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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Progress towards national reconciliation

THURSDAY, 15 MAY 2003

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SENATE
LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Thursday, 15 May 2003

Members: Senator Bolkus (Chair), Senator Payne (Deputy Chair), Senators Greig, Kirk, Scullion and Stephens

Substitute members: Senator Crossin for Senator Stephens and Senator Ridgeway for Senator Greig

Participating members: Senators Abetz, Brandis, Brown, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Lightfoot, Ludwig, Mason, McGauran, Murphy, Nettle, Sherry, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bolkus, Crossin, Kirk, Payne and Ridgeway

Terms of reference for the inquiry:

To inquire into and report on:

1. Progress towards national reconciliation, including an examination of the adequacy and effectiveness of the Commonwealth Government's response to, and implementation of, the recommendations contained in the following documents:
 - (a) Reconciliation: Australia's Challenge: Final Report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament;
 - (b) the Council for Aboriginal Reconciliation's Roadmap for Reconciliation and the associated National Strategies to Advance Reconciliation; and
 - (c) the Aboriginal and Torres Strait Islander Social Justice Commissioner's social justice reports in 2000 and 2001 relating to reconciliation.
2. That, in examining this matter, the committee have regard to the following:
 - (a) whether processes have been developed to enable and require government agencies to review their policies and programs against the documents referred to above;
 - (b) effective ways of implementing the recommendations of the documents referred to above, including an examination of funding arrangements;
 - (c) the adequacy and effectiveness of any targets, benchmarks, monitoring and evaluation mechanisms that have been put in place to address Indigenous disadvantage and promote reconciliation, with particular reference to the consistency of these responses with the documents referred to above; and
 - (d) the consistency of the Government's responses to the recommendations contained in the documents referred to above with the needs and aspirations of Indigenous Australians as Australian citizens and First Nation Peoples.

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Committee commenced at 9.05 a.m.

OXLEY, Mr Stephen, Assistant Secretary, Social Programs and Reconciliation Branch, Office of Aboriginal and Torres Strait Islander Affairs, Department of Immigration and Multicultural and Indigenous Affairs

PALMER, Mr Bryan David, Director, Service Delivery and Performance Section, Office of Aboriginal and Torres Strait Islander Affairs, Department of Immigration and Multicultural and Indigenous Affairs

VAUGHAN, Mr Peter Eric, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs, Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—This is the third public meeting for the Senate Legal and Constitutional References Committee inquiry into progress towards reconciliation. The committee has already held one public hearing in Sydney and another yesterday in Canberra. The terms of reference for this inquiry include examining the adequacy and effectiveness of the Commonwealth government's response to the recommendations of the Council for Aboriginal Reconciliation and the social justice reports of the ATSI Social Justice Commissioner. A particular area of interest for the committee is term of reference 2(c) concerning the adequacy and effectiveness of any targets, benchmarks, monitoring and evaluation mechanisms to address Indigenous disadvantage and promote reconciliation.

Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee does prefer to hear all evidence in public but, under the Senate's resolutions, witnesses do have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to so do.

I welcome representatives of the Office of Aboriginal and Torres Strait Islander Affairs from the Department of Immigration and Multicultural and Indigenous Affairs. You have lodged submission No. 75 on behalf of the Commonwealth government. Do you wish to make any amendments or alterations to it?

Mr Vaughan—No, Senator.

CHAIR—Would you like to make a short opening statement?

Mr Vaughan—Yes, thank you. I would just like to make two comments by way of opening statement. First, I note that the committee's inquiry commenced prior to the release of the government's response to the Reconciliation Council's final report. Therefore, to that extent, the government response in effect responds to those parts of the committee's terms of reference that relate thereto. However, the government has also lodged a submission dealing with two particular issues in which the committee has expressed interest and which are obviously integral to reconciliation. They are benchmarking or performance monitoring and the subject of agreement making.

The other point I would like to make concerns the nature and scope of the concept of reconciliation. This is a key question, because the answer to that question has obvious implications for the further question of who is responsible for what in terms of achieving reconciliation as a national goal. The Reconciliation Council's own definition of 'reconciliation', as expressed in its vision statement, reads:

A united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.

Similarly, in its final report in December 2000, the council emphasised that 'overcoming disadvantage is central to the reconciliation process'. Also, Reconciliation Australia identifies the 'achievement of social and economic equality' as the first of its three strategic priorities, the other two being sustaining the people's movement along with acknowledging the past and building for the future. This fundamental reconciliation goal of equality is reiterated in the government's response to the Reconciliation Council's report in which it says:

True reconciliation can never be said to have occurred until Indigenous Australians enjoy the same opportunities and standards of treatment as other Australians.

In other words, Indigenous reconciliation is in fact about long-term social and economic re-alignment of Australian society. This also means that reconciliation did not simply start in 1990 with the establishment of the Reconciliation Council, nor was it achievable by December 2000 when the council's legislative remit expired.

Arguably, the national reconciliation project in its contemporary form started in the 1960s with the abolition of the last vestiges of discriminatory voting entitlements and with the referendum of 1967. Similarly, to the extent that reconciliation entails the elimination of Indigenous inequality, it is not something that can be delivered in the short term by governments, federal or state, acting unilaterally or in unison or simply by declarations, conventions, legislation or constitutional amendments—although they can all play a part, obviously.

Achieving reconciliation is a larger and long-term societal process about social and economic re-alignment in which everyone has a role to play, which is why the term 'people's movement' is applied to it. That is presumably why the Reconciliation Council's report and recommendations are addressed to all governments and all elements of the community. We appreciate, of course, that this committee's inquiry is confined to the role of the federal government in that process. I am therefore happy to assist the committee in that regard.

Senator RIDGEWAY—I wanted to start with a few questions in terms of clarifying the roles and responsibilities of your office compared with the plethora of organisations that seem to be out there at the moment in government dealing with Indigenous affairs—ATSIC, the ILC and I believe there was an office of Aboriginal affairs established, or something of that sort, as part of DIMIA. I am trying to understand how you make a distinction between the various roles and responsibilities of the number of organisations that are there. How does that assist in terms of the coordination of effective ways of being able to deal with both policy development and service delivery? It just seems to me that there may be some overlap or some confusion—or at least a lack of clarity. How do they engage then with Indigenous communities to be able to effectively respond to how you describe reconciliation?

Mr Vaughan—I agree that there is certainly a complex mosaic of organisations, governmental and nongovernmental, Commonwealth and state, in this sector. I think at the end of the day they divide into two sorts of agencies. One category—and this accounts for the majority of them—are those specialist agencies that deal with particular issues such as health or education, or the Indigenous Land Corporation for land purchase or Indigenous Business Australia for economic investment.

Senator RIDGEWAY—So you have a number of specialist organisations which, in effect, mirrors what happens across the rest of government as well.

Mr Vaughan—And then the other category of organisation is those that have an overview or coordinating or monitoring role. There are relatively few of those. In fact, at the Commonwealth level, I would say they boil down to three organisations: one is the Social Justice Commissioner, another is ATSIC and the third is the office. They each have, although similar roles, distinct roles as well. The role of the Social Justice Commissioner is as an independent commentator; the role of ATSIC is to represent Indigenous perspectives; and the role of the office is to take into account the government's policy objectives.

The office has existed in one form or another for about 10 years now—since 1993 when it was set up in Prime Minister and Cabinet, until two years ago when it became part of the Immigration portfolio. Our role differs from that of ATSIC in that ATSIC is charged with representing the Indigenous perspective whereas the office is charged with furthering the government's policy agenda. There is obviously a degree of congruence from issue to issue there but at times there are differing views.

Senator RIDGEWAY—I am mindful of the fact that there will be estimate hearings to deal with some of the other issues. I guess what I am trying to establish is that in the make-up of the three that you describe—the office, ATSIC and the Social Justice Commissioner—in terms of the engagement with the Indigenous community and what seems to be an emphasis in your report of agreement making with various levels of government as well as directly with Indigenous communities, how do you rationalise or deal with what are potential conflicts in relation to the role that ATSIC has in representing views expressed by the Indigenous community, such as where you talk about the 10 communities project that is likely to come up in the future? There are a number of other examples of direct negotiating and agreement making on service delivery. I am trying to understand whether that is a shift in emphasis and whether ATSIC plays a legitimate role in that process, particularly given some of the recent announcements by the minister on the creation of a new service agency. Will they deal directly with communities or will they deal with ATSIC and ATSIC has a role to deal with the communities?

Mr Vaughan—From the office's point of view, our mode of consultation or discerning Indigenous perspective on issues is done through consulting ATSIC. You mentioned specifically the COAG coordinated trials—ATSIC is a player in each of those. ATSIC is represented at the meeting of secretaries of departments which oversees those trials, and the ATSIC chairman attends ministerial meetings where those issues are discussed. So ATSIC has a role at the table. But the nature of the trials involves a direct relationship with the community rather than an indirect one, if I can put it that way. So there is, I guess, input to the process through both channels, through the community's own perspective and articulation of its needs and indirectly through ATSIC's participation in the steering and oversighting fora.

Mr Oxley—In terms of the actual on-ground implementation of the trials themselves, ATSIC, as Mr Vaughan has said, has a varying degree of engagement. But the task force, which exists separately within DIMIA and has members of the ATSIC staff on it, has now been around and spoken to all but the Victorian regional councils of ATSIC about this whole process. In New South Wales, for example, where the Murdi Paaki region is being used as the basis for the trial—though not yet announced publicly—the community working party system which was established by ATSIC in that regional council is being used as the basis for operating those trials. So there is a high degree of engagement by ATSIC at the regional level in the trials themselves.

Senator RIDGEWAY—In relation to the government's announcement of proposing to establish a new service agency, what role will ATSIC play in future? Do you imagine that to be more effective or less effective, given what you have described in relation to ATSIC's role both out there in the regions and certainly in relation to policy making?

Mr Vaughan—The new service agency is, if you like, the administrative arms and legs of ATSIC in the same way as it was when it was organisationally part of the commission. The arrangements provide that the new agency will take direction in terms of policy and priorities from the elected arm of ATSIC, from the board.

