



ATSIC Board of Commissioners

Our Vision
is of Aboriginal and Torres Strait Islander peoples exercising our
legal, economic, social, cultural and political rights at the Local;
Regional; State; National; and International levels through Indigenous
elected representative structures

Submission to

**Senate Select Committee
on the Administration of Indigenous Affairs**

August 2004

Table of Contents

1.	EXECUTIVE SUMMARY and RECOMMENDATIONS	3
2.	MAJOR CONCERNS	7
2.1.	Protection of Indigenous Rights	
2.2.	Self Determination	
2.3.	Representation	
2.4.	Government Reports	
2.5.	Political Motivation	
3.	ADMINISTRATION OF INDIGENOUS PROGRAMS AND SERVICES	18
3.1.	Streamlining	
3.2.	Mainstreaming	
3.3.	Whole of Government - COAG Trial Sites	
4.	CONCLUDING REMARKS	24
Appendix A	Terms of Reference	
Appendix B	Preamble to the ATSIC Act	
Appendix C	ATSIC's Response to the Report on the ATSIC Review	
Appendix D	ATSIC's Capacity Building Framework	

Acknowledgement

ATSIC would like to acknowledge the kind assistance of its many public supporters in drafting this response to the Senate Select Committee on Indigenous Affairs. Their continued support of Aboriginal peoples and Torres Strait Islanders is deeply appreciated.

1. EXECUTIVE SUMMARY AND RECOMMENDATIONS

The International Decade of the World's Indigenous People concludes at the end of 2004 (10 December 2004). As a nation, will Australia's report mention?

- the twenty-year life gap between Indigenous and non-Indigenous Australians?
- the abolition of Aboriginal peoples and Torres Strait Islanders independent advocacy body?

The 20 year Gap

In Australia today, Aboriginal peoples and Torres Strait Islanders experience systemic and personal racism on a day-to-day basis; equality is not a reality for Indigenous peoples. This inequity is evidenced by the high levels of economic, social and cultural disadvantage that pervade all sections of the lives of Indigenous peoples.

The *Overcoming Indigenous Disadvantage Key Indicators 2003 Report*, commissioned by the Council of Australian Governments (COAG), details the pervasive inequality, disadvantage and poverty experienced by many Indigenous Australians. The current 20 year life gap between non-Indigenous Australians and Indigenous Australians is an appalling and shameful indictment on government's approach to Indigenous affairs. Indigenous people in Australia have a similar life expectancy (63/56) to the populations of non-industrialised countries such as Bangladesh (61/60), Cambodia (60/55), Bhutan (64/61), and Pakistan (60/60). It compares unfavourably with countries such as Vietnam (71/66), China (73/69), Malaysia (75/70) and Thailand (73/65). This is cause for great concern for all Australians, especially given the high levels of wealth and prosperity enjoyed by the wider society in this country.

The Abolition of ATSIC

The Aboriginal and Torres Strait Islander Commission (ATSIC) was established in 1990 after a lengthy consultation process with Indigenous people and after lengthy debate in both Houses of Parliament. Whatever the political intent by the Hawke Government, ATSIC was generally seen by Indigenous people as a step in the right direction. It enshrined in legislation the right of Indigenous people to a democratically elected representative body within the broader political environment, and gave some semblance of control by that body over funding decisions and policy development that had previously been the province of bureaucrats. This body, however, was charged with a broad responsibility: improving the economic, social and cultural development of Indigenous people.

Given that the full resources of government, particularly since 1967 (referendum giving power to the Commonwealth to enact laws pertaining to Indigenous people); 1972 (the establishment of the Office of Indigenous Affairs) 1973 (the establishment of the Department of Aboriginal Affairs) had not been able to realise optimal socio-economic and cultural outcomes for Indigenous people, it is not surprising that ATSIC, with minimal resources and even less power or authority, also might appear to have failed.

ATSIC's dual responsibilities – of representation and administration – have generated much discussion from parliamentarians and Indigenous peoples alike. ATSIC's structure is unique, and its relationship to government unusual – responsible to both the Minister and Indigenous peoples. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) explained ATSIC's dilemma thus:

Part of ATSIC's difficulties have stemmed from unrealistic expectations about what it could deliver. These are reflected in criticisms that it was not really a vehicle for self-

determination. This was because ATSIC always has been an instrumentality of the state, even though it was provided with the capabilities that far exceeded government departments. As a consequence, ATSIC tended to please no one – those who sought greater autonomy saw it as too limited, those who opposed special treatment for Indigenous Australians saw it as too radical. Coupled with this polarisation of views was a reality that saw accountability and ATSIC as inseparable but uncomfortable bed-fellows.¹

The ATSIC Review, a review commissioned by this Government, detailed the practical difficulties ATSIC experienced in attempting to affirm self-determination whilst delivering government programs. ATSIC was given the responsibility to improve the economic, social and cultural development of Indigenous peoples, but was severely restricted by the quarantining of its budget for particular government programs and the lack of capacity to direct other spheres of government (federal, state, local) to improve service delivery outcomes for Indigenous Australians.

Despite the limitations imposed on ATSIC, its advocacy for Indigenous interests over the past fourteen years has been extremely important and has influenced public policy in all spheres of government. At the national level, this is seen in the increased participation of Indigenous leaders in national policy bodies such as the National Health and Medical Research Council, Australian Indigenous Technical Advisory Council, Great Artesian Basin Committee, Australian Seafood Council; at the state level various partnership and commitment agreements, sector specific bilateral agreements, such as housing and infrastructure; and particularly at the local, regional level in the many agreements and MOUs which have been developed between Regional Councils and state and local government agencies.

ATSIC has also developed national policies in key areas, both issue-based and administrative in nature including Employment, Education, Good Governance, Family Violence, and Capacity Building.

A clear measure of ATSIC's effectiveness in policy development is that the Commonwealth Government adopted ATSIC's policy proposals on home ownership, services to combat family violence, and leadership development, as part of the package of new initiatives funded under this year's federal budget.²

ATSIC's preparedness to become more effective is evident in the significant reforms the Commission proposed in its response to the ATSIC Review Report - a review commissioned by this Government. The ATSIC Review detailed measures to strengthen ATSIC – not abolish it.

¹ Palmer, K, ATSIC: *Origins and Issues for the Future. A Critical Review of Public Domain Research and Other Materials*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Research Discussion Paper 12, 2004, p 22.

