



# **IN THE HANDS OF THE REGIONS - A NEW ATSIIC**

**Report of the Review of the  
Aboriginal and Torres Strait Islander Commission**

**November 2003**

Senator The Hon. Amanda Vanstone  
Minister for Immigration and Multicultural and Indigenous Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister,

We are pleased to present the report on our review of the Aboriginal and Torres Strait Islander Commission (ATSIC).

This review was conducted over the period December 2002- October 2003 in accordance with the terms of reference issued by your predecessor, the Hon. Phillip Ruddock MP.

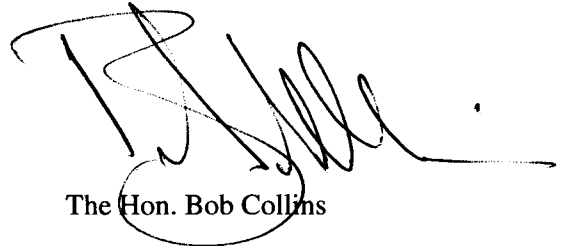
Yours Sincerely,



The Hon. John Hannaford



Ms Jackie Huggins AM



The Hon. Bob Collins

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**Panel Members:**

The Hon John Hannaford, Ms Jackie Huggins AM, The Hon Bob Collins

## **Acknowledgments**

This report has been made possible with the assistance of many individuals and organisations. In particular the review panel would like to thank members of the Aboriginal and Torres Strait Islander Commission (ATSIC), and Aboriginal and Torres Strait Islander Services (ATSIS) for their general support. We thank the organisations, government agencies and individuals who attended the meetings and shared their experiences, and the many people who put time and effort into preparing written submissions.

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## **EXECUTIVE SUMMARY – the new ATSIC**

This first comprehensive external review of the Aboriginal and Torres Strait Islander Commission (ATSIC), the principal policy adviser to government on Aboriginal and Torres Strait Islander affairs, has found that the organisation is in urgent need of structural change.

ATSIC needs the ability to evolve, directly shaped by Aboriginal and Torres Strait Islander people at regional level. This was intended when it was established, but has not happened. ATSIC needs positive leadership that generates greater input from the people it is designed to serve. One of its most significant challenges is to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations are met. ATSIC also has to operate in a fashion that engages the goodwill and support of the broader community.

The review panel's report recommends a package of reforms which gives greater control of ATSIC to Aboriginal and Torres Strait Islander people at a regional level. The reforms should enable Aboriginal and Torres Strait Islander peoples to stimulate change where it is most needed. Along with the recent COAG initiatives to address the appalling degree of Aboriginal and Torres Strait Islander disadvantage, a regional orientation will strengthen the voice and efficacy of regional councils and establish the necessary framework for integrated service and program delivery.

The panel re-emphasises that there will be no 'perfect' model. All governance structures are a compromise and this is particularly the case in an organisation which has to straddle such profoundly different Indigenous and Western perspectives. Whilst in this report the panel recommends a proposed model, the panel recognises that this is only one possible option for the establishment of a new ATSIC

The review panel considers that the 35 regional councils are the foundation of ATSIC and that no major changes should be made to that structure at this time.

The review panel recommends however that the existing governing body of ATSIC, the ATSIC Board constituted by 18 zone commissioners, be replaced with an Aboriginal and Torres Strait Islander national body and a national executive. The review panel considers that the existing system of zone commissioners is an unnecessary additional layer of governance which structurally contributes to the 'disconnect' between the regional councils and the national governing board.

The members of the national body will be the elected 35 regional council chairs, the chair of the Torres Strait Islander Advisory Board, and the chair and deputy chair of the national body. The chair of the Torres Strait Regional Authority should be a non-voting member at this point.

In between meetings, the national body will delegate the oversight of ATSIC to an executive group which will also provide leadership and advocacy at a national level. Members of the national body will elect the chair and deputy chair and six additional members of the executive. The Minister will be responsible for appointing up to two more members of the executive from the national pool of regional councillors. All

members of the executive will retain their membership and positions on their own regional councils, except for the full-time chair and deputy chair.

The national body will be the governing body of ATSIC. It will determine ATSIC policy and develop and review a national plan, informed by regional plans and the views of the national body members. This policy and national plan will be used to assist the Australian and the State/Territory Governments to develop their policies and programs for Aboriginal and Torres Strait Islander people.

The national body will be the forum for national debate on issues of significance to Aboriginal and Torres Strait Islander peoples. It is proposed that the term of the elected arm of ATSIC be increased from three years to four years consistent with trends of other elected bodies in Australia with the national body meeting at least twice during each term.

The chair and deputy chair of the national body and the chairs of the regional councils will be able to be removed by a vote of no-confidence in them carried by a statutory majority of the national body or council respectively.

The regional planning process, currently provided for under the ATSIC Act, will be accorded high priority with a more realistic focus to ensure goals are achievable. Regional plans will spell out what is expected of ATSIC and identify the responsibilities of government agencies to provide the services that will address disadvantage within the regions.