Senator RIDGEWAY—If I could move on to one other thing that you mention in your report in relation to the Commonwealth Grants Commission, both its reporting and previous research that has been done in relation to the equitable arrangements in allocating financial resources to the states and territories. I think you mentioned that, as far as specific purpose payments to states and territories are being renewed, you are going through a process of defining clear objectives about how those resources are to be allocated. Are you able to tell us where that process is up to? As you would know—and I am talking about at least the last 10 years—Indigenous communities through their own organisations have been critical of the fact that grants have been made to states and territories, taking into account the Indigenous population within each of those areas but not necessarily allocating funds for needs within those communities. I would welcome any comments that you have about where that process is up to.

Mr Vaughan—There are two aspects to that. One is the upfront part where you negotiate the terms and conditions of Commonwealth funding to the states, at least when you are talking about special purpose payments as opposed to general revenue reimbursement payments. That has a role to play, whether one is talking about the Commonwealth-State Housing Agreement or health care arrangements and so forth. But at the end of the day I think it is the second part of the equation which is where the proof of the pudding really is—and that is on what we can say or what we can demonstrate or what we can find out about actual Aboriginal access to services and to those programs which are often jointly funded programs.

The best compendium of information on that is the annual report of the Steering Committee for the Review of Commonwealth/State Service Provision. This volume deals exclusively with Indigenous access to mainstream state programs—for example, under child care, out-of-home placements for children by state, Indigenous versus non-Indigenous rates; the per cent of state-owned public housing, the overcrowding rates compared by state for Indigenous and non-Indigenous. I think that is the sort of information that is really the most telling. While I acknowledge it is important, as we state in our submission, to make sure the upfront agreements do whatever is necessary to ensure entitlement, it is only by looking, at the end of the day, at

what the actual outcome is that you can really make a judgment one way or the other. That sort of transparency and accountability is fundamental.

Mr Oxley—In relation to giving effect to that government policy, the office has been involved with the development of a couple of the next round of Commonwealth-state agreements. I will give you two examples as to how we are making sure that the Indigenous aspects of those agreements are given proper recognition. The first example I would give is the Commonwealth-State Housing Agreement under which there is an Aboriginal rental housing program, which guides the provision of Aboriginal housing. There are two things that the Commonwealth is doing in particular in relation to the re-negotiation of the Commonwealth-State Housing Agreement. The first is pursuing its policy of making sure that there is an Indigenous identifier included in the housing data set so that we have a much better capacity to know how the system is performing for Indigenous people. The second, at a much more practical level, is that as we have looked around the nation at how the various states and territories operate housing for Aboriginal people there seems to be a significant disconnect between the availability of mainstream public housing in the states and territories and the Aboriginal and community housing programs, to the extent that very often there are separate waiting lists and there is no interrelationship between the waiting lists for normal public housing and Aboriginal housing.

The Commonwealth has been concerned that that lack of working relationship between those two housing lists means that Indigenous need is not being dealt with as effectively as it could be and that Indigenous people may well be waiting longer for housing than they need to. If an Indigenous person is only on the Aboriginal housing waiting lists and not aware that they also have a right to access mainstream public housing, then they may be waiting longer than needs be. So through the vehicle of the Commonwealth-State Housing Agreement we are seeking to have that very specific problem of waiting lists addressed.

The other example I would give is that, under the re-negotiation of the health care agreements, we have had quite extensive discussions with the Office of Aboriginal and Torres Strait Islander Health within the health department, and with the health department more broadly, about how we might go about getting a better set of performance measures and indicators in the data collection that attaches to the health care agreements.

Mr Vaughan—If I could just follow on with that by way of illustrating the point. Mr Oxley spoke about the effect of having two separate waiting lists, for example, for public housing. When you look at the data, there are some 35,000 families per annum, Indigenous and non-Indigenous, allocated housing in the public housing system. Now less than 10 per cent of that, something less than 2,000 or 3,000, are actually the result of new housing construction. Over 30,000 of the 35,000 are the result of vacancies in the existing housing stock. The result of that, of course, means that some 80 per cent of public housing applicants are housed within five years. If we inadvertently create a system whereby Indigenous Australians are not in the queue for that huge stock because they are siphoned into the Indigenous-specific stream, then we are letting them down badly.

Senator RIDGEWAY—Could you tell us to what extent the office may get involved or at least make representations not so much on housing but on hostel accommodation? I am aware of some issues that hostels have experienced of late in trying to address the question of accommodation in relation to skills and training in the vocational education system. You may or

may not be aware of two examples of applications that have been made to build hostels in Hobart and Port Augusta, both of those being rejected by the local government body. I think the reasons have become pretty obvious to at least Aboriginal Hostels Ltd about why that has not occurred. Do you have any views about that? How do you deal with issues where it appears on its face that it is for reasons to do with discrimination? Would the government would take any sort of leadership role in that sense, particularly in terms of trying to achieve the sort of outcomes that you talk about? You do not have to answer those questions now. I would just be interested if you could go away and give some thought to that.

In relation to page 2 of your report where you talk about the government telling the nation that it is in no way hostile to the rights of Indigenous people, could you tell us what you mean by that, given the five principal areas that ATSIC have established to look at maintaining identity, security of country and the range of things in relation to cultural rights themselves? Given some of the changes that have been made both to the native title legislation that seem to have wound back the capacity for rights to be asserted and proposed changes on a range of other legislation that the government is proposing on heritage protection, you would no doubt be aware that the view in the community is somewhat different from the view the government expresses.

Mr Vaughan—Yes, Senator. We all know, when we talk about rights in this area, we are talking about two classes of rights in a sense: the common internationally accepted and defined human rights which apply to all people; and what are referred to in addition as the inherent rights of Indigenous people, which at this stage lack any international definition or recognition as such. What constitutes those inherent rights is a subject of considerable debate and discussion and ongoing exploration. ATSIC, for its part, has defined those rights under five headings, as you just indicated: the right to maintain their distinct identity, the right to enjoy life and security in their own country, the right to sustain livelihood, the right to appropriate social services and the right to be heard. The government has said it has no philosophical problem with any of those propositions and, in fact, accepts them entirely. But, as you indicate, there is scope for debate as to how they are applied in particular circumstances.

In the case of the Native Title Act, there is, as you say, one criticism or perception that says the rights are different today from what they were five years ago. There is another view that there is more benefit flowing through from the native title system today than there was five years ago if you measure that in terms of settled claims, Indigenous land-use agreements and other forms of agreement. So there is obvious room for debate, depending on your point of view on that one.

In relation to the Aboriginal and Torres Strait Islander Heritage Protection Act, the government has sought to alter the regime because at the moment there is automatic access to the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act without necessarily recognising that in some states and territories there is corresponding, if not superior, legislation. What it has sought to do is to say that, where there is adequate state or territory legislation, that should be the point of first recourse. To take as an example the Northern Territory Aboriginal Sacred Sites Act, which I know Senator Crossin would be aware of, it is regarded as the best practice model in a sense because it guarantees automatic blanket coverage protection of Aboriginal sites. The Commonwealth legislation, the Aboriginal and Torres Strait Islander Heritage Protection Act, does not provide blanket protection; it is only protection on application. The Commonwealth has been trying to say that, where you have a first-class system

at the state level, that should be the point of protection, and access to the Commonwealth regime should be by exception rather than by automatic recourse.

Senator RIDGEWAY—Thank you.

Senator CROSSIN—Mr Vaughan, can I just take you to the whole of government approach that is being trialled in the 10 communities. What sort of evaluation mechanisms have been put in place to assess the progress and adequacy of those new initiatives?

Mr Oxley—Senator Crossin, I will answer that question for you. The evaluation process is still under development. The position that the task force has taken in looking at how it might evaluate it is that, at the end of these trials, we want to be able to answer the questions: did it work and why; and, if it did not work, why not? And then have we got a model or models here that we can take forward and implement more widely in Indigenous communities?

Essentially, we have started from the ground up. There is a base line data collection component so that we have a snapshot in time at the beginning of the trials as to what these communities look like in terms of their socioeconomic status and what their needs are, and all this is by way of a process of negotiation with those communities. Then we go through a process of identifying: what are the outcomes that those particular communities want? What are the priorities that they see? What would they like to have changed in their communities through this partnership? We build from there some performance measures which are locally focused. They will hopefully give some answers about how the process has gone in terms of improving the situation in those particular communities.

Then underpinning all that is the work that is being done concurrently through COAG by the Steering Committee for the Review of Commonwealth/State Service Provisions on the development of a national indicator framework. The intention is, to the maximum extent possible, to integrate that new indicator framework into the performance evaluation in the trials so that we are able to take from each of those trials a snapshot that we can aggregate to give us a national picture of performance.

Senator CROSSIN—Is there an expectation that Commonwealth agencies will be fairly flexible in their approach to these trials? In other words, the shutters will not come down and people will do what is in the best interests of that community—jump out of their boxes, so to speak—and be amenable to trialling different challenges?

Mr Oxley—Yes, there certainly is. In fact, it is one of the key aspects of the trials. And this applies as much to the states and territories as it does to the Commonwealth, because here this is a partnership between three or four partners where local government becomes involved. I should have indicated that, in relation to the performance assessment and evaluation, one of the key areas of scrutiny will be how well government bureaucracies have done in terms of being able to think outside of the box and to find flexible solutions. Yes, that is very much the case.

Senator CROSSIN—You would be aware that Wadeye is just about to complete a rural transaction centre. In fact, it went ahead with the process of having a rural transaction centre by borrowing \$100,000 in order to get that centre up and running. The community actually considers the RTC to be a business venture. Can you explain why Centrelink as an agency are

willing to move into that RTC but are refusing to pay rent? In any other normal business venture around this country, if you moved into a privately owned venture, your Commonwealth agencies would be expected to pay rent. Why is it that Centrelink are refusing to do that in Port Keats?