² ATSIC, "Budget 2004 – Indigenous Programs Built on ATSIC's Bones", Press Release 11 May 2004

This submission sets out the concerns held by Aboriginal and Torres Strait Islander Commissioners in relation to the abolition of ATSIC, provides argument for the retention of an elected body of Indigenous people, comments on the machinery of government changes brought about by the abolition of Aboriginal and Torres Strait Islander Services (ATSIS), and provides a framework within which an improved model of Indigenous administration could function.

RECOMMENDATIONS

Protection of Indigenous Rights

- (i) The Senate amend the proposed Bill to ensure recognition of the inherent rights of Indigenous peoples, including that of self-determination is enshrined within the ATSIC Act.

Representation

- (ii) The Senate amend the proposed Bill to ensure there is continued representation of Indigenous peoples elected by Indigenous peoples at the regional, state, national, and international levels.

This will mean:

- the retention of a reformed Board of Commissioners
- the retention of Regional Councils in their current form with the capacity to form into Regional Authority structures

as covered in the ATSIC Response to the ATSIC Review at Appendix C.

Government Reports

- (iii) That the Senate Select Committee review these reports in their entirety, with a view to providing government with a more balanced and plausible platform for reform of Indigenous affairs.

Administration of Indigenous Programs and Services

- (iv) That an independent evaluation of the COAG trials be expedited to provide a proper context to guide further development and implementation of the new administrative arrangements.
- (v) The retention of an Indigenous specific agency with powers similar to that of a Senate Estimates Committee to ensure an independent evaluation of the implementation of the new administrative arrangements and that mainstream agencies are accountable for improved outcomes for Indigenous peoples.
- (vi) That any subsequent changes to administrative arrangements for Indigenous peoples are based on the ATSIC Capacity Building Framework.
- (vii) The retention and strengthening of the selection criteria requiring all positions across the public sector dealing in Indigenous affairs to have demonstrated experience in and an understanding of the distinct cultures and circumstances of Indigenous peoples in Australia and an ability to communicate with Aboriginal and Torres Strait Islander peoples in a sensitive manner.

2. MAJOR CONCERNS

2.1 Protection of Indigenous Rights:

The pursuit of equality for all people, Indigenous and non-Indigenous Australians, entails the Australian government and wider population's respect and recognition of the unique rights afforded to Indigenous peoples due to their status as Australia's first peoples – Inherent Rights. These rights have been recognised by successive federal governments since the referendum of 1967, and have been enshrined in a variety of specific Acts (see below). The High Court's decision on Native Title once and for all laid to rest the concept of terra nullius and recognised Indigenous peoples as the prior owners of this land. Significantly, the preamble to the ATSIC Act contains a resounding declaration of Australia's recognition and protection of Indigenous rights. The following statement from the preamble details the Australian Parliament's commitment to establish Indigenous representative structures as a means of safe guarding Indigenous Rights:

.....it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formation and implementation of programs and to provide them with an effective voice within the Australian Government...³

Also of particular relevance within the preamble is the reference to the main international human rights treaties Australia has ratified and enacted within our domestic law; specific mention is made of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR).

The protection of Indigenous peoples' distinct rights is implicit in the concept of equality. Laws have been enacted to recognise a distinction between formal equality (treating everyone in identical ways) and substantive equality (which accepts and requires treating people differently, as a special measure to address existing inequality and to protect cultural rights). The CERD Committee, which monitors the obligations under ICERD, has clearly interpreted the right to equality as a substantive right that recognises, and at times requires, different treatment. The application of ICERD to Indigenous peoples requires that governments:

Ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.⁴

Since coming to office in 1996, the current Government appears to have misunderstood - and even denied – these Indigenous rights. An example of this apparent denial was clearly articulated by the Government in its response to the Council for Aboriginal Reconciliation's (CAR) final report, *Reconciliation: Australia's Challenge*:

³ Aboriginal and Torres Strait Islander Commission (ATSIC) Act 1989

⁴ CERD, General Recommendation XXIII: Indigenous Peoples, Article 4, 18/08/97.

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument)> (accessed 12 August 2004).

The Government is committed to common rights for all Australians... The Government supports additional measures to ensure equality of opportunity where such measures are necessary to overcome specific disadvantages experienced by Indigenous people. Neither the Government nor the general community, however, is prepared to support any action which would entrench additional, special or different rights for one part of the community.⁵

Even more disturbing and racially discriminatory have been recent comments made by the Minister for Immigration and Multicultural and Indigenous Affairs, comparing ATSIC to the South African apartheid regime.

... Indigenous Australians vote in elections and they do have elected representation, that's their local member. And I make an additional point that there was once a country we wouldn't play cricket with because they had separate systems.⁶

These comments clearly indicate that the Coalition Government does not accept that equality in the law for Aboriginal peoples and Torres Strait Islanders involves supporting Indigenous rights.

The abolition of ATSIC and the ATSIC Regional Councils is contrary to the provisions of ICCPR, ICESCR, and ICERD and will leave the Australian Government in breach of its obligations under these international covenants and open to international accusations of racism and discrimination.

Similar statements to those contained in the ATSIC Act preamble about the right of Indigenous peoples to participate and be consulted about the development, design and delivery of measures that affect them, have also been embodied in other key documents, agreements and legislation. These include the Council of Australian Government's National Commitment to Improved Outcomes, (1991); sector specific agreements such as housing agreements that have been founded on the principles within the National Commitment document; and a variety of Acts that have social, cultural and economic impacts on Indigenous peoples' lives. These Acts are:

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- *Aboriginal Councils and Associations Act 1976*
- *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*
- *Aboriginal Land Rights (NT) Act 1976*
- *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *National Health and Medical Research Council Act 1992*
- *Native Title Act 1993*
- *Remuneration Tribunal Act 1973*
- *Social Security Act 1991*

⁵ Commonwealth Government Response to the Council for Aboriginal Reconciliation Final Report – Reconciliation: Australia's Challenge, September 2002, p.17.

⁶ ABC Lateline, Transcript quoting the Minister for Immigration, Multicultural and Indigenous Affairs, 16 April 2004, <<http://www.abc.net.au/lateline/content/2004/s1089303.htm>> (accessed 10 August 2004).

The Bill introduced by Government does more than abolish ATSIC; it also seeks to amend these eleven Acts of Parliament. This clearly undermines Aboriginal and Torres Strait Islander peoples' rights, which have been acknowledged by successive governments for nearly thirty years. The amendments which delete reference to ATSIC give no indication as to what consultative arrangements will apply to these Acts in future. The question must be posed as to how the rights and interests of Indigenous peoples will be considered and protected if there is no requirement within an Act to seek input from a democratically elected Indigenous representative body.

