

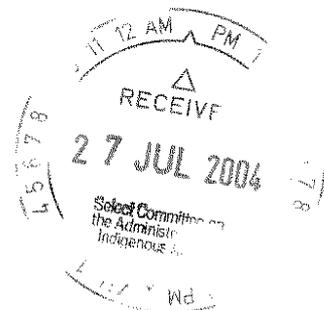


## Whitehorse Friends For Reconciliation Inc.

A Member of the ANTaR Network

P.O.Box 248,  
KERRIMUIR VIC 3129

26 July 2004



The Secretary  
Senate Select Committee on the Administration of Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam,

Please find enclosed a written submission to the above Senate Select Committee's Inquiry on the Aboriginal and Torres Strait Islander Commission Act Amendment Bill 2004 and proposed related changes to the administration of the Indigenous affairs policy of the Commonwealth.

The submission is lodged on behalf of Whitehorse Friends For Reconciliation Incorporated. Enclosed for the information of the Senate Select Committee are copies of a leaflet Whitehorse Friends For Reconciliation Incorporated (hereinafter referred to as "WFFR" for short) providing brief background information about WFFR, an active organization within the City of Whitehorse, a municipality in the eastern suburbs of Melbourne.

We request that the enclosed submission and accompanying leaflet be placed before the Senate Select Committee as part of the above Inquiry.

Yours sincerely,

Angela Bayliss,  
Secretary,  
Whitehorse Friends For Reconciliation Inc

**SUBMISSION OF**  
**WHITEHORSE FRIENDS FOR RECONCILIATION INC.**  
**TO THE SENATE SELECT COMMITTEE**  
**ON THE ADMINISTRATION OF INDIGENOUS AFFAIRS**  
**JULY 2004**

1. **PROTECTION OF RIGHTS.**

By its commitments to international instruments Australia is obliged to respect and protect the human rights of its Aboriginal and Torres Strait Islander citizens, their rights to self-determination and their rights not only to First Peoples status but also to all rights concomitant with the recognition of such status.

We submit that the Bill to amend the Aboriginal and Torres Strait Islander Commission Act and proposed related changes will breach those obligations in a number of respects.

The Howard Government has already been found by the United Nations to be in breach of its International rights obligations, most notably in relation to native title legislation and mandatory sentencing laws. The Government has refused to accept the UN's findings in those matters. It has also opposed the concept of self-determination (even extending to opposing use of the term in the UN Draft Declaration on the Rights of Indigenous Peoples).

In the current context, significant rights under threat for Indigenous Australians include:

- the right to choose their own representatives;
- the right to meaningful involvement in decision-making affecting their lives and communities; and
- the right to the provision of services which accommodate the special needs of Indigenous people.

Those rights are central to addressing the severe disadvantage and systemic discrimination faced by Indigenous Australians and to preserving their right to determine and maintain their identity as Indigenous peoples.

Without such rights, Government policy will simply equate to the previously rejected policies of assimilation.

The current Bill also underlines the inescapable conclusion that without secure recognition as Indigenous peoples, including Constitutional recognition, Indigenous Australians will remain vulnerable to the summary erosion of their rights and entitlements by governments hostile to their interests.

## **2. REPRESENTATION AND SELF-DETERMINATION.**

Central to the enjoyment of the above rights is the ability of Indigenous people to determine who represents them locally, regionally, nationally and internationally. The Indigenous peoples of Australia alone must have this right, as well as the consequent right to make free and informed choices for themselves, their families and communities.

The current Bill and proposed administrative arrangements will deny these fundamental rights. In reducing Indigenous involvement to an appointed advisory role, the Government will effectively remove the right of Indigenous people to meaningful involvement in decision-making affecting their lives and communities.

These changes are also contrary to the Government's own review of ATSIC which endorsed the need for national elected Indigenous representation and greater control at a regional level.