Mr Oxley—I cannot immediately give you an answer as to why Centrelink, which is an agency for which OATSIA has no responsibility, is not participating in the way that you suggest it should. But certainly I would be happy to take that on notice and make some inquiries with the appropriate people in Centrelink or the Department of Family and Community Services, which has the lead agency responsibility for the Wadeye trial.

Senator CROSSIN—So as well as taking a snapshot of current communities when you are developing the evaluation tools for these projects, is someone also taking a snapshot of the attitude and policies of the agencies within the Commonwealth and trying to evaluate how they may have changed? How they may have become more flexible? How they may have become more integrated with other agencies in the communities by the end of this trial?

Mr Oxley—That is the intention. In terms of measuring that aspect of the success or otherwise of the trials, that is very much a qualitative assessment. The Indigenous Communities Coordination Task Force is the body that has the responsibility within the Commonwealth for developing those aspects of the performance measurement, and certainly dealing with that need is high on its list. But, as I indicated at the outset, the development of that performance monitoring and evaluation framework is currently under development. Yes, it is something that will be given consideration. How that will be measured I think is too early to say.

Senator CROSSIN—I am aware that benchmarks have been developed—Senator Ridgeway may well have touched on this, because I was a bit late coming in—in relation to the progress towards the government’s terminology loosely labelled as ‘practical reconciliation’. Where is the progress at for those benchmarks or that evaluation tool?

Mr Vaughan—Senator, you are now talking more broadly than the trials?

Senator CROSSIN—Yes.

Mr Vaughan—In the minister’s budget kit this week there was a document called *Making headway*, which seeks to identify the extent to which we are making headway in areas such as education, employment and housing, and that is expressed in terms of data. For example, to take education, it gives the percentage of Aboriginal students who progress to year 12, which is now 38 per cent compared with 31 per cent six years ago. There are other measures of that type in there. For example—

Senator CROSSIN—Sorry, Mr Vaughan, does that document tell us how many communities would have secondary schools in them let alone how many kids would reach secondary school?

Mr Vaughan—No, you would find that in the community housing infrastructure needs survey, which is another document that is put out and I can give you a copy of that.

Senator CROSSIN—What I am getting at is in the *Making headway* document you are quoting from, as well as statistics in terms of people, does that document—as opposed to

referring to another document—make comment about the lack of actual physical secondary schools in rural and remote communities?

Mr Vaughan—It is a document about outcomes, not about inputs. It is about what results were actually produced.

Senator CROSSIN—Does it link any inputs with the outcomes?

Mr Vaughan—It does provide some details of participation in various governmental programs such as employment initiatives and so forth. But its primary focus is not on what governments are doing but on what governments are delivering or what is coming out of those programs. If you want the detail about inputs, it is often in the departmental statements.

CHAIR—Where does that figure come from? How do you come up with that 38 per cent?

Mr Vaughan—The source of that figure is the annual report of schooling; isn't it, Bryan?

Mr Palmer—It was provided to us by the Department of Education, Science and Training and they collect it, I believe, from the states and territory governments.

Mr Vaughan—It is part of the national data collection system. There was also a major report entitled *The national report to parliament on Indigenous education and training*, which was released last year and where you find all that sort of data too.

Senator CROSSIN—I guess where I am trying to make the link is that there will be a very small increase in your 38 per cent while we still only one or two secondary schools. For example, in the Northern Territory, east or west of the Stuart Highway, it is a bit hard to quote one without the other. In terms of looking at benchmarks towards reconciliation, has the government given any consideration to including benchmarking some of the symbolic aspects of reconciliation in their evaluation tools?

Mr Vaughan—Yes. There is a process afoot, which we have averted to in our submission, on the development of a national framework of benchmarking. The performance framework which is being developed under the aegis of first of all the Commonwealth-State Ministerial Council for Aboriginal and Torres Strait Islander Affairs and now by COAG through the Steering Committee for the Review of Commonwealth/State Service Provision. While it has been not too difficult for them to identify practical measures of progress towards reconciliation in terms of Indigenous disadvantage, for example, it has been very hard to find measures for symbolic issues. I am not quite sure how you would measure progress on the symbolic front in any quantitative fashion. You can identify it and measure it in qualitative terms in terms of milestones, whether you are talking about something like the opening ceremony for the Olympics, the forecourt of Parliament House, Reconciliation Place—those sorts of things.

Senator CROSSIN—Does the Commonwealth or each state or territory have a protocol for dealing with 'welcome to country' at the start of any major ceremony? Is there an expectation that the states or territories or even the Commonwealth would develop that? If there is, is that an evaluation benchmark that you would look at using?

Mr Vaughan—That would be one indication. I am not sure how you would actually quantify that, but it would certainly be one indication. In fact, I find it uncommon these days to go to any event which has an Indigenous dimension of any kind to it where there is not an acknowledgment of country.

Senator CROSSIN—That may well be true but, on the other hand, there is no evidence either that state or territory governments or even the Commonwealth government are actually documenting that in some sort of official protocol manual, for example. Have those sorts of symbolic issues been looked at when you come to evaluating reconciliation measures? I will give you another example. There has been a huge debate in Alice Springs about when, where and why the Indigenous flag should be flown—once a week, once a month or all the time. Is there an expectation that community government councils would put a third flagpole up and fly an Indigenous flag all the time?

Mr Vaughan—I think that sort of thing is a meaningful measure of reconciliation. Whether one can best progress that through some sort of national agreement as opposed to allowing that to be part of the people's movement is a question.

CHAIR—Sorry, was the first part of your question answered then? That was a two-part question, and we are interested in the answer to the first part as well.

Senator CROSSIN—I am not sure now. Mr Vaughan, are you distinguishing the government's movement as opposed to the people's movement here?

Mr Vaughan—There are some issues which are in the realm or the domain of the people's movement, and there are some issues that are in the realm or the domain of governments. That is why the Reconciliation Council's report was addressed both to governments and to the rest of the community as well. It was clearly contemplated that reconciliation was not simply a governmental program or a governmental process.

Senator CROSSIN—Does this government see that it has any role in playing some leadership towards assisting the people with their movement?

Mr Vaughan—I would think the government would say that it has sought to do that through the establishment and funding of Reconciliation Australia, through initiatives such as Reconciliation Place and through the initiatives it has sought state agreement on through the Council of Australian Governments including, for example, the Wadeye trial we were just talking about a moment ago.

Senator CROSSIN—So how is the progress at Reconciliation Place progressing, particularly perhaps in terms of the sliver relating to the stolen generation?

Mr Vaughan—The government announced in the budget this week that it would be seeking parliament's appropriation of money for the two remaining slivers at this stage of the project, one of which relates to separated children. Discussions have been ongoing between the representatives of that group and the government as to the formal nature of that artwork, and that has not been concluded as yet.

Senator CROSSIN—Can I ask you about the review of the Aboriginal Councils and Associations Act. What is happening with that review, and how is it progressing?

Mr Vaughan—The report of the review was released late last year and the government is currently considering its response to the review. It was a very thorough and, in many ways, complex review because the Councils and Associations Act over the past 25 years has not kept pace with developments in the Corporations Law. There is now a degree of dissonance between, for instance, a director's duties under the Corporations Law and a director's duties under the Councils and Associations Act. So the review has raised a number of these complex questions. I must opine as an aside that it is an extremely high quality review in terms of the clarity and the rigour of the analysis. The government is now in the process of considering its response to that review, which is a matter that needs to go to cabinet and ultimately be the subject of legislation.

Senator CROSSIN—Is there some thought in Indigenous communities that those Indigenous communities that are registered under the associations act should become incorporated bodies or is that all part of the review?

Mr Vaughan—That question was looked at—that is, the question of whether access to the Councils and Associations Act should be limited in some way instead of it being open-ended simply by choice. For example, if you are dealing with Indigenous organisations these days, which can be quite large and complex business-type operations, the issue of whether they should be subject to the normal disciplines of the Corporations Law rather than the 1976 version of the Councils and Associations Act is dealt with in the review.

One of the problems that was encountered though is where you would draw that benchmark as to what constituted, if you like, a large sophisticated business organisation that you would channel towards the Corporations Law as opposed to, say, a small community welfare organisation, which you would allow free access to the Councils and Associations Act. The review suggested some benchmarks for cut-off points but had not come to a clear view on that. One of the questions the government has to decide in responding to the report is whether it will propose going down the path of restricting access to the Councils and Associations Act to small community organisations or whether it will allow it to remain open to a large Indigenous business.

Senator PAYNE—Mr Vaughan, in the 10 years during which the Council for Aboriginal Reconciliation was established, one of its major strategies included the dissemination of specifically produced printed, audiovisual and technology-based information very broadly throughout the Australian community, particularly schools. I imagine, without going back to the material for the establishment of the council, that it was clearly recognised that there needed to be an engagement between the parts of Australia which were highly disengaged on the issues and that this was a method of achieving that, particularly by educating young Australians about the past and the future in relation to reconciliation and Indigenous Australia. It is my understanding through this hearing that, since the council ceased to operate, those sorts of things have effectively ceased to happen. There is probably a lot of hope that materials are distributed but in reality it does not seem to me, from the witnesses we have been hearing from, to be the case. I wondered whether that was a role that perhaps the government could take up as part of its operation with the people's movement and step back into that breach.

Mr Vaughan—If we are talking about materials relating to reconciliation as reconciliation as opposed to Indigenous affairs more generally, that role in respect of reconciliation was intended or contemplated to be taken over following the end of the council by Reconciliation Australia.

Senator PAYNE—Are they adequately funded to do that?

Mr Vaughan—They sought some variation in the funding agreement last year from the government to allow them a little bit more flexibility, and that was agreed to. They have not been back to the government since to revisit that question again.

Senator PAYNE—I can ask them about that on Monday, I suppose. Do you think it is important?

Mr Vaughan—I think it is important that there be if not some locus of responsibility then some point of focus at a national level for promoting the people's movement. That is what Reconciliation Australia is ideally placed to do. But I think it would be unfair to expect Reconciliation Australia to carry that role alone. In fact, there are other groups within the community, state based groups, which are seeking to play that role as well. So one cannot look at Reconciliation Australia in isolation from that.