2.2 Self Determination

The international treaties and conventions Australia has ratified include a specific obligation to protect the distinct cultural rights of Indigenous peoples. This includes the principle of self-determination and the notions of equality and non-discrimination.

Correctly understood, every issue concerning the historical and present status, entitlements, treatment and aspirations of Aboriginal and Torres Strait Islander peoples is implicated in the concept of self-determination. The reason for this lies in the fact that self-determination is a process. The right of self determination is the right to make decisions. These decisions affect the enjoyment and exercise of the full range of freedoms and human rights of Indigenous peoples.⁷

The policy of self determination which was in force from 1972 has been progressively watered down by this current Government. Initially it was replaced by the term self-management, then self-empowerment. Self-determination has all but disappeared from public discourse. This policy departure from self-determination is evidenced by the fact that Australia is the only nation to have spoken against the inclusion of any language of self-determination in the draft Declaration on the Rights of Indigenous Peoples. This policy reversal is significant as Australia was one of the very first nations to express support for self-determination in the draft Declaration in 1992.

Together with this watering down of the right to self determination, the Government has dismissed discussions about Indigenous rights in favour of focusing on essential service delivery to Indigenous peoples and rights are deemed to be symbolic measures with very little practical benefit. This attitude has permeated public discourse, policy development and government administration since 1996.

This emphasis on 'practical reconciliation' is simply a commodification of the real development needs of Indigenous peoples. As Nobel Laureate Amartya Sen has pointed out, basic needs programs such as health, education, and shelter are focused on providing the commodities to meet those needs. Whilst there is no argument against meeting basic needs, programs overly focused on commodity demands are user-friendly for institutions, but fail to consider the holistic nature of human development.⁸ The provision of commodities does not necessarily also provide the recipients the means to enjoy those commodities. As Noel Pearson (and others) have indicated, the active delivery of services to passive recipients of services can sometimes be an element of welfare dependence. It is precisely because of this

⁷ ATSIC, *Recognition, Rights and Reform: A report to Government on Native Title Issues*, 1995, quoting the Social Justice Commissioner, p 30

⁸ Alkire, Sabina, 2002. Dimensions of Human Development World Development Vol. 30, No. 2,

that ATSIC developed its Capacity Building Framework, a framework founded on the principle of self determination, and embodying that principle in its application.

Recommendation:

The Senate amend the proposed Bill to ensure recognition of the inherent rights of Indigenous peoples, including that of self-determination is enshrined within the ATSIC Act.

2.3 Representation

As quoted earlier, the preamble to the ATSIC Act, *which will persist after the proposed amendments*, states:

.....it is also appropriate to establish structures *to represent Aboriginal persons and Torres Strait Islanders* to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government;⁹

Apart from the denial of an inherent right of self-determination, the proposed amendments will also contradict this preamble by the removal of the structure of international, national and regional representation which Indigenous peoples have enjoyed since 1990. This structure – of democratically elected Aboriginal and Torres Strait Islander peoples – has enabled the voice of Indigenous peoples to be conveyed to government regarding the policies, programs and projects that affect their lives.

In its response to the ATSIC Review Report, the Commission has detailed its vision for significant progressive reform to further strengthen its elected structures at all levels so that they are more responsive to the people they represent. (Refer to Appendix C for a copy of ATSIC's response document).

ATSIC, as the peak Indigenous elected representative body, has also sought to build a new and constructive relationship with the elected arm of government, and has outlined a range of measures in its earlier response to the Review Discussion Paper to achieve this. These include, ATSIC having a formal relationship with the Prime Minister and the Cabinet, and direct representation on the Council of Australian Governments (COAG) and the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA).¹⁰

Regional

The community networking, trust and information accessible and available to Regional Councils is essential to turning around the appalling health, economic and social ills pervasive in the lives of Indigenous peoples. This information can not be provided by government-funded consultants, and neither can it be accessed by fly-in fly-out government visits. This information can only be provided by Indigenous peoples who live and breathe the same air as fellow community members; this information is based on trust, respect and lines of cultural authority and relationships that are more extensive and complicated than the lines of delegation within government bureaucracies.

⁹ ATSIC Act 1989

¹⁰ ATSIC, *Response to the Public Discussion Paper*, May 2003, *Review of ATSIC: Reassessment of Indigenous Participation in the Development of Commonwealth Policies and Programs*, p13

As the title of the ATSIC Review *In the hands of the Regions* suggests, the review panel considered the 35 Regional Councils as the foundation of ATSIC and recommended that there be no major changes to their structures in the immediate future. The review also identified ways of enhancing ATSIC's regional role. In particular, the panel recognised Regional Council Regional Plans as important vehicles to articulate the needs and expectations of Aboriginal and Torres Strait Islander people at the local level, to identify areas of disadvantage and the responsibilities of government agencies in service provision.

At the MCATSIA meeting held on 7 May 2004, there was strong support for effective regional representation for Indigenous people in the form of Regional Councils and their Regional Planning processes. Examples of State Ministers' comments:

- The *Commitment to a New and Just Relationship* agreement between ATSIC and the West Australian Government, the ATSIC Regional Councils and their community plans, underpin the way the State Government does business with Indigenous peoples; the WA Government believes the continuation of democratically regional representation beyond the next twelve months is fundamental to service delivery arrangements in WA.
- The NT Government is committed to working with ATSIC Regional Councils and its focus is on building stronger regions and establishing Regional Authorities.
- The Chief Minister of the ACT expressed his concern that abolishing ATSIC is a loss of legitimacy of Indigenous representation, leaving no coherent process in place.¹¹

As highlighted in ATSIC's submissions and response to the ATSIC Review, the Commission has for some years sought legislative change to enable Regional Councils to evolve into regional authorities. Many Regional Councils have invested considerable effort in the regional planning process and are well advanced in establishing local networks to enable them to progress to an authority model.

ATSIC notes that the Torres Strait Regional Authority will remain in place under the new arrangements, which is a different approach to that taken on the mainland. This begs the question as to the effectiveness of a regional authority model - Government appears to have recognised the success of the structure in one instance, but is not willing to support the process in other instances. At the very least this is a discriminatory decision; at worst it could be said that mainland Indigenous peoples are being punished for their geography.

The opportunity to evolve into autonomous regional governance structures must be extended to Regional Councils, together with the recognition that such an evolution is complex and will take a varying degree of time.

