**ATSIC's achievements and strengths:
Implications for Institutional Reform**

Dr Will Sanders
Centre for Aboriginal Economic Policy Research
Australian National University
August 2004

Introduction
The Aboriginal and Torres Strait Islander Commission (ATSIC) has been criticized from many sides in the fifteen years since it was established. Recently, with the 2003 ATSIC review panel and then in April 2004 with announcements by both Labor and the Coalition that they intended to abolish ATSIC, identification of ATSIC's weaknesses and failures has become even more prevalent. The current Senate select committee inquiry, initiated in response to the Coalition government's ATSIC Amendment Bill 2004 introduced in late May, is providing yet another forum for the airing of criticism. But what about ATSIC's achievements and strengths? I want to argue that, over its fourteen year history, ATSIC has indeed achieved much and displayed considerable strengths. This needs to be acknowledged and understood in current processes of institutional reform. Otherwise learning from ATSIC will only be negative, about what not to do. We also need to understand what worked in ATSIC and how that can be built on.

I discuss ATSIC's achievements and strengths under six headings:
-political participation of Indigenous people,
-a national Indigenous voice increasingly independent of government,
-distinctive, appropriate programs,
-regionalism,
-working with States and Territories, and
-distinctive Torres Strait Islander arrangements.
I believe all these areas of achievement and strength are significant and need to be built on in current processes of institutional reform.

My concluding comments begin with some of the findings of the final report of the 2003 ATSIC review panel, which sought to restructure rather than abolish ATSIC. This approach reflected the findings of an earlier Public Discussion Paper produced by the review which noted that there was 'overwhelming support among key stakeholders' for a national

body representative of Indigenous people's interests even though there was 'very little support for ATSIC's current performance' (Hannaford, Collins and Huggins 2003: 24). I too would argue that there is support and a need for a national Indigenous representative body and that ATSIC should not be abolished unless, or until, some replacement representative arrangement is negotiated with Indigenous people.

Political participation of Indigenous people
Together with colleagues, I have long argued that ATSIC has attracted significant levels of participation among Indigenous people (Sanders, Taylor and Ross 2000, Sanders 2004a). ATSIC office has been sought by over a thousand Indigenous people at all five rounds of elections since 1990. Numbers of voters have grown significantly and fairly steadily, from 39,000 in 1990 to 54,000 in 2002. How these numbers convert to voter participation rates is hard to determine, given that there is no national Indigenous electoral roll and that the census enumeration of Indigenous people is volatile. However, they at least amount to a national Indigenous voter participation rate of over 20 per cent, and considerably higher than this in some areas. In Tasmania, where a roll was drawn up in 2002, 55 per cent of those who were admitted to the roll then went on to vote (Sanders 2004b). In the 1994 National Aboriginal and Torres Strait Islanders Survey, 39 per cent of those interviewed had voted in the 1993 ATSIC elections. These are substantial levels of Indigenous political participation.

ATSIC has also given those elected significant opportunities for developing a public profile and participating in public debate. This applies not only to the chairperson and national commissioners, but also to regional council chairs and, to a lesser extent, ordinary regional councilors. ATSIC office holding has given many Indigenous people a status in the community which has meant that their opinions on public issues have been sought and valued. Although there are other forms of Indigenous leadership, ATSIC office holding has certainly become important, in relation to both the Indigenous and the larger communities.

A national Indigenous voice increasingly independent of government
In its early days ATSIC was often criticized by Indigenous people as just another government agency. Having been created by the Commonwealth Parliament and coming, ultimately, under Commonwealth ministerial control, this was a legitimate criticism. However ATSIC has worked hard over the years to develop its credibility and legitimacy among Indigenous people by acting independently of government. In 1993 and then again in 1997/98, ATSIC lined up against the Commonwealth and with the land

councils in native title negotiations. In 1994/95, ATSIC applied for and obtained accredited Non-Government Organisation status at the United Nations, which it later used to present perspectives in UN forums quite different from those of the Australian government. Also in 1995, ATSIC submitted a wide ranging report to government entitled *Recognition, Rights and Reform*, which outlined a comprehensive program to further address social justice issues once native title had been legislatively recognized (ATSIC 1995). Since 2000, under the leadership of Geoff Clark, ATSIC has also begun promoting the idea of a treaty, or treaties, between Indigenous and other Australians even though this idea was dismissed by the Howard Commonwealth government. Hence not only has ATSIC facilitated the emergence of a national Indigenous voice on a number of issues of national importance, but it has increasingly been a voice which is independent of government.

As this increasing independence was emerging, one analyst and ATSIC-insider suggested that this was a strategic mistake; that ATSIC was unnecessarily distancing itself from involvement in the executive processes of government where it had an advantage in comparison to other Indigenous organizations and where it had a licence from the government to be involved (Dillon 1996). Others saw the independence as anomalous behaviour for an organization which would never be able to transcend its governmental origins (Sullivan 1996). I would argue that ATSIC was obliged to develop its independence from government in order to build credibility and legitimacy with its Indigenous constituency. This was an achievement and strength for ATSIC, not a mistake or an anomaly. The challenge was for government to let ATSIC assert its independence, while still providing it with public resources and access to the executive. This is not always a comfortable position for governments. But it is necessary if a government-sponsored national Indigenous representative body is to have any credibility among Indigenous people.[i]

Distinctive, appropriate programs
ATSIC was not just an experiment in Indigenous representation. It also extended some executive power over select Indigenous-specific Commonwealth programs to these Indigenous representatives. ATSIC's third achievement or strength was programs which were distinctive from those of other government agencies and were appropriate to the circumstances of Indigenous people.