Senator PAYNE—I was not. In fact, I was looking at the role that the government itself would play either through the broad activities of the departments that work in Indigenous affairs or perhaps even in the Indigenous curriculum in the department of education, and whether there could be some advances made in that regard. But I guess by the end of this inquiry we will be able to make some decisions and some suggestions on that.

Mr Vaughan—I think it depends on what you define as promoting reconciliation for this purpose. I think the department of education would say that a lot of its activities are contributing to reconciliation. ATSIIC would say that a lot of its advocacy role and publications are directed towards reconciliation. It does depend in a sense, when people use the term, on whether the word 'reconciliation' appears on the cover of the brochure or not. It is not necessarily a measure of the totality of the activity that relates to reconciliation.

Senator PAYNE—Perhaps in terms of the targets, benchmarks, monitoring and evaluation that we are talking about in the broad of this inquiry, one of the areas—and I do not expect you to comment necessarily—this committee could turn its mind to is how effective that really is at being disseminated since the council ceased to exist, and what depth we are reaching in the Australian community on the issues of reconciliation, both those that the government regards and states as being important and those that the organisations that you refer to as the people's movement regard as important.

Mr Vaughan—It is an interesting question. There are two ways of measuring it, I think. One is—and I will not go back to it but just refer to it—that if you define reconciliation in terms of eliminating disadvantage then you can measure it in terms of the Indigenous socioeconomic indicators. The other way, which I think you were just referring to in part, is in terms of generalised community attitudes and how that feeds through into behaviours. In terms of community attitudes, the Reconciliation Council in its last year of operation conducted some fairly extensive market research through Newspoll on attitudes towards reconciliation, attitudes

towards things like treaty and attitudes towards Indigenous issues. It would be open, for example, to Reconciliation Australia or anyone else to go back and ask those same questions again today three years later to find out the extent to which attitudes have shifted since then. That would provide one objective measure.

Senator PAYNE—It is an interesting suggestion.

CHAIR—Can I just ask a few questions in conclusion. Your submission describes that agreements are being developed between the Commonwealth, states and territories in respect of some of the service areas such as health, housing and whatever, and you talk about including performance reporting. Can you tell us what information has been sought and what benchmarks are being applied?

Mr Oxley—In relation to each of those various agreements, the responsibility for negotiating those agreements falls to the respective Commonwealth department. So, in the case of the health care agreements, it falls to the health department. Certainly, in relation to health, through the health ministers council there has been quite an extensive process of developing performance indicators for Indigenous health, which have been agreed nationally in consultations—

CHAIR—I am cutting you short there because we know all that. So you cannot tell us what that performance reporting entails, what information is sought and what benchmarks apply?

Mr Oxley—Yes, certainly, I was going to come to that. That is this document here, which is entitled *National summary of the 1999 jurisdictional reports against the Aboriginal and Torres Strait Islander health performance indicators*.

CHAIR—So there has been no progress since 1999—or I suppose 1997, when that was done?

Mr Vaughan—It was 1999 data that was produced in 2001.

Mr Oxley—There is a lag of a couple of years in the reporting. For example, if I open it up to page 16, it shows age standardised death rates for injury and poisoning by sex, Aboriginal and Torres Strait Islander status, and state and territory per 100,000 head of population. So there is a large set of indicators.

CHAIR—Can you take this question on notice: in those areas of health, housing and wherever else you anticipate or imply that agreements are being developed between Commonwealth and state, can you come back to us on what that performance reporting entails in a practical sense?

Mr Oxley—Certainly.

CHAIR—Also with the Commonwealth Grants Commission report on specific purpose payments to the states, there are reporting requirements that you talk about there in your submission. I would like to know what they are and once again what benchmarks apply. You also say that the ministerial council action plans ‘vary in their sophistication’. Basically we are talking about monitoring performance. Can you come back to us with the mechanisms that are

being developed to monitor that performance? We know about the benchmarks, but what is happening at the moment?

Mr Oxley—Certainly.

CHAIR—The other question I have is in respect of those 10 communities with the whole-of-government approach. Who is choosing them? Who is picking them?

Mr Oxley—They are being agreed between the Commonwealth and the respective state or territory government. The genesis of the identification of each of the communities was where there is a community that is actually having a go and has some reasonable governance processes in place, where they are making a fist of making things better but where they would benefit from the Commonwealth and the state or territory government working together more effectively. So they have tended to be in communities where one of the governments was already engaged in an active way. For example, in Cape York Peninsula, there had been quite a deal of work done by the Queensland government through Fitzgerald and before. It made sense for the Commonwealth and the Queensland government to work together in that particular area, given the intense national focus on the difficulties in those communities up there. Having had the Commonwealth and state governments come together and say, ‘We think these are the communities that we would like to deal with,’ it was then a question of going to those communities, explaining to them what the intention of the COAG trials was and asking them whether they would like to be involved, and then negotiating with the community as to whether that was something in the end that they wanted to do.

CHAIR—What about communities that maybe are not as advanced in getting it together—for instance, Yalata in South Australia—where, in a small community, the infrastructure is not working and has huge needs? Those sorts of communities do not get identified in this process.

Mr Oxley—Those communities do not get identified in this process but, of course, the normal processes of government continue. Where those communities have needs, governments address them through existing processes. The intent of the COAG trial—

CHAIR—This does not seem to be working in respect of many of them.

Mr Oxley—They are not, and hence the COAG trials where the governments collectively, concerned at the very slow progress being made in many communities, decided that it was time that they came together and sought to see whether the way they were actually working with these communities was the barrier to progress.

CHAIR—In a community like Yalata in South Australia where there are huge infrastructure problems, there is substance abuse and there is lots of petrol sniffing, how do we prioritise those? They are not being prioritised in your 10 communities process.

Mr Oxley—They are not being prioritised in that process, but each of those communities has a capability—though the on-ground capability obviously varies greatly—to engage with the service provision of the Commonwealth, where that is a Commonwealth responsibility, and with the state and territory governments where it is their responsibility.

CHAIR—Okay, but they are the hard cases. What does ‘whole-of-government’ mean in a practical sense? They have the federal, state and local government and they have resources; they have had the resources for a long time, and they have been applied and they have been misapplied. What new thing happens here administratively? What happens in a structural sense? Does one person have responsibility for that particular community? Or are we still talking about IDCs or about each government making its own assessment and taking decisions?

Mr Oxley—Where it is headed from the point of view of the Commonwealth input into this process is that, for each of these communities, we have a lead Commonwealth agency. For example, OATSIA will be the lead Commonwealth agency in the Tasmanian trial. The Department of Employment and Workplace Relations is the lead agency in Cape York and in Shepparton in Victoria. It essentially is acting as a broker at the Commonwealth level across all Commonwealth departments, with secretaries as the champion, so to speak, for those communities. There is a high level secretarial engagement in the process. So when a need is identified, if it is outside the policy responsibility of DEWR in Shepparton, for example, then DEWR is working with other Commonwealth departments where they have a service provision responsibility, to give it a priority to address the problem.

CHAIR—What degree of authority does that lead agency have? Is there, for instance, a cabinet decision that compels other service agencies of the Commonwealth to prioritise in accordance with that lead agency or are we still talking about those agencies having their independence and autonomy?

Mr Oxley—Those agencies all still have independence and autonomy, but what we have is a very high level of support for the initiatives, starting with the ministers and coming down to secretaries of departments. Frankly, those secretaries are watching pretty closely to make sure the officers are—

CHAIR—How have the ministers and secretaries expressed that? Is there a decision or are we just talking about a cooperative process?

Mr Vaughan—There are regular monthly meetings of the six secretaries concerned.

CHAIR—And they have made a decision to basically authorise the lead agency in whatever field trial we are talking about?

Mr Vaughan—Yes, they have apportioned lead agency responsibility among them by agreement.

CHAIR—How do we know if it is going to work? What benchmarks are you applying?

Mr Oxley—I think I said in relation to a question from Senator Crossin earlier that we were still working through the process of benchmarking how we actually make the bureaucracy function in a more joined-up way.

CHAIR—Let us know when you work it out. We had better wind up there. Thanks very much.

[10.08 a.m.]

BROWN, Reverend John, Co-Chair, National Sorry Day Committee

KINNEAR, Ms Audrey Ngingali, Co-Chair, National Sorry Day Committee

CHAIR—I now welcome Reverend John Brown and Ms Audrey Kinnear from the National Sorry Day Committee. You have lodged submission No. 8 with the committee. Do you wish to make any amendments or alterations to it?

Rev. Brown—There is an updated version of that submission, of which we have two copies here. The body of the submission is the same, but we have incorporated into this the responses by the government and opposition to the forum for which we prepared the paper which is part of our submission.

CHAIR—We will obviously receive that, consider it and then decide whether we can make it public immediately, but I do not anticipate any problem. Would you like to start off with an opening statement?

Ms Kinnear—The healing of the wounds caused by the policies and practices of forcible separation of Aboriginal and Torres Strait Islander children from their families is an absolutely essential part of the process of reconciliation. These practices affected the entire Indigenous community—that is substantiated in the *Bringing them home* report—and, as much as any other single factor, have damaged the relations between the Indigenous community and other Australians.

Indigenous people, and especially those who suffered directly under the policies, together with their families must feel that the story of the stolen generation has been heard and their grievance addressed before there can be coming together of hearts and minds in Australia. The observance of Sorry Day and the beginning of the journey of healing have brought a heartfelt response to the wider community, and this has enabled many of the people who were separated from their families to begin to move on. The response of state and federal governments have been piecemeal, inadequate and not well targeted, so it has not brought a warm response from the stolen generations.

The National Sorry Day Committee considers that there are five areas that must be addressed. The single most helpful action that the federal government could take would be to offer a national apology to the stolen generations. I must add that nearly every family who gave their stories to the national inquiry wanted an apology from the nation for the harm done to our people. The federal government allocated an initial \$63 million in response to the recommendations of the *Bringing them home* report. This funding was not well targeted, even though some good results have been achieved—for instance, through the recording of the stories by the National Library.