It is unclear as to what arrangements could possibly be put in place to effect the level of cooperation and coordination which already exists between State and Local government and Indigenous peoples, particularly at the local or regional level. What is clear is that Regional Councils have been extremely effective in developing strong relationships with government agencies throughout the country; this is a resource which must be nurtured.

National

Within the rhetoric of the new arrangements, much has been said by Government about recognising alternative representative structures at the community and regional levels which may evolve. National representation is clearly as important in terms of consistent policy

¹¹ ATSIC, Notes of the MCATSIA meeting, 7 May 2004, Agenda Item 2.

approaches, ensuring equity of outcomes, and advocating on behalf of Aboriginal and Torres Strait Islander People, yet within the new arrangements there is no scope for continued national representation.

There has been some attempt by a coalition of peak Indigenous service delivery organisations in recent weeks to fill this void. The coalition includes national Indigenous health, childcare, legal services and justice agencies. There are fundamental differences between these organisations and ATSIC, which makes the capacity of such a coalition to fill ATSIC's role doubtful. The Coalition is made up of service delivery agencies whose focus is on the delivery of sector specific programs; ATSIC's focus was holistic and the Commission provided governments with policy advice and advocacy on the broad spectrum of issues affecting Indigenous peoples.

Furthermore, ATSIC's representative arm is made up of members who have been democratically elected to represent the views of Aboriginal and Torres Strait Islanders to government. In contrast, the Coalition of Indigenous organisations has no formal authority from within the community, or legislated authority from government. Such organisations are accountable only to the membership of their respective organisations, rather than to the broader Indigenous community.

It is also unclear as to what role the proposed National Indigenous Advisory Council, whose members are to be appointed by government, would have. If this Council were to provide the primary source of advice to government on national Indigenous policies, it would in effect be an unelected quasi representative body. There would be no connection between this group and community, and no accountability back to community through an election process.

Members of this Senate Committee well understand the importance of accountability to constituents – one of the foundation elements of democracy. One of the strengths of ATSIC has been this accountability, through a national and regional election process.

International

ATSIC has played a significant role in international forums, enabling Aboriginal and Torres Strait peoples to be kept informed of developments in international standards and jurisprudence concerning the human rights of Indigenous people. ATSIC has contributed to international standard setting by its participation at the United Nations in the development of the Draft Declaration on the Rights of Indigenous Peoples.

ATSIC has Non-Government Organisation observer status with the United Nations Economic and Social Council, which enables access to various UN forums. ATSIC has made submissions to the UN Human Rights Committees, providing the expert Committees with an Australian Indigenous perspective on developments in Australia. The establishment of the UN Permanent Forum on Indigenous Issues has been an important development, incorporating formal consideration of Indigenous issues into the UN structure. The dismantling of ATSIC, together with the winding-up of the UN Working Group on Indigenous Peoples (WGIP) will mean that Indigenous people will no longer have an independent voice at the permanent forum.

Recommendation:

The Senate amend the proposed Bill to ensure there is continued representation of Indigenous peoples elected by Indigenous peoples at the regional, state, national, and international levels.

This will mean:

- **the retention of a reformed Board of Commissioners**
- **the retention of Regional Councils in their current form with the capacity to form into Regional Authority structures**

as covered in the ATSIC Response to the ATSIC Review at Appendix C.

2.4 Government Reports

Four recent Government reports have detailed the current failure of government service delivery arrangements for Aboriginal peoples and Torres Strait Islanders, and many have detailed succinct and well-formulated recommendations. These reports are:

- Commonwealth Grants Commission, *Report on Indigenous Funding 2001*.
- Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2003 Report*.
- Australian Government, *In the Hands of the Regions: A New ATSIC* (2003).
- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *Many Ways Forward: Report of the Inquiry into Capacity Building and Service Delivery in Indigenous Communities, 2004*

Commonwealth Grants Commission (CGC)

The *Report on Indigenous Funding* (2001) details the levels of disadvantage experienced by Indigenous peoples compared to non-Indigenous people in key areas – housing and infrastructure; employment and training; health and education. The CGC found that even though Indigenous peoples had distinct levels of disadvantage and their needs were greater than non-Indigenous peoples, Indigenous Australians access mainstream services at much lower rates than non-Indigenous people; the CGC summarised:

It is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous peoples.¹²

and:

The mainstream programs provided by the Commonwealth do not adequately meet the needs of Indigenous people because of barriers to access. These barriers include the way programs are designed, how they are funded, how they are presented and their cost to users. In remote areas, there are additional barriers to access arising from the lack of services and long distances necessary to access those that do exist.¹³

The report also concludes that an important principle in aligning funding with needs includes the full and effective participation of Indigenous people in decisions affecting funding

¹² Commonwealth Grants Commission (CGC), 2001, *Report on Indigenous Funding 2001*, p xv

¹³ *ibid*, pxvi

distribution and service delivery”¹⁴. With the dismantling of ATSIC there will be no formal process for representing Indigenous people in such decisions.

Productivity Commission

The Productivity Commission Report *Overcoming Indigenous Disadvantage* is an important report addressing the issues of measuring change in the wellbeing of Aboriginal and Torres Strait Islander peoples. This Report has a significant underlying principle:

The purpose (of collecting data) ‘is both visionary and strategic. The vision is that Indigenous people will one day enjoy the same overall standard of living as other Australians. They will be as healthy, live as long, and participate as fully in the social and economic life of the nation’.¹⁵

ATSIC Review

In November 2002 the current Government commissioned an external review of ATSIC’s functions and role. The Review was conducted over a 12 month period and Indigenous people were widely consulted in its development. The final report of the Review Panel, *In the Hands of the Regions – A New ATSIC* was completed in November 2003 at a cost of \$1.4million.¹⁶

The Government has largely ignored the findings from this Review. In announcing the intended abolition of ATSIC in April 2004, the Prime Minister and Minister for Immigration and Multicultural and Indigenous Affairs stated that ATSIC had lost the confidence of its constituency, ‘as outlined in the ATSIC Review’.¹⁷ This statement does not accurately reflect the Review findings. While the Review Report found that ATSIC needed structural reform, the overarching recommendation was that ATSIC be retained, evidenced by the following statements in the report:

As the findings of this report show, there is widespread support for the objectives of ATSIC and a commitment to work constructively with it from all levels of government and all sectors of Australian society...ATSIC 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.¹⁸

The Review recommendations call for a stronger unified ATSIC. The abolition of ATSIC and the mainstreaming of its programs, as the Government has proposed and is instituting, were not considered – let alone recommended - by the Review.