Specifically-tasks national committees will provide policy input to the national body to ensure that regional priorities are incorporated into national planning. These committees will be made up of members of the national executive.

The review panel supports the need for a delineation of roles between the elected representatives at all levels in ATSIC and the administrative officers of the Commission. The delineation of roles should become a permanent arrangement through a legislated change to ATSIC.

The review panel recommends that ATSIC and the recently established Aboriginal and Torres Strait Services agency (ATSIS) be reunified. The panel notes that the Government instituted this arrangement as an interim measure pending this review.

Any changes to ATSIC's program delivery role should be considered as part of a Commonwealth/State/Territory examination of the most effective delivery of all services and programs of significance to Aboriginal and Torres Strait Islander Australians.

Among the administrative arrangements proposed is that a small coordinating group be established in the Department of Prime Minister and Cabinet to provide a whole-of-government approach to dealing with Indigenous issues. This coordinating group will replace the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA) currently located in the Department of Immigration and Multicultural Affairs.

Funding to the regions should be targeted at reducing disadvantage. The current system of across the board per capita funding should be discouraged. Funding to the regions should be primarily on the basis of need. The funding of ATSIC and the bodies it funds should be based on triennial funding contracts and accrual accounting should be introduced.

The Commonwealth Grants Commission should be benchmarking relative need in the regions and funding should be underpinned by that and other relevant information.

Funding to all service providers should be focused through outcomes-based services contracts. ATSIC will be required to evaluate and report on the achievement of those outcomes by all service providers.

Indigenous funding based on historical funding arrangements and by way of funding grants should be discouraged. Future funding should focus on outcomes-based contracts for the purchase of services. Bilateral agreements, memoranda of understanding and purchaser/provider arrangements should be used to develop more effective working relationships and service delivery between ATSIC, funded service providers and governments.

For ATSIC to achieve its objectives it requires the continuing goodwill and support of the Australian and all State and Territory governments. They need to cooperate with ATSIC collectively, through the Council of Australian Governments (COAG), and specifically within their own jurisdictions based on an acknowledgement and respect for Aboriginal and Torres Strait Islander Australians.

The most significant service providers to Aboriginal and Torres Strait Islander people are the State/Territory Governments. Until recently these governments have not had sufficient interface with ATSIC. Arrangements for closer collaboration will be progressed by the new ATSIC with these governments and their agencies in a transparent and publicly accountable manner.

Regional councils will be responsible for encouraging more cohesive Indigenous community organisations with higher levels of community governance. In conjunction with these organisations and government agencies, regional councils will develop regional plans that identify the levels of disadvantage in individual communities and the services that will be needed to address that disadvantage.

Performance evaluations should be undertaken of all organisations that are expending Australian Government funding for Indigenous purposes. This will include all State and Territory agencies as well as Australian Government agencies. The Productivity Commission should be asked to undertake this role as an independent organisation that reports to the Minister and to the Parliament.

The review panel cannot stress too heavily the urgency for this reform package. ATSIC needs stability, a new leadership structure and a boost to its morale. As the findings of this report show, there is widespread support for the objectives of ATSIC and a commitment to work constructively with it from all levels of government and other sectors of Australian society. Reform to capitalise on this goodwill and commitment cannot come too soon.

## **RECOMMENDATIONS**

### **OVER-ARCHING**

1. The existing objects of the ATSIC Act should be retained.
2. ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and be an agent for positive change in the development of policies and programs to advance the interests of Indigenous Australians.

### **THE RELATIONSHIP BETWEEN ATSIC AND ABORIGINAL AND TORRES STRAIT ISLANDER AUSTRALIANS**

3. The structure of ATSIC shall be altered to provide for a national body and a national executive as outlined on pages 14-15 and explained on pages 78-80.
4. ATSIC regional plans should be focused on needs, outcomes, outputs and capacities, not the broad sweep currently set out in the Act.
5. ATSIC must take the initiative to involve other relevant players, particularly all relevant government agencies, in the preparation of regional plans.
6. All spheres of government and government agencies need to be actively involved in assisting with the development and implementation of ATSIC regional plans.
7. Section 94 of the ATSIC Act should be amended in accordance with the above recommendations.
8. Funding to Aboriginal and Torres Strait Islander organisations based on historical funding arrangements, by way of funds grants, should be discouraged.
9. Future funding by ATSIC should focus on outcomes-based contracts for the purchase of services.
10. Bilateral agreements, Memorandums of Understanding (MOUs) and purchaser/provider arrangements should be used to develop more effective working and service delivery relationships between ATSIC, funded service providers and governments.
11. Professional development programs should be adequately resourced and implemented immediately for both the elected and administrative arms of ATSIC to enable the organisation to cope with the new administrative arrangements and to deal effectively with new working relationships.