The right of representation and the power to determine their own affairs have also been shown to be critical factors in improving the well-being of Indigenous Australians. Outcomes are significantly better where there is full and effective Indigenous involvement in decision-making accompanied by strong Indigenous organisations and governance and appropriate cultural recognition within both Indigenous and non-Indigenous institutions.

Central to the right of Indigenous Peoples to self-determination is their right to determine who represents them at all levels. It is unacceptable for the Government to decide who will represent Indigenous people.

Indigenous people must be able to effectively represent their views on policy, program and funding in any and all areas that impact on their lives. This is fundamental to the successful delivery of services and programs to Indigenous people (see Sections 3 and 4 below).

The Government's Bill would also introduce a significant disparity in the rights enjoyed by different sectors of the Indigenous community. In announcing the Government's decision to abolish ATSIC, Prime Minister Howard stated that *"We believe that the experiment in elected representation for indigenous people has been a failure"*. Yet the Government has made no move to abolish the Torres Strait Regional Authority (TSRA), which, like ATSIC, consists of an elected arm and an administrative arm and which has as its vision *"To empower the Torres Strait Islander and Aboriginal people living in the region to determine their own affairs..."*. The TSRA's primary goal in achieving that vision is *"...to gain recognition of our rights, customs and identity as indigenous peoples"*.

In addition, the Government's own review of ATSIC endorsed the need for elected Indigenous representation at international, national and regional levels. It found no compelling evidence to support the Government's conclusions that either ATSIC or the concept of elected Indigenous representation should be abolished.

The government's position is therefore both contradictory and discriminatory. We now contemplate the absurd and unacceptable situation where one group of Indigenous people in Australia will have an elected representative body and the power to determine their own affairs, while those same rights are to be totally denied to the majority of their fellow Indigenous Australians.

### **3. A NEW INDIGENOUS REPRESENTATIVE STRUCTURE.**

Indigenous Australians have endorsed the need for a National Indigenous Representative Body which reflects their values and aspirations, and which is open, transparent and accountable to Aboriginal and Torres Strait Islander people.

This body should have primary roles in representation and advocacy, be the principal source of Indigenous policy advice to government, and have control over the provision of Indigenous-specific services.

There must be a sustainable, independent National Indigenous Representative Body that:

- reflects the aspirations and values of Aboriginal and Torres Strait Islander peoples;
- is open, transparent and accountable to the Aboriginal & Torres Strait Islander peoples; and
- is achieved with the informed consent of Indigenous peoples through inclusive processes which acknowledge their diversity and traditional authority structures.

With the option of reforming ATSIIC's structure to address its acknowledged deficiencies having been rejected, priority must be given to establishing a new independent National Indigenous Representative Body. The structure of this body needs to address deficiencies outlined in the Review including an increased focus on regional and local roles, and issues of transparency and accountability.

This body should have primary roles in representation and advocacy, be the principal source of Indigenous policy advice to government, and have control over the provision of Indigenous-specific services and programs.

The details of the model and structure for such a body are matters for negotiation with Indigenous peoples and should be determined only on the basis of their informed consent.

It is clear that regardless of the outcome of the next election, Indigenous Australians will not abandon their aspirations for a self-determined future. The Labor Opposition has committed itself to negotiating with Indigenous Australians a replacement national representative Indigenous body with enhanced regional autonomy.

#### **4. MAINSTREAMING AND ACCOUNTABILITY.**

The proposed wholesale return to mainstream-focused service delivery will be a step back to a failed paternalistic approach in Indigenous affairs. Indigenous people are poorly served by mainstream services and there will remain the need for Indigenous-specific services controlled by Indigenous people themselves.

Some mainstream service delivery will continue to have an important role. However, this must be on the basis of being responsive to Indigenous community and cultural needs. Governments, mainstream departments and agencies must be publicly accountable for the provision of services to Indigenous people and such accountability should include rigorous monitoring frameworks and the ability for Indigenous people to exercise such accountability.