¹⁴ *ibid*, pxvi

¹⁵ Steering Committee of the Review of Government Service Provision (SCRGSP), 2003, *Overcoming Indigenous Disadvantage: Key Indicators 2003*, Productivity Commission, Canberra, p1.1

¹⁶ Hannaford, J, Huggins, J & Collins, R, (2003) *In the Hands of the Regions – A new ATSIC: Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Canberra

¹⁷ Transcript of the Prime Minister, The Hon John Howard MP, Joint Press Conference with Senator Amanda Vanstone, Canberra 15 April 2004, <<http://www.pm.gov.au/news/interviews/Interview795.html>> (accessed 15 April 2004)

¹⁸ Hannaford, J, Huggins, J & Collins, R, (2003) *In the Hands of the Regions – A new ATSIC: Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Canberra, pp 7-8

While the Government chose to ignore the Review and has yet to provide a response to it, ATSIC supported many of its findings and saw them as an opportunity to:

.....address the aspirations of Aboriginal and Torres Strait Islander peoples, and to establish enhanced, constructive relationships between ATSIC and the Australian Government. While the main concern of the Review was the representation of Aboriginal and Torres Strait Islander people at the national level, clearly the Review was also an opportunity to consider both sides of the linkages between Aboriginal and Torres Strait Islander people and governments.¹⁹

Not only did ATSIC support the need for change, as detailed in its comprehensive response to the Review, but ATSIC Commissioners also believed the recommendations did not go far enough in ensuring significant progressive reform. In reviewing its own operations ATSIC has consistently called for change that would support its objectives. (ATSIC's response to the Review, Appendix C).

HRSCATSIA – Capacity Building Inquiry

The House of Representatives Standing Committee for Aboriginal and Torres Strait Islander Affairs *Inquiry into Capacity Building* (2003), provides recommendations for a range of issues, including data collection, capacity development, and service delivery. The Report concludes that:

The critical challenge for all levels of government is to move from the rhetoric of partnership to a position of genuine partnership and engagement to allow Indigenous people to achieve Indigenous objectives.²⁰

Not only has the Government largely ignored its own reports, but the amendments to the ATSIC Act are in direct contradiction to many of the findings of these substantial, far-reaching reports carried out with maximum consultation with Indigenous people. The intent of all of these reports was to inform government in regard to overcoming Indigenous situational disadvantage. ATSIC, as a party to the process of developing all of these reports, is deeply disappointed that the Government has demonstrated such a cavalier attitude towards these significant documents. *It is not clear as to how the new arrangements, avoiding as they do many of the positive findings of the reports, can bring about substantive improvement in the quality of life of Indigenous people.*

Recommendation:

That the Senate Select Committee review these reports in their entirety, with a view to providing government with a more balanced and plausible platform for reform of Indigenous affairs.

¹⁹ ATSIC, Commission's Response to the ATSIC Review Report, December 2003, p 2

²⁰ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HRSCATSIA), 2004, *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous Communities*, p.52

2.5 Political Motivation

ATSIC's creation was turbulent. The then Howard-led Opposition was vehemently opposed to the establishment of ATSIC. Mr Howard's primary concern in 1989 was the separate status or cultural rights of Indigenous peoples, something he and the Coalition Government have consistently reiterated since winning office in 1996:

I take the opportunity of saying again that if the Government wants to divide Australian against Australian, if it wants to create a black nation within the Australian nation, it should go ahead with its Aboriginal and Torres Strait Islander Commission (ATSIC) legislation ... In the process it will be doing a monumental disservice to the Australian community ... If there is one thing, above everything else, that we in this Parliament should regard as our sacred and absolute duty, it is the preservation of the unity of the Australian people. The ATSIC legislation strikes at the heart of the unity of the Australian people.²¹

Even though ATSIC's establishment engendered fierce debate in the federal parliament and in the public press, its existence provided an expectation of a better future for Indigenous Australians. ATSIC today, however exists in a very different political and public environment from its creation in 1989.

Since 1989, ATSIC has operated in increasingly hostile circumstances and has laboured under intense scrutiny and criticism. This was manifested by the Coalition Government's imposition of severe funding cuts shortly after taking office and the creation of the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA) as a separate and non-elected source of policy advice. These decisions seriously undermined ATSIC's relationship with government.

The continual discrediting by some politicians and the media of ATSIC in areas in which it has no legislative authority has lead some commentators to suggest that dismantling the Commission and not improving the outcomes for Indigenous peoples, has been the primary concern of the Coalition Government. An example of this is the Coalition Government's call for increased financial accountability of ATSIC expenditure, without the same stringent accountability requirements being applied to the Commonwealth-State fiscal arrangements where significant amounts of public funds should be earmarked for Indigenous service provision.²² ATSIC has been – and continues to be - an easy and convenient target for the poor levels of government service delivery to Indigenous peoples.

As outlined in the previous section, the Coalition Government announced a Review of ATSIC's role and functions in 2002. The Indigenous Affairs Minister at that time, Mr Ruddock, stated that this would be an opportunity to strengthen ATSIC's role as a key policy advisor to government and agencies. ATSIC welcomed the review and participated in the process in good faith.

The ATSIC Review team consulted widely with Indigenous peoples and as outlined in the previous section, the over-arching recommendation was that ATSIC should be retained.

²¹ Parliament of Australia, *The end of ATSIC and the future administration of Indigenous affairs*, Current Issues Brief (4), 2004, p 4.

²² See Ivanitz, M, *The Demise of ATSIC? Accountability and the Coalition Government*, Australian Journal of Public Administration, 59(1), p 3-12, March 2000.

In contrast to the consultative process of the ATSIC Review, the 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 and the views of the Indigenous people who had contributed to its findings – that ATSIC should be retained and strengthened.

It can be speculated that the decision to reform the current administration of Indigenous affairs was more political in its intent, rather than a genuine attempt to improve Indigenous disadvantage, given the announcement made by the Leader of the Opposition, Mark Latham, at the beginning in April 2004, that Labor would abolish the organisation, and replace it with an alternative elected structure. It seems the Opposition's announcement provided the Prime Minister with the opportunity to do what he has wanted to do since 1989 – dismantle ATSIC.

This point did not escape senior political correspondents commenting on the decision to abolish ATSIC. Writing in *The Age*, Michelle Grattan reported that the Government was caught off guard by the Opposition.