12. A skills audit of all staff should be undertaken by ATSIC in order to identify the existing level of policy development skills within the organisation.
13. Adequately resourced policy skills development programs should be instituted for ATSIC staff. ATSIC should develop a model employer program for itself which particularly provides for the development of the skills of its staff in rural and remote regions.
14. ATSIC's advocacy and representation at the international level should continue but must ensure that it reflects the views of its constituents.
15. ATSIC should review the nature and quality of its communication to the elected membership of ATSIC about its international advocacy and representation activity.
16. The ATSIC Board, with the financial and other support of ATSI, should immediately examine practical ways, including active campaigns and other strategies, to address the under-representation of women in ATSIC elected positions; if it has not been completed, this work should continue under any new arrangements for ATSIC.
17. ATSIC should adopt and resource approaches that have been identified through the implementation of recommendation 16 to ensure that the under-representation of women is remedied.
18. ATSIC voting should continue to be voluntary.
19. ATSIC's activity to encourage voter participation should continue.
20. An Indigenous electoral roll should not be introduced.
21. ATSIC in conjunction with all levels of government should address the issue of proof of Aboriginality as a matter of priority.
22. The members of the Torres Strait Islander Advisory Board should continue at this time to be appointed by the Minister.
23. The Torres Strait Islander Advisory Board (TSIAB) should elect its own chair from its membership and that this person become a full-time chair of the TSIAB representing mainland Torres Strait Islanders.
24. The TSIAB chair should be a member of the proposed ATSIC national body.
25. Recommendation 23 from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs *A New Deal* report (to transfer the Office of Torres Strait Islander Affairs to assist and support the Torres Strait Islander Advisory Board) should be implemented.
26. The Minister should consider appointing an additional Torres Strait Islander Advisory Board member from Queensland.

27. The ATSIC Act should be amended to allow flexibility in the boundaries of the Torres Strait Regional Authority.
28. The Minister should consider amending section 94 of the ATSIC Act to substitute the Torres Strait Islander Advisory Board for the Torres Strait Regional Authority.

## **THE RELATIONSHIP BETWEEN ATSIC AND THE AUSTRALIAN GOVERNMENT**

29. Government funding of services and the development of programs should be consistent with the regional plan.
30. Funding for ATSIC and for its service providers should be on a triennial funding basis with the adoption of accrual accounting practices for the organisation.
31. The Cabinet Secretariat should report annually, within the annual report of the Department of the Prime Minister and Cabinet, on ATSIC's involvement in the Cabinet process.
32. A small group should be established within the Department of the Prime Minister and Cabinet, replacing the current office of Aboriginal and Torres Strait Islander Affairs (OATSIA) located within the Department of Immigration and Multicultural and Indigenous Affairs, to provide a whole-of-government focus on Indigenous issues.
33. ATSIC'S function in subparagraph 7(1)(e)(i) of the ATSIC Act should remain.
34. A ministerial veto power in relation to decisions of the national body or the national executive should not be introduced.
35. The Act should be amended to give the Minister the power to order an Inquiry, with appropriate coercive powers, to determine whether a member of the national should be removed from office.
36. The Commonwealth Grants Commission should be tasked to develop measures of relative need in Aboriginal and Torres Strait Islander communities at the regional council level, taking into account funds provided by Indigenous-specific and mainstream programs and funds provided by all levels of government.
37. The work referred to in recommendation 36 should be undertaken by the Commonwealth Grants Commission on an ongoing basis.

## **THE SPECIFIC ROLES OF ATSIC AND THE DIFFERENT SPHERES OF GOVERNMENT IN EFFECTIVE PROGRAM AND SERVICE DELIVERY**

38. COAG should convene a round table between the Australian, State and Territory governments and ATSIC to identify and clarify program and service delivery roles and responsibilities.
39. The COAG round table approach outlined in recommendation 38 should be used to identify the most effective processes to achieve key Indigenous policy outcomes.
40. ATSIC should retain its existing programs pending a determination of its role in the context of this broader examination of service delivery.
41. ATSIC's regional planning role should be examined and determined, also in context of the above task.
42. The Australian Government should ensure that ATSIC's involvement should be written into all relevant MOUs and bilateral agreements that involve Indigenous issues.
43. COAG meetings should in future include Aboriginal and Torres Strait Islander Affairs as a standing item.
44. The ATSIC chair should have observer status at COAG meetings for all discussions on Aboriginal and Torres Strait Islander Affairs.
45. The role of MCATSIA should be reviewed.
46. COAG should commission the Productivity Commission to undertake a rolling program of evaluations at the regional level.
47. The Indigenous Land Corporation, Indigenous Business Australia and Aboriginal Hostels Limited remain under their current arrangements.
48. These three agencies should participate in the development of the regional plans that are to be prepared by ATSIC's regional councils.
49. Funding decisions of those three agencies should be consistent with relevant ATSIC regional plans.
50. The function of governance training and capacity building of Aboriginal and Torres Strait Islander organisations should not be performed by ORAC.
51. ATSIC should increase the level of governance training and capacity building of Aboriginal and Torres Strait Islander organisations and provide it through appropriate training organisations.
52. Consideration should be given in the longer term to having all Aboriginal and Torres Strait Islander organisations incorporated under general corporations laws.