Foremost among these distinctive, appropriate programs was the Community Development Employment Projects (CDEP) scheme, a work-for-the-dole type program which had been created by ATSIC's

predecessor the Commonwealth Department of Aboriginal Affairs as far back as 1977 and which had proven enormously popular with Indigenous communities. Originally designed for remote Indigenous communities with significant working-age populations but few employment opportunities, CDEP was expanding into southern, more urban areas by the time ATSIC inherited it. ATSIC managed the expansion of CDEP well, maintaining the flexibility and focus on non-market work in remote communities, while also promoting CDEP's use in the achievement of more general labour market outcomes for Indigenous people in more southern and urban areas. CDEP has accounted for over a third of ATSIC's budget and a similar proportion of the Indigenous employed. Without CDEP, Indigenous unemployment would have been far higher during the ATSIC years and other government agencies would have had to think much harder about their program efforts in this area.

Another major example of a distinctive, appropriate program was ATSIC's Community Housing and Infrastructure Program (CHIP), again inherited from ATSIC's predecessor the Commonwealth Department of Aboriginal Affairs and dating back to the early 1970s. CHIP provided essential services and community rental housing to predominantly remote, discrete Indigenous communities, but also to some Indigenous communities in less discrete, more urban settings. In most instances CHIP operated in areas where other government and market providers of these services had not delivered essential services infrastructure or housing. Because of CHIP, community rental is a significant housing tenure for Indigenous Australians, particularly those with low incomes and in remote areas. In the 2001 census, 13 per cent of Indigenous households were in community rental housing and in remote areas this figure rose to 44 per cent. Community rental is vastly more affordable than private rental and significantly more affordable than even government rental, which is often not available in many remote areas serviced by CHIP. Again other agencies would have had to think much harder about their program efforts in housing and essential services infrastructure, were it not for ATSIC's.

While CHIP and CDEP have been ATSIC's big budget item programs, other ATSIC programs in areas like the arts, communications, native title representative body support and legal service support can also make strong claims to being both distinctive from general government programs in these areas and appropriate to Indigenous peoples circumstances. If such programs are to be administered in future by general government agencies, then those agencies will have to think

much harder than they have in the past about how programs can be made appropriate to Indigenous peoples circumstances.[ii]

Regionalism
ATSIC was also a bold experiment in regionalism, trying to link the national and local in Indigenous affairs. Regional councils attempted to bring together diverse local interests and to feed their concerns to the national Board (see Smith 1996). This was not always successful, as early attempts at regional planning met with limited success and the gap within ATSIC between early regional councilors and national commissioners was keenly felt (see Finlayson and Dale 1996, Rowse 1996). One reaction to this was to delegate project funding decisions in some ATSIC programs to regional councils. But this too had its costs. Founding ATSIC chair, Lowitja O'Donoghue, argued by 1996 that delegation had been a mistake and made the councils too inward looking, as they focused on the sub-division of their own tiny program budgets. She argued for a 'separation of powers' within ATSIC and for councils to 'concentrate on larger strategic and political issues, such as negotiating with other government agencies or levels of government to ensure that they fulfilled their responsibilities to local Aboriginal communities' (O'Donoghue 1997: 8).

Although regional councils have remained involved in individual project funding decisions, there have been examples of them also becoming involved in larger strategic issues. Murdi Paaki regional council in western NSW has gained a reputation for working effectively with the local governments of its area, as well as encouraging innovative forms of Indigenous regional organisation. Similarly the Yarpakurlangu regional council in central eastern Northern Territory has worked well with the Tennant Creek town council on a range of issues. Other ATSIC regional councils too have become more outward looking, and not solely focused on their own meagre program budget. So ATSIC's regionalism, too, has had its achievements.

Working with States and Territories
ATSIC has also worked usefully with States and Territories over the years. One of the earliest examples of this was a housing funding agreement made between the Northern Territory government, the Commonwealth and ATSIC in 1995. This agreement pooled ATSIC and Northern Territory government funds for Indigenous community housing and administered them through an authority comprising ATSIC regional council chairs and Northern Territory public servants. This Indigenous

Housing Authority of the Northern Territory (IHANT) arrangement was clearly a significant improvement on what had gone before and encouraged the development of similar innovative tripartite Indigenous housing agreements in the States over the next few years.