When Latham made his surprise announcement, Vanstone had not yet put a submission to Cabinet. The other driving forces in Government's timing were the budget – if functions were to be transferred, that was the time to do it – and the ticking of the clock of an election year.²³

Indigenous Affairs Minister, Senator Vanstone, at the May 2004 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, which was attended by the states and territories Ministers acknowledged that the Review **did not recommend** the abolition of ATSIC. The Minister added that while Government felt the organisation could not be repaired, all Australian government agencies and the States and Territories (in addition to ATSIC-S) were responsible for the high levels of disadvantage still experienced by Indigenous peoples. This prompted the Australian Capital Territory (ACT) Chief Minister to query why ATSIC was the only agency to be abolished if the failings came from all spheres of government.

Significantly, Minister Vanstone's statement that the organisation "was beyond repair" is different from her position only two months earlier. In a speech she delivered to the Australian Government Executive Forum in February this year, Minister Vanstone stated:

ATSIC needed reform and we are doing that. But it is unfair to put all the blame on ATSIC – the rest of the bureaucracy has to get its act together too.²⁴

The only major development in that intervening period was the Opposition Leader's announcement at the start of April that Labor would abolish ATSIC. ATSIC strongly believes the reasoning behind the Government's proposal is not well grounded, is lacking in substantive reasoning and is the result of political manoeuvring in the lead-up to the 2004 federal election.

²³ Michelle Grattan quoted in *ATSIC News*, June 2004, pp6-7

²⁴ Senator Amanda Vanstone, Minister for Immigration, Multicultural and Indigenous Affairs, *Address to the Australian Government Executive Forum (SA)*, Friday 20 February 2004

3. ADMINISTRATION OF INDIGENOUS PROGRAMS AND SERVICES

The Minister for Indigenous Affairs, Senator Amanda Vanstone, in an address to the Australian Government Executive Forum in February this year:

It's all very well for people in leafy metropolitan suburbs to talk about what's wrong with ATSIC – what we should be doing is turning our minds to what we can do better. The fact is ATSIC didn't cause low education outcomes, or high unemployment. ATSIC didn't cause the appallingly high mortality rates.....Lets be honest. We all failed.²⁵

The streamlining of government service delivery has been a recurring recommendation in most reports examining Indigenous situational disadvantage from the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) onwards.

The Commission welcomes any approach to the administration of Indigenous programs and services which has been proven to enhance outcomes for Indigenous peoples. Unfortunately it appears that much of the administrative change to be brought about by the abolition of ATSIC has been ill conceived, poorly designed, and based on very little evidence of effectiveness.

Examples are:

- **Streamlining of service delivery through co-location of varying government agencies;**
- **Mainstreaming Indigenous administration through the abolition of a distinct Indigenous administrative body; and**
- **Basing the whole-of-government approach on the perceived success of the COAG trials – prior to independent evaluation of their effectiveness.**

3.1 Streamlining through co-location

When a policy decision was taken to dismantle the Commonwealth Employment Service the changes and revised structures were phased in over a two-year period. In contrast, the dismantling of Aboriginal and Torres Strait Islander Services was to take place inside two months. At the present moment, there is still much that has not been arranged in the 'new arrangements' and only scant information is available about the role and operations of Indigenous Coordination Centres (ICCs) or the staffing of the new Office of Indigenous Policy Coordination (OIPC).

For example,

- On 1 July most ICCs did not have a permanent manager in place and lines of reporting within and between agencies were unclear; this continues to be the case in some instances. The confusion has been exacerbated by the lack of communication with staff about the changes.
- Corporate support for ICCs is still being put in place. What this has meant in practice is that vehicles have not been serviced (contravening workplace health and safety requirements); equipment has not been repaired; and no standard office supplies can be purchased. There have also been continuing disruptions caused by the

²⁵ *ibid*

introduction of new information technology systems that more than double the time officers spend processing financial information, and in many instances they have not been able to access these and many other essential applications at all.

- Much confusion also surrounds financial and legal matters. In one example, an ICC staff member, in attempting to draw up a contract with a consultant hired to assist an Indigenous organisation in a crisis situation, had to change the type of contract on four occasions as no clear direction was available as to which agency or entity could enter into the agreement, or which agency would pay for the contractor.

To dismiss these situations as teething problems would be simplistic in the extreme. In fact they are a clear example of the lack of planning which has typified this whole exercise.

The uncertainty has also extended to individuals and community organisations in a number of ways. Downward communication has been limited to letters from Minister Vanstone, the ATSIIS CEO, and in some cases ATSIIS and now ICC offices. This type of communication reaches a limited number of Indigenous people, and is not an effective means of communicating major change at the local level, particularly in remote areas.

Based on the feedback received by the Commission from community organisations and individuals, there is considerable confusion about how the new arrangements will work in practice and concern about the disruption in funding. Because most staff within ICCs have little information or detail about how the new arrangements will be implemented, they are having difficulty in explaining the concept to community members and community organisations.

There are implications also for ongoing funding of Indigenous organisations. ICC funding agreements have not yet been finalised and it is not clear as to which individual agencies will use ICC agreements as opposed to retaining agency specific agreements. Indigenous organisations could have separate agreements with the range of agencies now delivering ATSIIS programs, as opposed to the single agreement that ATSIIS used for all its programs. The different financial requirements of agencies mean that while one agency may be satisfied with an organisation's financial reporting, another might find it in breach.

There is also no consistency between agencies represented in ICCs regarding the level at which delegations can be exercised. To enable greater responsiveness at the local level, ATSIIS delegations have usually been devolved. The indication at this stage is that agencies want to push these delegations up to more senior levels. This will greatly inhibit responsiveness and flexibility at the local level – contrary to the principles on which the new arrangements have been built.

Of particular concern are the departmental silos that have already become established in some ICCs, with teams being constructed along agency lines rather than being multi agency teams dealing with particular locations, as espoused in the connecting government concept. What this means for community organisations is that whereas previously they had one contact officer for ATSIIS funding, they could now be dealing with up to five officers for the same programs. This departmentalisation is evident at other levels; indications are that ICCs will not have a specific operational budget. All budgeting will continue to be along departmental lines.

What is even more worrying is that some ICCs are measuring their success in achieving greater coordination by the number of coordinated visits undertaken by field staff. The Productivity Commission's attempt to provide an alternative principle – that of measuring changes in outcomes over time – has not yet filtered down to the bureaucracy.

It is difficult to conclude that these new arrangements demonstrate even a single element of streamlining, let alone provide a shining example of a coherent approach to administration.