53. The *Aboriginal Councils and Associations Act 1976* should be amended to allow for an appropriate business turnaround mechanism to be used by organisations.
54. The role of the Office of Evaluation and Audit be expanded to enable it to evaluate and performance audit the programs and services of all service providers including all agencies of government where the Australian Government has provided resources for the provision of services for Aboriginal and Torres Strait Islander people.

#### **THE RELATIONSHIP BETWEEN ATSIK'S ELECTED ARM AND ITS ADMINISTRATIVE ARM**

55. ATSIK should be a single organisation with a legislated delineation of roles.
56. Governance training programs should be developed by ATSIK to lift the skills levels of the elected and administrative arms to implement an appropriate level of governance.
57. Culturally appropriate variations to the standard principles of governance should be adopted.
58. The ATSIK Act should require that protocols be developed covering working relationships for the elected and administrative arms of ATSIK. Partiality in decision-making should form part of such protocols.
59. Breaches of these protocols, either by elected officials or staff members, should constitute misbehaviour.
60. ATSIK staff should continue to be engaged under the *Public Service Act 1999*.
61. ATSIK's CEO should be appointed by the Minister after consultation with the national executive.
62. The ATSIK Act should be amended to reinforce that the ATSIK CEO is responsible for all staff and their employment.
63. The remuneration of elected members should continue to be determined by the Remuneration Tribunal.
64. The remuneration of elected members through sitting fees should be reconsidered and replaced with annualised remuneration. The remuneration should reflect any additional duties that are undertaken by different categories of elected member.
65. Elected members should cease to hold office if they fail to attend without reasonable cause one half of the meetings scheduled each year.

66. The chair and the deputy chair of the national body and the chairs of the regional councils may be removed by a no-confidence vote in them, carried by a statutory majority of their respective electing bodies.
67. The ATSIC Act should be amended to provide that where a substantial majority of Aboriginal and Torres Strait Islander people living in an ATSIC region or ward agree to a system for selecting regional councillors that is different from the system set out in the ATSIC Act, the Minister may approve such a system for determining the regional councillors for that region or ward.

## **THE 'NEW ATSIC' AT A GLANCE:**

- Control of ATSIC will be put directly into the hands of the existing 35 regional councils.
- An Aboriginal and Torres Strait Islander national body will be the governing body of ATSIC.
- The national body will comprise the 35 regional council chairs, the chair of the Torres Strait Islander Advisory Board, the chair and deputy chair of the national body and the two executive members appointed by the Minister. The chair of the Torres Strait Regional Authority will be a non-voting member of the national body.
- The national executive shall consist of the chair and deputy chair of the national body and six executive members who shall be elected by the 35 regional council chairs, the chair of the Torres Strait Islander Advisory Board and two executive members appointed by the Minister from the pool of regional councillors throughout Australia. The chair and deputy chair of the national body will also be chair and deputy chair of the national executive.
- The elected and administrative arms will be reunified, with a clear delineation of roles incorporated in the ATSIC Act.
- The national body will consider and determine ATSIC policy and develop and review a national plan informed by regional views and plans.
- Between meetings the national body will delegate to an executive the oversight of ATSIC and the tasks of providing leadership and advocacy at national level.
- Specifically-tasks national committees will provide policy advice to the national body. They will consist of members of the national body and national executive.
- High priority is for ATSIC to develop more effective working relationships with State/Territory governments, especially through multilateral agreements, MOUs and purchaser/provider arrangements.
- Regional planning will be greatly enhanced to involve the community in identifying needs and priorities and to integrate the efforts of agencies of all spheres of government.
- Commonwealth Grants Commission to be given the role of benchmarking regional needs with funding to be based on that advice.

- The national body will provide a mechanism for ministers and senior representatives of all spheres of government to meet Aboriginal and Torres Strait Islander elected representatives.
- ATSIC elections will be held on a four-year, rather than the current three-year, term with the national body meeting at least twice during that term.
- COAG to keep Aboriginal and Torres Strait Islander affairs as a standing item on its agenda.
- The current electoral process will remain with provision for the regions to adopt different selection arrangements for representation with an 'opt out' arrangement, if approved by the Minister.
- The Productivity Commission should expand its role in assessing outcomes to include assessment of the effectiveness of programs and services at a regional level.
- The Office of Evaluation and Audit will expand its responsibilities to include performance auditing of the way service providers, including all governments, are utilising Indigenous funds.

## *Chapter 1*

# CONTEXT OF THE REVIEW

### **A brief history of ATSIC**

The Aboriginal and Torres Strait Islander Commission, ATSIC, came into effect on 5 March 1990.

Its prime aim is to ensure that Aboriginal and Torres Strait Islander peoples participate in decision-making processes at all levels of government on matters that affect them.

The commission is an organisation unique in the world. As well as being the elected voice of Aboriginal and Torres Strait Islander people, it was created to be the Australian Government's principal agency for administering Aboriginal and Torres Strait Islander affairs, on its establishment bringing together the functions previously handled separately by the Department of Aboriginal Affairs and the Aboriginal Development Commission.