From 2000, ATSIC sought to make more general agreements with the State and Territory governments and to this end began rotating some Commission meetings through State and Territory capital cities. Agreements were signed with Victoria and Western Australia in 2000, South Australia, Tasmania and Western Australia (again) in 2001 and Queensland, New South Wales and the Australian Capital Territory in 2002. Although these agreements are often limited in their scope or general in their intent, and hence leave much work still to be done, they are indicative of achievement by ATSIC in working with the States and Territories. Indeed, if ATSIC is abolished, some of these sub-national governments will be faced with the issue of who to relate to as mandated Indigenous representatives. ATSIC was becoming as useful to them, as they to it.

Distinctive Torres Strait Islander arrangements
The final achievement or strength of ATSIC that I would note is its distinctive arrangements for Torres Strait Islanders. These are not just restricted to the Torres Strait Regional Authority, which the proposed ATSIC Amendment Bill 2004 leaves intact. They also include a Torres Strait Islander Advisory Board and an Office of Torres Strait Islander Affairs, which the proposed ATSIC Amendment Bill abolishes.

One of the great challenges of Torres Strait Islander affairs is to provide for the representation of Islanders who now live outside the Strait in other parts of Queensland and Australia and to articulate their interests with those of Islanders and others living in the Strait. These 'mainland' Torres Strait Islanders now outnumber 'homeland' Torres Strait Islanders by up to five or six to one, so the issue is a substantial one (see Sanders and Arthur 2001).The Torres Strait Islander Advisory Board and the Office of Torres Strait Islander Affairs within ATSIC have been dedicated to articulating the interests of Torres Strait Islanders living outside the Strait. Their inclusion in the original ATSIC legislation was in many ways part of a larger package for the representation of Torres Strait Islander interests which will be drastically altered if only the Torres Strait Regional Authority remains after current institutional reform processes. Torres Strait Islanders living outside the Strait have never particularly liked their position within ATSIC outside the Torres Strait Regional

Authority, but they will be bound to like even less the prospect of no representation of their interests at all. Distinctive Torres Strait Islander arrangements have, unequivocally, been one of ATSIC's strengths.

Concluding comments: Abolition or Reform?

The final report of the 2003 ATSIC review identified an 'urgent need' for 'structural change' in the organization. It argued for a 'new leadership structure' which drew more directly on regional councils in the hope that ATSIC might be more 'directly shaped by Aboriginal and Torres Strait Islander people at the regional level'. It saw ATSIC's 'most significant challenges' as being 'to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations are met' (Hannaford, Huggins and Collins 2003: 5). While the 2003 review clearly felt that ATSIC had experienced something of crisis of Indigenous and larger public confidence in recent times, it was unequivocal that ATSIC should continue to exist. ATSIC, it argued:

> should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and be an agent for positive change in the development of policies and programs to advance the interests of Indigenous Australians (Hannaford, Huggins and Collins 2003: 8)

The 'objects of the ATSIC Act' dating from 1989, the review report argued, 'remain completely relevant today' and 'should be retained' (Hannaford, Huggins and Collins 2003: 8). Abolition of ATSIC was an option which the review report considered, but explicitly rejected (Hannaford, Huggins and Collins 2003: 80).

These findings of the 2003 ATSIC review were, I believe, sound at the time and remain so today. The need for an Indigenous representative body which has both national and more regionalized components is compelling and overwhelming. It is due recognition within the Australian system of government both of the position of Aboriginal and Torres Strait Islander peoples as pre-existing political communities colonized without consent and of the geographic and cultural diversity of such communities. It is a necessary part of treating the contemporary bearers of these senses of Indigenous political community with equality and respect, of what I have elsewhere referred as the recognition of an Indigenous order of Australian government or internal decolonization (Sanders 2000, 2002).

To abolish ATSIC without having in place some alternative regional and national Indigenous representative arrangements within the Australian system of government would seem a backward step. Modern Indigenous

affairs policy needs such elements of political recognition of Indigenous people as ATSIC has been. This is not to say that the ATSIC of the last fourteen years cannot be improved upon. But to abolish ATSIC might be, as cartoonist Peter Nicholson suggested back in April, to throw out the bathwater with the babies, the context and structure with the personalities (see attached cartoon). The babies of Nicholson's cartoon are, of course, the ATSIC elected chair and deputy chair returned after the 2002 ATSIC elections, Geoff Clark and Ray Robinson. If, for a variety of reasons which do not need to be canvassed here, these leaders had become unacceptable to the Commonwealth government, then this issue should have been dealt with on its own terms, through the existing available mechanisms such as ministerial intervention, rather than by wholesale institutional abolition. To get rid of ATSIC as a way of pushing aside a particular chairperson is like abolishing Parliament to push aside a particular Prime Minister. To use institutional reform for such personalized purposes is both wrong and a dangerous precedent, particularly when there are statutory mechanisms available for dealing with such issues.

ATSIC should be reformed, rather than abolished, or at least its replacement as an Indigenous representative body should be negotiated with Indigenous people before abolition. As outlined above, the ATSIC of the last fourteen years does have many achievements and strengths on which to build.

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[i] Weaver 1983 made this argument in relation to the National Aboriginal Consultative Committee and the National Aboriginal Conference.
[ii] Sanders 2001 contains arguments relating to how the social security system could think much harder about issues of appropriateness of rules and procedures to Indigenous peoples circumstances.