3.2 Mainstreaming Indigenous administration through the abolition of a distinct Indigenous administrative body

The Commonwealth Grants Commission's (CGC) *Report on Indigenous Funding* (2001) found that even though Indigenous peoples had distinct levels of disadvantage in comparison with non-Indigenous Australians and their needs were greater, Indigenous Australians access mainstream services at much lower rates than non-Indigenous people:

It is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous peoples.²⁶

The mainstream programs provided by the Commonwealth do not adequately meet the needs of Indigenous people because of barriers to access. These barriers include the way programs are designed, how they are funded, how they are presented and their cost to users. In remote areas, there are additional barriers to access arising from the lack of services and long distances necessary to access those that do exist. The inequities resulting from the low level of access to mainstream programs are compounded by the high levels of disadvantage experienced by Indigenous people.²⁷

Under the new arrangements, programs administered by ATSIS have been transferred to mainstream government agencies. These include the commodity programs of housing and CDEP, as well as non-commodity programs such as language maintenance and remote area communication. Not only has the Government ignored the findings of the CGC, it has acted in contradiction to the recommendations contained in the *Report on Indigenous Funding* – to the obvious detriment of Indigenous peoples.

If mainstream programs delivered by mainstream agencies have failed to address the needs of Indigenous peoples, it is difficult to capture the logic of this decision. What changes have been wrought in those agencies to enable them to be more responsive? What changes have been made to their programs to ensure greater access by Indigenous people – especially in remote areas? What policy changes have taken place so that mainstream programs are a better 'fit' with Indigenous needs? How will agency performance be measured, and by whom?

If mainstream agencies are to administer programs to achieve improved outcomes for Indigenous people (as outlined in the National Commitment 13 years ago) it will be necessary for them to be more acutely aware of the findings of the CGC, to understand the failings of the past, and to devise strategies to overcome these failings. Whilst Indigenous/agency relationships have improved in many localities due to the efforts of Regional Councils and

²⁶ CGC, 2001, *Report on Indigenous Funding 2001*, p xv.

²⁷ *ibid*, p xvi

dedicated agency staff, there are restrictions in administering broad-brush, mainstream programs.

It is worth taking a moment to consider the meaning of the term 'mainstream'. When we talk of the mainstream, we are talking of the 'system' of a society. The 'system' is the dominant ideas and practices and institutions of a society which determines 'who gets what'. The *institutions* of the mainstream are those of governance; government ministries and administrative agencies, the legal system and the political structure – the decision-making system. The dominant *ideas and practices* of a society are those which are accepted as the norm, even though those ideas and practices may discriminate against a section of that society.

As pointed out by the *Report on Indigenous Funding*, this mainstream has generally failed Indigenous people. Decision-making institutions and systems – government agencies at all levels – have not been sufficiently sensitive to Indigenous needs, concerns and experiences, and this must be addressed. Indigenous needs, concerns and experiences differ from 'the mainstream' – the institutions which have historically determined 'who gets what' – and this has caused entrenched discrimination within agency policy and program development. This failure cannot be overcome simply by the administrative manoeuvre of shifting programs from one agency to another. There are changes which have to be made in the way agencies do business with Indigenous people.

For example:

1. Agencies must design their policies, programs and budgets so that benefits are distributed on an equitable basis between Indigenous and non-Indigenous Australians. It is no longer acceptable for Indigenous people to have less access to programs than do non-Indigenous Australians.
2. The concerns of Indigenous people must be integral to the design, implementation, monitoring and evaluation of policies and programs at all levels, not just Indigenous-specific policies and programs. Agencies must devise strategies for consultation with Indigenous people so that needs and concerns are understood and taken into account. Indigenous people should no longer be disadvantaged by government practices.

The CGC report asserts that an important principle in aligning funding with needs includes the full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery.²⁸ It is clear from the recommendations outlined above that the participation of Indigenous people would be paramount in bringing about change in the operations of mainstream agencies. The new arrangements – after the dismantling of the Indigenous representative body – leave no process for this participation. In fact the new arrangements are a return to the paternalism of the past, with ultimate power in the hands of bureaucrats, accountable only to the bureaucracy.

What is clear from the *Report on Indigenous Funding* is that self-regulation has not worked in the past and there is nothing to indicate that the future will be different. Mainstreaming, if it is to benefit Indigenous people, must be accountable to Indigenous people. This requires the retention of an Indigenous-specific agency with the authority to monitor the performance of the mainstream.

²⁸ *ibid*, pxxvi

3.3 Whole of Government

The COAG trial sites have been hailed as a measure of success by the Government and have been cited as the model on which the proposed new arrangements will be based. In his press conference announcing the Government's decision to abolish ATSIC in April, Mr Howard said that the 'COAG trials in this area have been encouraging and have taught us a number of lessons'.²⁹ The emphasis in this model of administration is on a greater degree of coordination between agencies in all spheres of government. ATSIC welcomes this recognition on the part of government that streamlined or seamless service delivery is an essential element of improved outcomes for Indigenous people. Greater coordination has been a constant demand from communities, community organisations, and from agencies themselves, frustrated by departmentalism and its attendant inefficiencies.

It is not clear, however, what lessons have actually been learnt in the COAG trial sites with no independent evaluations having been carried out. Given the diverse nature of the trial sites, and the impossibility of separating trial site outcomes from outcomes deriving from prior activities or variables within those geographic locations, it is difficult to see how the Government has been able to make such a statement.

ATSIC recognises that a great deal of energy and goodwill has been expended on these trials and has participated willingly in all locations. It is clear that progress achieved in the COAG community trials is, to a large extent, the result of mainstream Australian government agencies engaging with Indigenous peoples in genuine dialogue. This cannot be accurately described as a whole-of-government approach but as the mainstream fulfilling its responsibilities to Indigenous peoples. This is genuinely encouraging and goes some way towards meeting the requirements outlined above (see Mainstreaming) to achieve real change in the way agencies 'do business'.

Service delivery is not enough.

Changes in the way agencies do business is essential; the next step is to understand that service delivery is not enough in itself. The vision of ATSIC is of Indigenous peoples freely exercising their rights; this must include the rights as outlined in the Productivity Commission Report:

that Indigenous people will one day enjoy the same overall standard of living as other Australians. They will be as healthy, live as long, and participate as fully in the social and economic life of the nation'

ATSIC has contributed to the growing body of knowledge about effective capacity development strategies for Indigenous peoples. From the experience and knowledge gained over the last 14 years, ATSIC has developed a framework for capacity building which details the steps needed by all sectors (government; Indigenous organisations; and individuals, families and small groups) to build the capacity of Indigenous peoples.