The creation of ATSIC was the third attempt by the Commonwealth Government to establish a representative Indigenous body. But this time the body had a much closer relationship with government and had the power and responsibility to deliver at least some programs and services.

In his statement *Foundations for the Future* of December 1987<sup>i</sup>, the Minister for Aboriginal Affairs, the Hon Gerry Hand MP, outlined the government's intentions for the establishment of a commission made up of, and working for, Aboriginal and Torres Strait Islander people. He said 'Aboriginal people need to decide for themselves what should be done – not just take whatever governments think or say is best for them.'

Also foreshadowed in *Foundations for the Future* was the government's intention to include a preamble to the Act officially recognising for the first time that Aboriginal and Torres Strait Islander people were 'the prior occupiers and original owners of this land'.

The legislation charged ATSIC with advancing the interests of Aboriginal and Torres Strait Islander people. The objects in the Act gave ATSIC the responsibility:

- (a) to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;
- (b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;

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<sup>i</sup> *Foundations for the Future*, Hansard, 18 December 1987.

(c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and

(d) to ensure co-ordination in the formulation and implementation of policies affecting Aboriginal persons and Torres Strait Islanders by the Commonwealth, State, Territory and local governments, without detracting from the responsibilities of State, Territory and local governments to provide services to their Aboriginal and Torres Strait Islander residents.

The panel is of the view that the objects of the Act remain completely relevant today. Many submissions to the review support this view, summarised in the following comment in the WA Government's submission:

These objectives remain a sound framework for designing new structural arrangements that is informed by the experience of the past 12 years.

The ATSIC Act established ATSIC as the Australian Government's principal policy adviser on Aboriginal and Torres Strait Islander issues and charged it with the role of providing advice to other levels of government. It also laid out ATSIC's roles in administering a large proportion of the Australian Government's special programs for Aboriginal and Torres Strait Islander people, e.g. the Community Development Employment Program (CDEP) scheme and the Community Housing and Infrastructure Program (CHIP).

The ATSIC Act also established the Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC) to foster commercially viable activities and economic development through the accumulation and utilisation of a substantial capital asset for Aboriginal and Torres Strait Islander people. Other relevant organisations at the time were the renamed and reconstituted Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Aboriginal Hostels Ltd (AHL).

On its first day of operation, inaugural chair Ms Lowitja O'Donoghue AC CBE, hailed ATSIC as recognition at last of the right of Australia's Aboriginal and Torres Strait Islander people to have a real say about matters affecting their future. She said<sup>ii</sup>:

It will enable Aboriginals and Torres Strait Islanders to build on our own histories and cultures within the broader Australian framework. Mainstream Australia has always had this voice through its traditional forms of representation at the different levels of government. These systems, however, have never provided an appropriate outlet of expression for us. ATSIC will give us an effective say in the decision-making process relevant to modern Australia. The diversity of needs of remote, urban and rural communities will be met more effectively by the decentralised decision-making processes of ATSIC's

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<sup>ii</sup> 'A Fair Go for Aboriginals and Torres Strait Islanders', media release of the chairperson of the Aboriginal and Torres Strait Islander Commission, Miss Lowitja O'Donoghue CBE AM, 5 March 1990.

Regional Councils. This should ensure that policy development and program delivery is effective because it will be culturally appropriate to our people.

One of the unique features of ATSIC is that it represents the voice and interests of Aboriginal and Torres Strait Islander peoples within government in the development of policies and decisions that directly impact on their lives and future well-being. It also provides the means by which Aboriginal and Torres Strait Islander peoples can exercise significant influence from within government over the administration, delivery and resourcing of programs designed to meet the needs of their own communities. With the creation of ATSIC, Aboriginal representatives had access for the first time to the executive processes of Government.<sup>iii</sup>

ATSIC's advocacy role extends internationally. The commission has been accredited by the United Nations as a Non-Government Organisation in Consultative Status with the Economic and Social Council. This means it has independent access and an independent voice at UN forums. It participates in the annual sessions of the UN Working Group on Indigenous Populations and other international standard-setting activities.

Over the years, ATSIC's program responsibility has fluctuated as a result of functions being transferred to it from other agencies, initiatives arising from the recommendations of the 1991 *Report on Royal Commission into Aboriginal Deaths in Custody* and transfers of responsibilities to other departments.

The ATSIC budget was more than \$800m by 1992-93, accounting for about two-thirds of the Australian Government's Aboriginal programs. In 2001-02 it amounted to approximately \$1.1 billion, less than half of the Australian Government's allocation for Indigenous specific programs. It was reduced after primary health care was transferred in 1995 from ATSIC to the Department of Human Services and Health (as the Commonwealth health portfolio was then known).

ATSIC does not have full control over its budget. The Minister approves estimated expenditure and the Act sets out a compliance regime. The Australian Government requires ATSIC to maintain minimum levels of expenditure on certain core programs through quarantining provisions applied by the Minister. These include ATSIC's two largest programs, CDEP and CHIP, which together account for two-thirds of the Commission's budget.