But the large allocation of \$34 million for stolen generations counsellors has missed the mark very largely for two reasons: first, it was labelled as mental health counselling, and stolen

generations people do not see themselves as being mentally ill; and, second, it was allocated to the Aboriginal medical services, and stolen generation peoples often do not relate to those centres. Their first port of call is usually Link-Up. We want state and territory governments to assess their response to *Bringing them home* report and develop methods of coordinating their programs with federal programs, perhaps through MCATSI, so that programs are available as widely as possible to the stolen generations.

Rev. Brown—The next point we want to make is that we need to assess the extent of the need. Several new Link-Up offices have been established through the initiatives of the federal government and other initiatives—that is a plus—but there are still only four or five Link-Up case workers in each state, while we estimate that there are several thousand people across the country who are wanting to find family members. Link-Ups and stolen generations counsellors are mainly located in the state capital cities. They tell us that they are so stretched in meeting the needs within those cities that they can do little in regional areas. We want a survey to determine the extent to which the family reunion services are needed, particularly in rural areas. If we are serious about reconciliation, we will find out the extent of the need and fund these services to meet the need. We will train the staff adequately for their immensely difficult work. Additional federal or state funding and/or state funding is needed for Link-Up services.

Finally, the stolen generations need to be involved in their own healing. The federal government has responded compassionately to the families of those who were killed or injured in the Bali bombings and has organised gatherings for the families of troops involved in the war with Iraq. Governments, state and federal, need to address the stolen generations in the same spirit. So far, with some exceptions, our governments at either state or federal level have not attempted to meet with representatives of the stolen generations. They are still largely treated as victims for whom someone else must find solutions.

Recently, Senator Kay Patterson established an innovative projects program which has helped to fund healing programs initiated by stolen generations group themselves, such as the former residents of Kinchela Boys Home. This has been very effective. We believe a consultation process must be developed with stolen generations people on the use of the ‘bringing them home’ funds. The National Sorry Day Committee is ready to help develop that process. What we are asking in this last point is that the stolen generations people be addressed as subjects—not treated as someone for whom something has to be done, but addressed and taken into confidence in developing the solutions to the grievances which they feel.

CHAIR—Thank you very much.

Senator CROSSIN—Reverend Brown and Ms Kinnear, welcome and thanks for coming. You were sitting at the back of the room when the Office of Aboriginal and Torres Strait Islander Affairs and the Department of Immigration and Multicultural and Indigenous Affairs presented their submission to us this morning. What is your reaction to this comment from their submission:

The Government is aware of criticism that its practical approach to reconciliation does not acknowledge the consequences of history. This is incorrect. Quite to the contrary, its policies are designed as a direct response to the legacy of disadvantage that flows from that history.

How would your committee respond to that statement?

Ms Kinnear—My first response would be that one would expect such a statement from the representatives of the government where reconciliation has not happened, and it could really be helpful to the nation if the government and the Prime Minister supported the process. The fact that the recommendations of the council have not been implemented is indicative of that. This is probably not the forum to do it, but it is just one example of many pieces of unfinished business for Indigenous people.

Senator CROSSIN—Those departments would respond to that by saying, as their report states:

It should be noted in relation to the Council's final report that its recommendations were not directed exclusively to the Commonwealth ...

In fact, this morning we heard about the Commonwealth's responsibilities and what is happening in the people's movement. Do you think that there is a role for the government to play in leading both arms of reconciliation?

Rev. Brown—I think there is an important place for both government and community response and for community activity. There is need for both symbolic action and practical action. To say that symbolic action is not practical action is a bit funny, actually. It is very practical. For instance, to erect a memorial or to dedicate a place to honour a particular part of the history, is that a symbolic act or is that a practical act? It is practical in the sense that it has a very direct effect on the healing of the people who see that place as a place that honours their story.

Senator CROSSIN—Professor Mick Dodson put it to us yesterday that the people's movement may well be progressing, albeit slowly and with limited funds, but that it really needs to be driven by the leadership of the government. Is that something you would agree with?

Rev. Brown—We think there needs to be both. There needs to be a lead from government. We hear that as a very muted voice at this part of our history. Since the end of the Council for Aboriginal Reconciliation, it seems to have been a muted voice. We think that both are needed. People respond to leadership. If the national leadership does not give a lead then people also wonder how they are to respond, although there is a strong people's movement.

Senator CROSSIN—Has the \$63 million that was initially allocated to the Link-Up services and to addressing the needs of stolen generations been increased or varied since that initial expenditure?

Ms Kinnear—I had a meeting with ATSIC two months ago, and I believe there is a review being undertaken at the moment of that. They will report back to the minister and to us.

Senator CROSSIN—So you are not aware—it was \$63 million each and every year—

Ms Kinnear—No, no it was definitely one-off and it is the review of that initial funding that was allocated. There has not been any additional funding.

Senator CROSSIN—There has been some talk about trying to benchmark reconciliation—how we work out when we have got there, what the indicators are and how we do this. Has your committee played any role in that or do you see a role for your committee in that?

Ms Kinnear—The National Sorry Day Committee is certainly playing a huge role in that, and certainly we were involved in the hundreds of people that walked across the bridge. I must put on the record that the Prime Minister was in his taxpayer funded Kirribilli residence, observing it from there. I think the one single thing that is missing in this process is the leadership by the government. It is not happening. We have just been planning our events for 26 May this year. Each state and territory has wonderful programs, including in the parliament house here. The people are very generous with their time and want to learn and want to heal, but the failure is in the leadership of the government.

Senator RIDGEWAY—There are just a few things. The first thing is that you have been involved in this for many, many years now, and I just want to put on the record my congratulations to the National Sorry Day Committee for showing the leadership that has been lacking. Certainly, if that focal point had not been created then a lot of people would be lost. I just wonder whether you could describe the nature of the relationship now between the National Sorry Day Committee and the government in any form? Do you believe that, in the spirit of what reconciliation is about, you are moving forward or standing still or that things are going backwards?

Rev. Brown—There are things on both sides of the ledger, I suppose. First of all, we can talk about the states. The Victorian government has presided over the establishment of a stolen generations association in Victoria. That is the first time that there has been a dealing with the stolen generations as a group of people who need to be addressed and who need to be heard. That has been a great plus. Something similar may be developing in South Australia, but it has not yet.

Here, we are negotiating with the government over the memorial—although they do not call it a memorial, and we do not know what to call it—that is, the place in the parliamentary triangle where this part of the history is to be recorded. The National Sorry Day Committee was quite unhappy with the original proposal for a sliver to be erected down there. We did not think that that told the story in any balanced way. We obtained agreement from the government that the National Sorry Day Committee would then conduct a survey of people who were affected by these policies and bring back a proposal for a memorial which told the story from all perspectives: what governments intended when they implemented these policies, what the churches thought they did when they set up homes for children or set up adoption processes and so on, and the people who suffered under these policies. I say ‘suffered’ because there was real loss and you can only describe it as ‘suffering’. So we have brought a proposal. It has not yet been approved by the government, but we are in the process of negotiations. So, there are some steps forward. Further, we indicated that Senator Kay Patterson and the health ministry has established some contact with the stolen generations in at least two places, which has been positive. So there are some positive things. It is slow work.

Senator RIDGEWAY—You are no doubt aware of some of the issues that are now arising within each of the states, particularly in relation to the question of stolen wages and the offer that came out of Queensland and the Beattie government. Certainly in New South Wales, the Carr

government are considering their own proposal but it was an issue that was never looked at in any way or surfaced during at least the debate over the past decade and longer. I wonder whether you have any comments about the appropriate way of being able to deal with unpaid wages to what was, in effect, a servant class and most of that being appropriated by governments for public infrastructure, hospitals, roads, et cetera—how that might be dealt with and whether the federal government has the responsibility of showing leadership on that issue is another thing that still needs to be resolved.

Ms Kinnear—I would just like to say that communication is a wonderful means of people sitting down and discussing their needs. Also, it is about justice and rights. If the state governments do not take the appropriate action to meet with the relevant people who were denied their wages, then I think that the federal government does have a responsibility to take that on board and ensure it happens—because if it does not, it is like the apology. I am not going to rest until we get an apology from the nation. To be taken away at the age of four years and not having any family, raised in institutions and then at the age of 28 to find out that you do have a mother and that my three siblings are still alive, why did that happen? I, for one, am not going to let this issue lie. And it will happen. If you look at the South African model, they have dealt with their justice and reconciliation. Here we are, a population of 20 million and with an Indigenous population that is two per cent of that, what is the problem? The problem is personal. They do not have the heart and the will to do it. That is what it boils down to. We have to wait for a future government to meet our rights.

Senator KIRK—Thank you very much for your submission. I wonder if you could elaborate some more on what you outline on page 38 where you talk about a reparations tribunal. You make the point:

The Federal Government has refused to consider any alternative to litigation in the Court system for stolen generations people who seek compensation.

You note there that last year the committee got together with the Public Interest Advocacy Centre and carried out some consultations in relation to a reparations tribunal, and a report was published. Unfortunately, I have not had the chance to look at the report. I wondered if you could outline the nature of the consultations and what the findings were in this regard, because it is something that interests me.

Ms Kinnear—The consultations were like selecting a sample group because we did not have the funding to do all of the communities. Each community or sample group they consulted wanted something other than going to court, and their recommendation was reparation. We then had a national conference in Sydney where many, many people from around the states and territories came and also supported reparation but, regrettably, the minister for Aboriginal affairs attended that conference and rejected every recommendation. That is where we are at.

But we did have some light in the tunnel with the victory of one of our members who went to the New South Wales Victims Compensation Tribunal and was awarded costs for injuries that occurred to her some 40 years ago. So the door is opening for reparation and healing.

Rev. Brown—The Canadian government has now established a process where the people who were brought up in the residential schools, the equivalent to the stolen generations, can now

proceed either through the courts or through an alternative disputes resolution mechanism which they have set up to resolve their grievance. That has the agreement now of the federal government and the provincial governments and also of the churches, including a formula for who pays for what. So there is a precedent now. It can work in other places.