ATSIC's framework was submitted to the House of Representatives Standing Committee for Aboriginal and Torres Strait Islander Affairs Inquiry into Capacity Building in 2003. It was subsequently recommended by the former Commissioner for Aboriginal and Torres Strait Islander Social Justice, Dr William Jonas AM, (in his 2003 report to Parliament) to be

²⁹ Parliament of Australia, *The end of ATSIC and the future administration of Indigenous affairs*, Current Issues Brief (4), 2004, p14

endorsed by COAG to be the framework for all spheres of government to follow in supporting genuine capacity development strategies. The HORSCATSIA Report on Capacity Building makes a number of recommendations in this respect:

Recommendation 5

The Committee recommends that the Commonwealth Government investigate the utilisation of community development courses as an induction for agency staff and others working with Indigenous communities, especially in remote areas, with the purpose of ensuring agency staff have an understanding of Indigenous communities' history and culture and relevant policy issues and development practices.

Recommendation 7

The Committee recommends that, in relation to the provision of services to Aboriginal and Torres Strait Islander communities, the Commonwealth Government ensure a whole of government approach, together with the States and Territories and local government, in consultation with Indigenous Australians, including (inter alia)

- (d) the incorporation of capacity building into the design and implementation of programs delivering services to Indigenous communities, including funds to enable mentoring of community members and organisations;

- (g) the enhancement of the skills and capacity of agency staff (including cross-cultural and language training and the placement of high level staff and policy makers 'on the ground' in Indigenous communities) and the placement of appropriately skilled field officers 'on the ground' and reducing the turnover rate of such staff;

The report also concludes that:

The critical challenge for all levels of government is to move from the rhetoric of partnership to a position of genuine partnership and engagement to allow Indigenous people to achieve Indigenous objectives.³⁰

For this to occur there needs to be reform within the public service consistent with the COAG whole of government approach and a simultaneous focus on building the capacity of individuals, families and organisations within Indigenous communities, as articulated in ATSIC's Capacity Building Framework. (Refer to copy at Appendix D).

One of the first reforms within the public service witnessed since 1 July 2004 is the disappearance from the selection criteria for people working in the Indigenous affairs area the requirement to demonstrate the capacity to communicate with Indigenous people and an understanding of Indigenous cultures and issues. These criteria have always been an essential requirement for all positions within ATSIC-S and were in place to ensure the employment of suitably qualified people in this area of work. A similar point was made in the HRSCATSIA Capacity Building Report:

In considering evidence it is clear to the Committee that the development of the capacities of government staff, in particular their communication and facilitation skills and their understanding of cultural differences and local issues, are critical to the building of successful partnerships.

³⁰ (HRSCATSIA), 2004, *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous Communities*, p52

Recommendations:

That an independent evaluation of the COAG trials be expedited to provide a proper context to guide further development and implementation of the new administrative arrangements.

The retention of an Indigenous specific agency with powers similar to that of a Senate Estimates Committee to ensure an independent evaluation of the implementation of the new administrative arrangements and that mainstream agencies are accountable for improved outcomes for Indigenous peoples.

That any subsequent changes to administrative arrangements for Indigenous people are based on the ATSIC Capacity Building Framework.

The retention and strengthening of the selection criteria requiring all positions across the public sector dealing in Indigenous affairs to have demonstrated experience in and an understanding of the distinct cultures and circumstances of Indigenous people in Australia and an ability to communicate with Aboriginal and Torres Strait Islander peoples in a sensitive manner.

4. Concluding Remarks

The Commission wants to stress to the Senate Committee the unfortunate precedent the Government and the Opposition will set if the proposed changes to ATSIC proceed. Neither has consulted properly with Indigenous people yet both have decided to impose major reforms on Indigenous peoples. One outcome of this is likely to be a lack of confidence of Indigenous people in the word of either future Coalition or Labor Governments.

Neither seem prepared to consult properly and in the case of the Government to negotiate in good faith. With this in mind how can Indigenous people at the community and regional level have any long term faith in the proposed agreements when the Government, without any notice, change the fundamental formal arrangements it has with Indigenous people.

Indigenous communities are clearly even more vulnerable to the political whims and tactics of mainstream political parties and the unproven ideas of non-Indigenous bureaucrats in relation to program delivery which provides the basis for one of the main arguments for the maintenance of a credible representative Indigenous body at the national and regional level.

ATSIC has been heartened by the many submissions to the Senate Select Committee on the proposed amendments to the ATSIC Act and the proposed abolition of ATSIC.

ATSIC has read all the submissions and what is striking amongst all is the common theme that runs throughout them: support for Indigenous peoples' right to self-determination. Whilst the current Coalition Government may dismiss Indigenous rights and Australia's obligations under our international treaties and conventions as symbolic, the Australian polity has embraced Indigenous rights and our right to self-determination.

Our reading of the eighty-five submissions however differs from the statement made by the Committee Chair, Senator Crossin on 5 August 2004, that little support exists for maintaining ATSIC and ATSIS.³¹

Whilst the current Government may be fixated on certain elements – or members – of ATSIC, the majority of the public has focused on what ATSIC represents for all Aboriginal peoples and Torres Strait Islanders: a vehicle for self-determination.

The overwhelming majority of submissions insist that Indigenous peoples must have the right to self-determination and have their own elected representative structure. Whether this is ATSIC or a reformed ATSIC (as per the recommendations of the ATSIC Review) is not the point; the central issue is the widespread support for a representative decision-making body for Indigenous peoples. As mentioned earlier, ATSIC welcomed the ATSIC Review recommendations in 2003 and we support national and regional reforms to make us a stronger and more viable organisation for our people given the proviso we have stronger legislative provisions to adequately monitor and guide government service delivery agencies (both Australian government and the states and territories) to work in partnership with Aboriginal peoples and Torres Strait Islanders.

The majority of submissions urge the Senate Select Committee to ensure that if a new democratically-elected representative structure is instituted within Australia's legislative system, it must involve the full and informed consent of Indigenous peoples. As you are well aware, the decision to abolish ATSIC and mainstream existing ATSIC-S programs was done without any consultation and was attempted to be rushed through parliament a little under two-months from the April 2004 announcement. As noted earlier, this may prove another example of Australia's non-compliance under the International Convention on the Elimination of All Forms of Racism (ICERD).

ATSIC would like to formally thank all of the Indigenous and non-Indigenous supporters for their support of Indigenous rights and our right to self-determination.

³¹ ABC News Online news item quoting Senator Trish Crossin, *Senate Committee Finds Little Support for ATSIC*, 5 August 2004 <<http://www.abc.net.au/news/newsitems/200408/s1169168.htm>> (accessed 5 August 2004)