### Structure

The original representative structure of ATSIC comprised 60 regional councils and a 20-member board consisting of 17 commissioners elected from within 17 geographical zones, plus a chairperson and two commissioners appointed by the Minister. The administration was staffed under the *Public Service Act* and headed by a chief executive officer, a statutory officer appointed by the Minister.

Several significant changes over time have altered both the structure and the status of the original commission.

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<sup>iii</sup> As explained in the submission from Mr Bill Gray AM, Chairman of the ATSIC Task Force 1987-88 and Inaugural CEO of ATSIC 1990-91

In 1993 the Act was amended to reduce the number of regional councils from 60 to 36. This followed ATSIC's representation to government that it found the administration of so many regional councils unwieldy. Once the Torres Strait Regional Authority (TSRA) came into being in July 1994, the number of regional councils reduced to 35. The establishment of the TSRA meant that ATSIC was responsible to the Aboriginal and Torres Strait Islander population outside the Torres Strait region and the TSRA's functions were defined in relation to the population of the Torres Strait region.

Ms Lowitja O'Donoghue was appointed chairperson for two three-year terms, and the second chair, Mr Gatjil Djerrkura OAM, served one three-year term before the commission moved in 1999 to an elected chairperson after amendments to the Act came into effect.

After the 1999 national ATSIC elections, Mr Geoff Clark became the first elected chair of ATSIC, elected by the board for a three-year term. Mr Clark was again elected in December 2002 for a second three-year term. He was suspended from duty by the Minister on 13 August 2003.

Another major change occurred in 2003 when the Australian Government, concerned about issues of accountability and conflict-of-interest, split the commission into two. It separated the elected arm and the administrative arm by creating under the *Public Service Act* a new executive agency called the Aboriginal and Torres Strait Islander Services (ATSIS) to handle the administration, in particular funding decisions. As at 25 September 2003, 49 staff served ATSIC, with the ATSIS staff comprising 1,211 people. The Government has indicated that these changes are an interim measure pending the completion of the current review.

Other amendments to the ATSIC Act over time were made to encompass the establishment of the Indigenous Land Corporation (ILC) and the reconstitution of the Aboriginal and Torres Strait Islander Commercial Development Corporation to become Indigenous Business Australia (IBA).

### History of accountability

The creation of ATSIC established a body which is different from Australia's mainstream structures of governance. Due to perceptions about accountability, some of which had arisen out of matters in other organisations such as the Department of Aboriginal Affairs and the Aboriginal Development Commission, specific accountability measures were included in the Act, e.g. the Office of Evaluation and Audit.

ATSIC is both accountable to Aboriginal and Torres Strait Islander people through an electoral process, and to the broader community through the forms of executive government and parliament.

Although the current review is the first comprehensive independent review of the organisation, ATSIC has been subject to frequent auditing, internal and external

reviews and legislative amendment in its 13-year history, not to mention a high level of media scrutiny.

### **The ATSIC constituency**

Australia's Indigenous peoples comprise two distinct cultural groups – Aboriginal people and Torres Strait Islander people. A rich diversity of experiences and cultural practices has always existed within each group. Aboriginal and Torres Strait Islander peoples' identity and culture have survived the devastating impact of colonisation and today these cultures are dynamic and a vital part of Australian society. Aboriginal and Torres Strait Islander men and woman contribute significantly across many fields including sport, politics, science, media and the arts.

Today Aboriginal and Torres Strait Islander peoples continue to strive for greater control over their lives and improved social and economic conditions. They maintain continuing affiliations to 'country' that refer to land, water and sky.

In the 2001 census <sup>iv</sup> 410 003 people identified as Aboriginal or Torres Strait Islander, 2.2 per cent of the total Australian population. <sup>v</sup> Taking into account various additional factors based on these figures, the Australian Bureau of Statistics estimated the resident Indigenous population of Australia at 460140, or 2.4 per cent of the total estimated resident population of Australia as at 30 June 2001.

Estimated Indigenous populations in the States/Territories were:

- New South Wales 135 319, or 29 per cent
- Queensland 126 035, or 27 per cent
- Western Australia 66 069, or 14 per cent
- Northern Territory 57 550, or 13 per cent
- South Australia 25 620, or 6 per cent
- Tasmania 17 442, or 4 per cent
- Victoria 27 928 or 6 per cent
- Australian Capital Territory 3 941 or 1 per cent.

More than one in four people in the Northern Territory (29%) were estimated to be of Indigenous origin. In all other State/Territories, Aboriginal and Torres Strait Islander Australians were estimated to comprise less than 4% of those populations, with Victoria's Indigenous population being the lowest proportion at 0.6% of that State's estimated resident population.

Of the 410,003 people who were identified as Aboriginal and Torres Strait Islander in the 2001 census, 6.4 per cent were reported to be of Torres Strait Islander origin only (8.1 per cent in 1996). Almost 6,000 Torres Strait Islander people live in the Torres Strait region itself with around 23,000 Torres Strait Islanders living across mainland Australia. More than half (58 per cent) of all Torres Strait Islanders live in Queensland.