The other thing I would say is that, wherever we have consulted with the stolen generations, the first thing that has come up is: 'We want to hear an apology.' The question of other kinds of reparations is secondary but, nevertheless, we believe must be addressed. A different process from fighting every inch of the way through courts is needed and a precedent has now been set by Canada.

Senator KIRK—Would it be your view that the Canadian precedent would be appropriate here in this country?

Ms Kinnear—Definitely. We recently had an Indigenous woman from Canada visit us. She also attended an international conference in Sydney. In Canada they have set up dispute resolutions as a forum of discussing what they want and for reparation. That is working really well.

Senator KIRK—You mentioned that in the Canadian system there is a court based system as well as the dispute resolution tribunal?

Ms Kinnear—Yes.

Senator KIRK—But, from what you have told me, you would prefer the dispute resolution tribunal?

Ms Kinnear—It might be of interest to the senators that they are also going to have their annual day on 26 May, which is similar to Australia's National Sorry Day.

CHAIR—Thank you very much and thanks for your evidence this morning. We have had a look at the amended submission and that has been approved for publication. Thanks very much for that as well.

Rev. Brown—Thank you, Senator.

Ms Kinnear—Thank you.

Proceedings suspended from 10.32 a.m. to 10.41 a.m.

FOLEY, Mr Cliff, Commissioner for the New South Wales Metropolitan Zone, Aboriginal and Torres Strait Islander Commission

ROBINSON, Mr Ray, Acting Chairman, Aboriginal and Torres Strait Islander Commission

SCHNIERER, Mr Peter Noel, Manager, Coordination and Review Policy Group, Aboriginal and Torres Strait Islander Commission

CHAIR—I welcome Mr Ray Robinson, Mr Cliff Foley and Mr Peter Schnierer from ATSIC. You have lodged submission No. 80 with the committee. We will just pause for a moment. You would like to lodge an amended submission; is that the case?

Mr Robinson—Yes.

Mr Schnierer—Yes, we would like to table a revised amendment.

CHAIR—How do you intend to do that?

Mr Schnierer—I have already provided a copy to the secretariat.

CHAIR—Revised submission.

Mr Schnierer—We have additional copies here. The amendment is just a deletion of one paragraph. So if you have the older version, I can point out where that paragraph is.

CHAIR—Yes, if you like.

Mr Schnierer—It is on page 14. It is the paragraph that starts with the words ‘It has been two years.’ We simply want to delete that paragraph. That will be reflected in the revised submission.

CHAIR—Approval is given. Would you like to start by way of an opening statement?

Mr Robinson—Yes, I would. I have some talking points here. The Aboriginal and Torres Strait Islander Commission, ATSIC, is disappointed with the Commonwealth’s response to the Council for Aboriginal Reconciliation final report. The council spent considerable time and resources in preparing its final report, which included detailed national strategies to advance reconciliation in this country. ATSIC believed that the council’s approach provided the basis upon which to progress reconciliation and as such deserved greater support by the Commonwealth.

The participation of tens of thousands of Australian citizens in reconciliation walks during 2000 in cities and towns around the country gave some real hope that reconciliation was achievable. Regrettably, the federal government chose not to translate this goodwill into tangible outcomes. Racial prejudice still confronts Aboriginal and Torres Strait Islander people in our daily lives. Unfortunately, the recent attacks on the commission by the media, supported by

some government members, do not give hope that much progress will be possible in the near future.

The bias against Indigenous people in the mainstream media has been clear. How can reconciliation be advanced when we have the *Courier-Mail* publishing editorials that attack ATSIC in an unfair and unreasonable way? I will table the editorial from the *Courier-Mail*. Just briefly, ATSIC has never ever handled education and employment and it has been eight years since we handled health, but papers like the *Courier-Mail* and the mainstream media continually attacks ATSIC on portfolios that we do not handle. This was part of the process—they used this against us in the move to restructure and dismantle ATSIC.

Senator PAYNE—I would just note, Mr Robinson, that ATSIC is hardly alone as a victim of inaccurate reporting on occasion though.

Mr Robinson—Right. The media needs to be more mature about their reporting of Indigenous issues and they should seek out the Indigenous perspective in order to construct more balanced coverage. There has also been a number of trials by media that have made judgments about people before due process is allowed to run its course. We call on the government, especially the Prime Minister, to show the leadership required to overcome these obstacles and to resolve our differences in a negotiated and constructive manner.

ATSIC remains committed to working closely with the Commonwealth to formally resolve differences between Aboriginal and Torres Strait Islander people and the wider Australian community. ATSIC is willing to continue to work with the Commonwealth on practical reconciliation measures. However, we note that these measures alone will not result in true or full reconciliation. We also need to focus on the fundamental rights of Aboriginal and Torres Strait Islander people in order to develop an inclusive Australia that acknowledges the mistakes of the past and is proud of its heritage.

There are a number of issues that are central to this committee's inquiry. Apology—the issue of an apology is fundamental to the reconciliation process, particularly as many members of the stolen generation and their families consider that a national apology is crucial to the healing process. ATSIC does not support the view by the Commonwealth that a formal apology will result in a substantial payment being made to those affected by past government policies on child separation. From my perspective, an apology from the government or the Prime Minister now would be a hollow gesture. A lot of time has elapsed since the stolen generation report was released, and in my view the Prime Minister demonstrated that he is not willing to offer an apology.

Treaty—the Commonwealth also needs to consider a process for negotiating a treaty with Aboriginal and Torres Strait Islander people. ATSIC strongly supports the Council for Aboriginal Reconciliation's draft legislation which specifically called for the Prime Minister to begin negotiations with us to develop a process to unite all Australians by way of an agreement or a treaty. Through this process, unresolved issues of reconciliation may be progressed and ultimately resolved. A properly negotiated agreement would establish a framework between Aboriginal and Torres Strait Islander people and the Australian government. It could cover relevant issues such as the legal and constitutional recognition of our people's inherent rights; recognition and protection of our unique cultural heritage; and control over our lands, seas and

resources. The issue of a treaty or a formal negotiated agreement remains high on ATSIC's agenda. We have undertaken an extensive consultative process with the Aboriginal and Torres Strait Islander community to obtain its views and to seek their support to advance this matter. ATSIC is committed to promoting awareness, understanding, acceptance and support for the treaty concept for all Australians.

Constitutional change—similarly, we note that the Commonwealth is generally supportive of the removal of section 25 of the Constitution and we believe that measures should be taken to effect its removal by way of referendum. ATSIC believes that another significant constitutional amendment, possibly in the preamble to the Constitution, is also required to acknowledge that Aboriginal and Torres Strait Islander peoples are the original inhabitants and custodians of this land.

Self-determination—the principle and process of self-determination is central to the reconciliation process. ATSIC has the potential of becoming a more powerful tool for advancing Aboriginal and Torres Strait Islander aspirations and addressing particular needs, especially at the local level through our extensive national network of regional councils. This concept requires Commonwealth, state, territory and local governments to link or integrate their regional planning and interventions with the planning of the regional councils. This would be more cost effective and result in improved outcomes being achieved for Aboriginal and Torres Strait Islander peoples. This process would also ensure the involvement of Aboriginal and Torres Strait Islander people at the grassroots level in the design, development and implementation and evaluation of programs and policies. Such an approach is being tested through the current COAG sponsored whole of government trials in communities around Australia with active involvement by ATSIC and regional councils. This needs to be extended to become the hallmark of our government doing business with Indigenous people.

Improving the delivery of services—the recent Productivity Commission *Report on government services 2003* revealed that the situation with Aboriginal and Torres Strait Islander people in all areas where governments provide service remain markedly poor. We acknowledge the Commonwealth is seeking to address these deficiencies through COAG initiatives, but measures need to be implemented that move beyond the practical reconciliation priority—areas of health, housing education and employment.

Native title—the process for determining native title continues to fail our people. Governments have been slow or unwilling to make the cultural shift to acknowledge and accept that Aboriginal and Torres Strait Islander peoples have distinct and special rights arising from our long-established occupancy of the land and our sovereignty. In 2002, ATSIC called for a candid, bipartisan appraisal of the 1998 amendment to the Native Title Act 1993, which was based on a political compromise and bypassed the interests of Aboriginal and Torres Strait Islander people. ATSIC's position remains unchanged, and we call on the Commonwealth to work closely with ATSIC to resolve those concerns.

Review of ATSIC—the commission supports the ATSIC review now in train and is committed to actively supporting worthwhile reforms that may flow from it. The commission's preference is to renew ATSIC in terms of reinstating its program budget appropriation and reuniting elected and administrative arms into one organisation. This structure would be firmly committed to improving internal governance and the separation of powers concept addressed through revised

legislation. ATSIC's submission to the current review provides what we consider would be the best approach to the national and regional level representation of Indigenous peoples and thus provide the most appropriate point of reference in the Indigenous community for the government and the parliament to move forward on reconciliation.

Finally, I want to inform the committee that practical reconciliation is already happening in many communities. In particular communities, Indigenous and non-Indigenous people are working together to improve the living conditions of Aboriginal and Torres Strait Islander people. Having said that, I invite the committee to visit Charleville to see for themselves progress that has been made in my community where we work together in a constructive way.

Mr Chairman, I acknowledge the traditional owners of the country, the Ngunnawal people. I also acknowledge the only Aboriginal member of parliament, Senator Aden Ridgeway. Thanks very much.

CHAIR—Thank you very much and thanks for the submission. I would like to kick off the questioning and get from you, for the purposes of the record, an indication of why you think the rights agenda, the symbols agenda, is so critical in the process towards reconciliation. You mentioned that an apology now would be a hollow gesture—I presume you mean from this Prime Minister—but can it become a meaningful one in the future? Is the process put on hold while we actually get to that stage?