## **5. REFORMING ADMINISTRATION OF INDIGENOUS AFFAIRS POLICY.**

Australia has a duty to pursue social justice & economic development for all Aboriginal and Torres Strait Islander peoples and to urgently address the current unacceptably high levels of systemic disadvantage.

Evidence from Australia and overseas demonstrates that both effective mainstream and Indigenous-specific service delivery is required and that the critical elements in achieving successful outcomes are effective Indigenous involvement in decision-making and the existence of capable and culturally appropriate Indigenous institutions of governance.

Addressing the current unacceptably high levels of disadvantage faced by Indigenous Australians and providing a sound economic base for the future development of Indigenous communities must become national priorities.

However, these should not be seen as the sole objectives of Indigenous affairs policy, as the Government has sought to suggest with its 'practical reconciliation' policy approach. The Government has sought by sleight-of-hand to suggest that so-called 'practical' issues and 'symbolic' or rights issues are mutually exclusive. They are not and we should not be fooled by such a false dichotomy.

Experience, both in Australia and overseas, has shown that not only is this dichotomy false, but that 'practical' measures are counter productive in the absence of parallel action on rights issues.

In Australia, a recent study by ANU's Centre for Aboriginal Economic Policy Research (CAEPR) compared the performance of the Keating and Howard Governments on improving the well-being of Indigenous Australians, both in absolute terms and relative to non-Indigenous Australians. The Keating Government pursued parallel 'rights' and 'practical' policies while the Howard Government's emphasis has been entirely on 'practical reconciliation' policies. The results showed little difference in 'practical' outcomes after seven years of 'practical reconciliation' policies while leading to a further widening of the gap in well-being between Indigenous and non-Indigenous Australians.

The Commonwealth Grants Commission (CGC) report on Indigenous Funding 2001 and the Productivity Commission's Review of Government Service Provision have shown that Indigenous people are poorly served by mainstream services. The CGC report highlighted the problems in mainstream service-delivery caused by our complex federal system and the need for "the full and effective participation in decisions affecting funding distribution and service delivery".

Experience from overseas echoes these findings. The US Harvard Project on American Indian Economic Development found that the most important factors in successful economic and social development of Indigenous communities have included the effective exercise of sovereignty in making their own decisions and capable and culturally appropriate Indigenous institutions of governance.

All evidence suggests that both mainstream and Indigenous-specific programs are required to meet the needs of Indigenous Australians. Moreover, mainstream service delivery must be responsive to Indigenous community and cultural needs.

The Government has ignored all such evidence and now seeks to return Indigenous programs and service delivery to the failed paternalistic approach of the past.

## **6. ACCOUNTABILITY.**

Governments, mainstream departments and agencies must be publicly accountable for the provision of services to Indigenous people and such accountability must include rigorous monitoring frameworks and the ability for Indigenous people to exercise such accountability.

The lack of accountability of governments, mainstream departments and agencies in the delivery of services to Indigenous people has been identified by numerous inquiries as a significant impediment to improving service delivery and outcomes for Indigenous Australians.

This lack of accountability has also enabled governments to scapegoat ATSIC as responsible for the failure to improve outcomes for Indigenous Australians even though ATSIC only controlled 15% of Indigenous expenditure, with governments controlling the remaining 85%, delivered through mainstream departments and agencies.

Proper public accountability, including directly to Indigenous people, is therefore essential to achieving effective Indigenous service delivery.

**7. ATSIC'S ASSETS.**

The establishment of a new National Indigenous Representative Body will require the provision of resources and assets and it is therefore important that the current assets of ATSIC be preserved for transfer to the new body.

If ATSIC's current assets are disbursed to mainstream departments it will be more difficult, if not impossible, to reinstate them at a later date.

**8. INDIGENOUS CONSULTATION AND CONSENT.**

Finally, any replacement for ATSIC must be determined in consultation and negotiation with Indigenous stakeholders and on the basis of their informed consent. The Committee's report should provide strong endorsement of this principle.

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