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<sup>iv</sup> 2001 Census data from the Australian Bureau of Statistics.

<sup>v</sup> Taking into account various additional factors, the Australian Bureau of Statistics estimates the total Indigenous population at 30 June 2001 to be 460 000.

There is a high birthrate in the Indigenous population compared with the rest of Australia (in 2001 2.1 babies per Indigenous woman compared to 1.7 babies per woman among the total female population). Another important characteristic of the population is its youth – approximately 39 per cent is under 15 years of age. The lower life expectancy of Aboriginal and Torres Strait Islander people is reflected in the fact that only 6.7 per cent of the population is over 55, as opposed to 22.3 per cent of the non-Indigenous population.

### **Commonwealth Grants Commission Study**

The disadvantage endured by Aboriginal and Torres Strait Islander peoples has been chronicled in many recent and official reports. The 2001 study by the Commonwealth Grants Commission<sup>vi</sup> depicts the gap that exists between Indigenous and non-Indigenous Australians across all social indicators, e.g. health, housing, education, employment, incarceration and so on.

The Grants Commission examined the delivery of programs and services to Aboriginal and Torres Strait Islander Australians. Its *Report on Indigenous Funding 2001* shows:

- ◇ Aboriginal and Torres Strait Islander Australians in all regions and across all function areas experience entrenched levels of disadvantage compared to other Australians.
- ◇ Needs are greater in remote areas.
- ◇ Supplementary funds provided through ATSIC and other agencies are forced to do too much work, due to barriers to access to mainstream programs.
- ◇ Australia's federal system obscures responsibilities between various levels of government and creates opportunities for cost shifting, both between governments and between agencies at the same level of government.
- ◇ The Australian Government has a limited capacity to direct the States and Territories in the use of funds notionally supplied for Aboriginal and Torres Strait Islander advancement.
- ◇ The Australian Government's funding is generally not allocated on the basis of need, except in the area of housing and infrastructure.
- ◇ The link between funding and outcomes is not necessarily a direct one, but hedged around by many complexities.

The *Report on Indigenous Funding* laid down some important principles and key areas for action to achieve a better alignment of funding with needs. These include:

- i. the full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery;
- ii. a focus on outcomes;
- iii. ensuring a long term perspective to the design and implementation of programs and services, thus providing a secure context for setting goals;
- iv. ensuring genuine collaborative processes with the involvement of government and non-government funders and service deliverers, to

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<sup>vi</sup> Commonwealth Grants Commission (2001) *Report on Indigenous Funding 2001*.

- maximise opportunities for pooling of funds, as well as multi-jurisdictional and cross-functional approaches to service delivery;
- v. recognition of the critical importance of effective access to mainstream programs and services, and clear actions to identify and address barriers to access;
  - vi. improving the collection of and availability of data to support informed decision making, monitoring of achievements and program evaluation; and
  - vii. recognising the importance of capacity building within Indigenous communities.

These conclusions, spelt out in the review panel's *Public Discussion Paper*, were addressed in many submissions and public meetings, and have guided the review panel's deliberations. One of the review panel's objectives is to address the issues raised by the Commonwealth Grants Commission in the creation of a 'new ATSIC'.

## Chapter 2

# THE NATIONAL CONSULTATION

### Submissions and Discussions

The review panel's consultation process is outlined in Appendix One. As well as written submissions (56 in the first round and more than 100 in the second round as at 7 October 2003), the panel gathered views through 41 meetings with ATSIC elected officials (mostly regional councils) and members of the public. The panel held additional discussions with organisations, agencies and individuals handling matters covered by the review's terms of reference.

In the course of the review there have been many suggestions about ATSIC and the way it has evolved, with criticisms levelled at nearly all aspects of its structure, role and operation. However, the overwhelming view expressed to the panel was ATSIC should continue to operate as the national representative organisation.

Many voices and written submissions echoed such sentiments. In its submission, Murdi Paaki Regional Council makes the point <sup>vii</sup>:

Appropriate structures for Aboriginal and Torres Strait Islander people should be based on ensuring we have the capacity and support to manage our own affairs and control our own development.....We see improved governance arrangements as central to achieving our goals. Through them, we are aiming to improve our living standards and quality of life and give us social justice. It involves empowering our communities to make their own decisions and ensuring accountability to us of the way services are delivered and their outcomes.

ATSIC acting chair, Mr Lionel Quartermaine, in a speech on 1 October 2003 <sup>viii</sup> discussed the need to empower people at the community and regional levels so that policies and service delivery were driven by the people and the communities themselves. He said:

We want Indigenous peoples and communities to drive change and shape their own futures. But that means we have to get two things right:  
The capacity of community members and the community as a whole to make good policy and to campaign and negotiate for the outcomes they want; and the good governance and self-management of Aboriginal and Torres Strait Islander peoples at national, regional and local levels.....Taking control of our own lives and our own affairs means taking ownership of the mistakes and responsibility for fixing them, as well as taking credit for achievements. We have to learn from experience and adjust accordingly.