Mr Robinson—I think it is very difficult to achieve better race relations in this country and practical reconciliation while we still have very discriminatory laws in this country against Indigenous people. Even with the mainstream media, there is always the negative printed as far as Indigenous communities are concerned. Aboriginal people are still the most incarcerated people. Every report that has ever come out as far as mortality rate is concerned states that we are eight times worse than that of the rest of the community. The living conditions of some Aboriginal and Torres Strait Islander people in outback communities are absolutely appalling. ATSIC at a very young stage in a lot of the mainstream media—anything that goes on in Aboriginal and Torres Strait Islander affairs is blamed on ATSIC, yet we have no responsibility for a lot of these programs. We have no money for family violence. We have never been given any money by the Commonwealth, only very little bits of money. That is a state government responsibility, yet the state governments are never criticised.

The human services department within this government is responsible for Aboriginal health. We lost Aboriginal health about eight years ago. When we had Aboriginal health, the budget was about \$96 million. It is about three times that amount, but the health problems of Indigenous people rural and outback communities have increased threefold, yet ATSIC continues to get the blame.

With educational programs, we have curriculums in schools but not enough in the curriculum emphasises Aboriginal culture. I just put it to you this way: the education system itself discriminates against Aboriginal and Torres Strait Islander people. If non-Aboriginal people want us to learn their ways, they have to learn a bit of our ways. That leads to a better understanding.

If I can just give Charleville as an example. We have a community organisation where 297 people are employed—60 per cent of those people are Indigenous people and 40 per cent are

non-Indigenous people. They work together. We have businesses in the town and we are moving towards economic independence. We run cattle properties, we run motor dealerships, we run mechanical shops, we run panel beating shops and we use educational training programs to train both black and white Australians in that community. In Charleville there are about 500 Aboriginal people in a community of about 5,000 people. That is just to give you an example.

When we talk about the rights of Aboriginal people in this country, when the Mabo decision was brought down, it said that we were the prior owners of the country. It was a very brave decision at that time, I thought, that was made by the High Court of Australia but I do not think it went far enough. If the government does not want to work with us and go down that track, then we need to go back to the High Court. It should have gone that step further. If we were the prior owners of the country, when did we seek sovereignty? When did we give our ownership away? Because we, unlike the Mauri people in New Zealand, did not sign any treaty and did not accept any beets. The High Court made that recognition but, somewhere along the track, if they recognise that you are the prior owners of the country, then we all have to ask ourselves this question: when did we seek sovereignty?

CHAIR—Mr Robinson, that is a fair point and I think you have explained the importance of the rights agenda. Going to the responsibilities of ATSIC, Charleville might be one example, but you can go all the way up through South Australia and through the Territory, and you will find community after community in a wasteland situation with kids sniffing petrol and whatever. We have been told by the government that ATSIC has an important role in relation to the performance monitoring and reporting in these areas. You may not have that health budget, but what role does ATSIC have in respect of the monitoring of outcomes and performances? To what extent do you think the system is delivering? Where would your priorities be in terms of enhancing both the outcomes and the performance and monitoring of the services? I think that is a critical issue.

Mr Robinson—We have housing infrastructure programs in those areas. We have got a Work for the Dole scheme—36,000 Aboriginal and Torres Strait Islander people work for CDEP programs. Most of those communities are working on the Work for the Dole scheme, CDEPs. As far as their housing conditions are concerned, through the housing infrastructure program we have expert consultants that come in and evaluate the housing and tell us how much money is needed in those communities to fix what. A lot of those communities are not really supported by state and local governments. ATSIC cannot be superman in a lot of these Aboriginal communities.

I take the Queensland communities, for instance. Though they have local government elections, they do not get the same benefits as non-Aboriginal local governments. So a lot of the funding that goes into those communities comes from ATSIC and very little comes from the state or local governments. With water and sewerage and all the things you are talking about, you will probably remember some time back that we could not get to enough of those communities quick enough and we had to call in the Army. ATSIC has not got enough money to cover all the communities. Peter might like to add a bit more.

Mr Schnierer—In terms of monitoring and reporting, ATSIC has been on the front foot about being engaged with government and wanting to work with government since ATSIC's inception. You might recall that we were party to the original COAG decision about implementing services

in Indigenous communities where we strongly pushed for a greater role and transferring the role that we have in the act into practice. Early on we found that there is not the same degree of accountability in some respects in terms of ATSIIC's funding and mainstream funding. So when ATSIIC tries to monitor and report on what is happening across governments, it is very difficult to find out what the mainstream resources are actually achieving in Indigenous communities because, as the acting chair has indicated, we have a lot of trouble trying to keep the focus on those sorts of issues.

At the end of the day, ATSIIC's funding is, for all intents and purposes, supplementary funding and is fairly limited because we have to stretch across all the needs and aspirations that people have across the board in terms of services that they want to provide. We have been pushing very strongly to have a greater active role, particularly in relation to federal assistance grants that are given to states and territories which basically are untied and do not require reporting to any great extent in terms of Indigenous-specific outcomes. We are very interested and positive about some recent steps that have been taken, particularly through the Productivity Commission in its development of the Indigenous disadvantaged indicators that it is working on now. We are very much a party to that because we believe that, for the first time, we might get some progress in terms of being able to get hard data and performance information on various programs across the board.

In addition, we have noticed that the Productivity Commission over the last 10 years, through its publication of what it calls the blue book, which basically looks at the effectiveness and efficiency of government services, has developed a much stronger emphasis or focus on Indigenous people to the point this year where it has published a separate document called *The compendium on Indigenous data*. That for us has been a great step forward because mainstream government is starting to produce—through agencies like the Productivity Commission—data which we can look at and which is independent of us, so the information is not cast in any biased light. It shows across the board what is not happening and, I think, showing that, in relation to mainstream effectiveness of programs, there is a long way to go.

Our reporting is dependent on the quality level of data that we can access. As I have indicated, that has not been as deep and sophisticated as we would have liked. However, the census material does provide us with a fair range of material. We analyse that and we provide that through our reporting and submissions. We have brought some of the Productivity Commission material into our submission here. So, in that sense, we are monitoring as best we can. We are working with governments, Commonwealth and state, to improve the quality of data.

CHAIR—I am wanting to work out what that means. We talk about performance indicators, we talk about action plans and we talk about benchmarks. While kids are sniffing petrol, we are still trying to work out which is which and what constitutes what. You mentioned that you are part of the COAG process in developing action plans and that there is a working party doing that. Who is on the working party? I just want to get an idea of how far that process has gone and I want to get an idea of the benchmarks. That process has been going for two years. For me, it cannot be all that difficult to work out an action plan. You could probably knock it up in a couple of days if you sit people in a room with the will to do it. Why has it taken that long to develop action plans? Who is on the working party doing it and who is chairing that working party?

Mr Schmierer—I think some of those questions are better directed—

CHAIR—You do not know who is on the working party? You are on it, aren't you?

Mr Schnierer—We are engaged with it and we participate in it. But, for example, on the COAG trials with the whole of government initiative now in the 10 communities—

CHAIR—I do not want to move to that; I want to focus on this action plan. Who is on the working party? Are you on it?

Mr Schnierer—As I understand it, it is driven basically through OATSIA in DIMIA and through PM&C.

CHAIR—Are you actually on the working party as members?

Mr Schnierer—We are represented in terms of the secretaries group through our CEO and we interact at an officer level with it. In the last six to eight months, our commissioners have made a strong commitment to working with the various ministers—

CHAIR—Sure, but why has it taken two years to get an action plan drawn up?

Mr Schnierer—It is not our action plan.

CHAIR—But what is your experience of it? You have been part of it for two years. Why has it taken that long to get an action plan drawn up, from your experience?

Mr Schnierer—I think to a certain extent it is the difficulties that most mainstream departments have in fully understanding and appreciating what the situation is and the principles and best ways that you should go about dealing with some of the challenges that are out there—a basic one being whether Indigenous people are part of the design, development and delivery of services. We have had that ongoing debate and have been actively pushing that principle with mainstream departments for 10 to 12 years. As the acting chair mentioned, our regional council plans are there and are statutorily set up. We make those available. We try to create interaction between our regional councils and Commonwealth agencies and state agencies.

CHAIR—Sure but, getting back to the action plan, is ATSIC happy with its progress?

Mr Robinson—No. As I said before, we have difficulty dealing with mainstream departments. My understanding is that ATSIC's budget is over \$1 billion but, in other government agencies, we have another \$1.6 billion. At a regional level, when these government agencies—whether they are state or federal government agencies—come to the region, they never consult with the elected arm, the regional councils. It is very difficult to have a sort of a plan for the whole of the region or the whole of the state.

CHAIR—Mr Robinson, we are talking here about a particular process which is supposed to be quite critical to the delivery of state and federal government programs and the monitoring of them. I suppose I have made my point.

Mr Schnierer—In terms of the process for those action plans, ATSIC was involved in inputting advice when sought but, at the end of the day, it is a question of how much of that

advice is taken up. We have actually been interacting through the officers groups with ministerial councils, having a look at their various action plans as well. We bring forward our position and perspective. At the end of the day, it is not up to us to determine what those action plans actually do. We try to be supportive and we try to be proactive about pushing the issues that we have, but at the end of the day we do not have control over what actually goes in those plans.

CHAIR—I was not going to ask another question but I will now. In terms of what you would like to see in an action plan, is there one document that represents ATSIC's position on what would be ideal for an action plan?

Mr Robinson—Senator, I just have to say this: that is our problem. That is what we are talking about here. When ATSIC puts up something, the other government agencies ignore what we put up, and it is very difficult to come up with any action.

CHAIR—I want to get an idea of what you have put up, Mr Robinson. Can you take it on notice and come back to us with information as to what you have put up to the process as being an ideal action plan? It is a document we are looking for.

Mr Foley—In the situation we are in currently with this separation of powers, we are negotiating with the minister to look at the role of ATSIC in relation to addressing the issues right across all our communities. In terms of the question you asked earlier, one of the problems is the lack of response and the lack of action by the other Commonwealth agencies to work in addressing these needs. We want a whole of government approach to look at some of these things and have proper action plans.

Our plan is to look at being the driving force to bring those changes through by having those agencies all work together with ATSIC and bring those from the community up to address it. We can do it but we have to have a commitment by the other Commonwealth agencies to do it. We are looking to our minister to deliver that. We are quite happy to take that on board, because I think that will come out more when we are looking at some of our policies. But we will be looking for further support to be able to deliver that because we need the other members of cabinet to direct their departments our way.

