible without either Senate approval or the confidence of Indigenous Australia. This policy direction must be strongly opposed from all sides for the sake of the history books, if nothing else.

Senator Aden Ridgeway  
Democrat Senator for NSW