CHAIR—I better move to Senator Ridgeway but, if you can take that on notice, that would be great.

Senator RIDGEWAY—I wanted to follow along the line of some of the questioning from Senator Bolkus. I draw your attention to this statement in your own submission:

The purpose of this submission is to provide an assessment of the Commonwealth Government's Progress Towards National Reconciliation.

We heard from the government this morning, through the Office of Aboriginal and Torres Strait Islander Affairs, who said in their own submission that it considers that ATSIC has an existing and important role in relation to performance, monitoring and reporting. Given the questions that have been asked so far, does ATSIC consider itself to be a major player or a minor player in relation to that statement about monitoring and reporting on progress on reconciliation and Indigenous affairs?

Mr Robinson—For me—and other people can speak for themselves—I think we are only a minor player so far in this reconciliation process. There has not been much negotiation or contact with us at all in this regard.

Senator RIDGEWAY—Given the recent announcements by the minister in relation to ATSIC, what view have you formed about the roles and responsibilities that you should have in relation to being able to assess, monitor or report on issues concerning reconciliation being achieved, particularly on Indigenous social disadvantage?

Mr Robinson—I think we should play a major role, as we should play a major role in all government agencies that have some responsibility for the lives of Indigenous people. But that is not the case at the moment, and the minister has not helped ATSIC achieve those aims of moving us down that line.

Mr Foley—We should be a major respondent to a lot of those issues. We are fully elected. We are a national statutory body fully elected from all communities throughout Australia. Our networks have community based connections. We can draw on that and we can report on that. We have a better handle probably than all the other Commonwealth and state agencies. Given that responsibility, if we were allowed to pursue that properly and have reporting mechanisms whether into the parliament or into the cabinet sessions of government, we need to be able to report on that properly. Our funds are supplementary. The major program deliverers are the other major departments around the place and they do not have to consult ATSIC and they should do because we believe, in terms of our submission to the review, that we have a role to play—and a major role if this government wants to pursue reconciliation. The chair's question a bit earlier about why we pursue our issues of rights, it is simply because we are Indigenous. We are the owners of country and it is our inherent Indigenous rights to pursue those actions and to advocate on behalf of our people.

The federal government have picked up on some of these and started to pursue it in terms of the self-determination of the Iraqi people. They are over there fighting for their rights. I would like to see the time when they start fighting for some of our rights in terms of Indigenous inherent rights in this country. They are on the right track but they need to focus inwards rather than focus outwards.

Senator RIDGEWAY—We heard from the government this morning that they regarded that, even with recent announcements, the decision about separation of responsibilities would not essentially change anything that ATSIC does. Do you hold the same view?

Mr Robinson—My view is—and I brought it up in the last two board meetings—that the CEO cannot be the CEO of ATSIC under the ATSIC Act and be the CEO for this new agency because there is a big conflict of interest there. On the one hand, he is answerable to government because with the new agency he is directly answer to the minister. However, as the CEO of ATSIC, he is answerable to the board of commissioners under the ATSIC Act. I think we have a problem with a conflict of interest there.

I also think we have a conflict of interest where the same staff that are maintained under this new agency still work for the elected arm. I think the elected arm needs to have their own budget and their own staff. I think we have taken a backward step about 30 years and we are back to the

old NACDAA days, when the bureaucrats made all the decisions as far as Aboriginal communities were concerned and when the elected arms just sat around twiddling their thumbs and dealt with policy that the public servants took no notice of. If we are going to have staff that work for the elected arm, those staff should have to be on contract and have to be taken out of the Public Service. I do not think that the present situation, the interim situation that we have set up now, can really work with one CEO for both departments. That is my opinion.

Mr Foley—Into the future we look to the time when it is all back together. It was something that was imposed upon us. It was split in terms of the appropriation process of the budget. We were working to a timetable of the review. It seemed to be that the minister pre-empted that and we were put in a situation with the appropriation process where those powers were split. Our view, in terms of our submission to the review, is looking forward to when it is back together and we have control of those funds.

In negotiating that position now with the minister, we look to the government and to the minister giving us a broader say and input into some of the programs and initiatives from the other major departments so that we can look at proper outcomes and development of services in our communities. It is a bit like in terms of what we will get back to you, Mr Chair, about some of those COAG trials. That is our view on it, but we look to the time when it will be back together and we have more say and more effect in delivering services and providing good reports back to your Senate committees here on what we are actually achieving in terms of reconciliation.

Senator RIDGEWAY—You do not have to answer this next question if you do not feel that it is appropriate: what is the nature of the relationship between ATSIC and the minister? Would you describe it as a warm and workable one?

Mr Foley—Healthy and robust.

Mr Robinson—I think Cliff has just said healthy and robust.

Mr Foley—At least both sets of doors are open.

Senator RIDGEWAY—So being a minor player, as you describe it, and being involved in the processes of looking at initiatives at the COAG level, how would you respond to issues to do with whether states or territories are being cooperative, including agencies— federal, state and so on—in dealing with questions of reconciliation and benchmarking standards? Is the political will there, first of all? Are they taking seriously the need to deal with the problems that exist? Is it fair to say that they are there 110 per cent doing the job that they are supposed to do?

Mr Robinson—The states and territories are definitely not doing their job. We look a long time to get bilateral agreements drawn up with state and territory governments. It has taken ATSIC a whole 10 years to do that. We have bilateral agreements, I believe, drawn up with each state and territory governments and ATSIC. But with this new separation of powers, that puts it on the back foot, because how do we work it from there? ATSIC has no more money so they cannot make a contribution to the bilateral agreement anymore. I do not think that this new structure that has been put in place can work, because I think there needs to be amendments to the ATSIC Act. I think it needs to come back before parliament. I do not think you can put it in

place, even on an interim basis, because we have bilateral agreements with just about every state and territory government. We can no longer produce on those bilateral agreements because we have no money. The money has gone to the new agency.

Senator RIDGEWAY—If you are a minor player in the scheme of things, and given what the government has said about the promotion of partnerships and engagement with Indigenous people, where does the government seriously engage with Indigenous people to not only develop policy but also implement service delivery if you do not feel that you are the body, even under your own legislation where you are supposed to be primary adviser? How and where is that occurring in relation to the other arms of government dealing with Indigenous affairs?

Mr Robinson—It is not, simple as that.

Senator RIDGEWAY—So it is fair to say that it is being run by the bureaucrats?

Mr Robinson—That is right.

Mr Foley—In terms of those framework agreements between the Commonwealth, the state and ATSIC itself to look at coordinating some of these services, it was a great initiative of the previous board in terms of what they achieved. But there needs to be a proper commitment now by the Commonwealth to make the states come in line with it.

In terms of your question about reconciliation, I have never heard the issue raised from any of the state or territory agencies in negotiating anything with them. I do not believe reconciliation is on the table for any of them. They are quite happy to talk something up as long as they are still getting their tied or untied grant funds from the Commonwealth. But those framework agreements have been signed as an initiative by Aboriginal people. The potential is there for them to work, but there needs to be a bit more weight behind it rather than just a small agency like ATSIC trying to push it. We can keep talking it up, but there has to be a major commitment to drive it. We will do everything we can, because at the end of the day it is our commitment to the needs of our communities out there. That is what we will be trying to bring through all the time, but there needs to be that coordination and cooperation.

CHAIR—Just one last question, you mentioned what you see as the incompatibility between ATSIC's CEO also having another position in the new structure. Does ATSIC have the capacity to change their CEO in these circumstances or are you actually stuck with the situation?

Mr Robinson—We have sought legal advice from a QC with regard to what our legal position is here and whether there is a conflict of interest. We hope to get that legal advice in about three or four weeks. One of the problems on our mind is that assets need to be signed over, because the money is no longer for the elected arm; it is in the new agency. As I said before, the CEO under the ATSIC Act is the CEO of ATSIC. In consultation with the board, the minister appoints him, but the board gives him his delegations and the board can take those delegations away from him. He is head of all of our staff as they are at the moment. When those staff transfer to the new agency, he will be head of that new agency, the CEO and head of those staff. We will be left with a shell of probably 20 support staff in the elected arm. I for the life of me cannot see how this separation of powers benefits the Indigenous people of this country. I understand that at the moment it is only an interim measure. We have put in a submission to the review and we are

waiting for the outcomes of the review. As it stands now, I do not know how things are going to work administratively.

CHAIR—Can that submission be made public and can it be provided to the committee?

Mr Robinson—Yes. We signed off on that submission yesterday. We have no problems providing it to the committee.

CHAIR—Thank you.

Mr Foley—Our problem was that we have no money now so we had to ask the ATSIC CEO to get legal advice on the CEO of ATSI. Surely it is deemed some sort of conflict of interest in getting a QC's advice on his own position. That is what Sugar would say.

Mr Schnierer—The difficulty is that the ATSIC Act, as it currently stands, does not provide the flexibility for employment for people outside of the act and, in terms of the employment of consultants, it has to be done through the whole board. So there is an inflexibility built in there when you want to engage more independent staff. That has only become patently clear to us in the last few months when we have tried to organise independent advice for the commission. We are seeking to engage legal counsel that the commissioners have nominated. So that process is working its way through. We are hamstrung though by procedures laid down by the Attorney-General's in relation to the engagement of legal counsel, and that provides a difficulty for us. There is a process to go through in terms of quotes, costs and those sorts of things. They have guidelines on those sort of things, and we have to follow those through.

At present the commission's submission is looking for amendments to the ATSIC Act so that some more flexibility can be introduced there in relation to employing staff under the Public Service Act. There are agencies around, for example, who have their own employment provisions within their own act. That is a model that we hope the review team will look at in terms of ATSIC. So the need to get more flexibility under the ATSIC Act is being pursued in that submission.

CHAIR—Thank you very much. Thanks for your submission and for your evidence this morning. And thanks for travelling all the way to get here.

Mr Robinson—Thank you, Mr Chairman and senators.

Committee adjourned at 11.27 a.m.