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<sup>vii</sup> 'Mid Passage towards Self Determination: A New ATSIC', submission from the Murdi Paaki Regional Council, p.10.

<sup>viii</sup> 'What's it About?' – Keynote Address to open the Indigenous Researchers' Forum by Acting Chairman of ATSIC, Mr Lionel Quartermaine, 1 October 2003.

Regional council meetings asked for a greater role for Regional Councils in service delivery. Some wanted control of the funds returned, but others did not. Most supported a delineation of roles and responsibilities (often articulated as a ‘separation of powers’), but within one organisation.

Generally, submissions expressed the view that comprehensive interaction with ATSIC by government, non-government sectors and the whole Australian community would maximise the opportunity for the commission to articulate Indigenous views and aspirations and for Australia to engage with those aspirations and seek ways to realise them. To a varying extent, the submissions contained recommendations on ways this interaction could be improved.

Of the State/Territory government submissions received, all expressed support for greater engagement with ATSIC, achieved through more effective arrangements.

The review panel’s recommendations are based on the finding that ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples’ views to all levels of government and to be an agent for positive change in the development of policy and programs to advance the interests of Aboriginal and Torres Strait Islander Australians. As one contributor to the review put it: ‘If ATSIC’s not in that business, then it’s not in business at all’.

### **Vision for a ‘new ATSIC’**

Aboriginal and Torres Strait Islander people aspire to a better future where they will have the same opportunities and sense of well being as other Australian citizens. They want independence and choice in making life decisions and do not want to rely on government. They want to stop seeing their culture, their families, their communities and their hopes and aspirations destroyed by alcohol, drugs and violence.

The ATSIC we know today will evolve in line with the progress, development, diversity and aspiration of the peoples it represents. This mirrors the call by a great many Aboriginal and Torres Strait Islander Australians for their peak organisation to represent voices from where the people live, show flexibility in its approaches and to be held accountable to its constituents.

A consistent message to the review panel was that Aboriginal and Torres Strait Islander people see ATSIC as an important stepping stone to a desired future, and believe its role is to assist them get where they want to go.

As the acting Chair of ATSIC said on 1 October 2003:

Our vision for ATSIC is an organisation which makes other government agencies truly accountable when delivering services to Aboriginal and Torres Strait Islander peoples. ATSIC should also be the main Indigenous adviser for government agencies which provide the services.

The review panel considers that reform of ATSIC should result in an organisation that:

- enables Aboriginal and Torres Strait Islander people to build a future grounded in their own histories and cultures within the broader Australian framework;
- represents and promotes the views of Aboriginal and Torres Strait Islander people, including their diversity of opinion;
- vigorously pursues the interests of Aboriginal and Torres Strait Islander people through partnerships with Aboriginal and Torres Strait Islander communities, governments and other sectors of Australian society;
- influences priorities, strategies and programs at the national, State/Territory and regional level;
- minimises and streamlines the government interface with Indigenous communities;
- promotes good Indigenous governance;
- recognises the complexity of relationships between Aboriginal and Torres Strait Islander individuals, communities, organisations and governments and the values and limitations created by this;
- is an equal partner in all negotiations, resourced adequately to achieve this equality, and commands goodwill and respect;
- increases women's participation and expression of views;
- ensures that there is transparent accountability of all organisations that are funded to provide services for Aboriginal and Torres Strait Islander people.
- maintains its unique status;
- recognises that ATSIC is a key player, but not the only player, that seeks to advance the interests of Aboriginal and Torres Strait Islander Australians with government and others.

### **Principles for a 'new ATSIC'**

During its preliminary round of consultation, the review panel established key principles which it believed should underpin a 'new ATSIC'. These principles were outlined in the *Public Discussion Paper* of June 2003 and were a major focus of the second round of consultation. The principles were widely supported and remain:

- ATSIC should be the peak State/Territory and national body, which advocates for the development of Aboriginal and Torres Strait Islander communities;
- the regional councils (and relevant members of the national body) should provide the State/Territory policy interface with the governments co-ordinating regional activities;
- representatives from each State/Territory should then constitute the national body, achieving a direct relationship between the regional, state and national levels;
- the national body should provide the policy interface for the Australian Government setting and advocating a national strategic direction and monitoring progress against ATSIC's national plan to reinforce the accountability of program and service providers;
- ATSIC's primary focus should be on building strong local communities through development and implementation of a needs-based regional plan;
- State/Territory and national programs should be informed by, and undertake activities consistent with, regional plans;
- strengthening Aboriginal and Torres Strait Islander communities must not be based solely on the provision of welfare services;
- Aboriginal and Torres Strait Islander people should be provided with equal access to health services and there should be an appropriate balance of preventative, environmental and public health policies, programs and services;
- health, education, training, skills development and employment are integral to building the local and regional economy on a long term sustainable basis;
- housing should be provided on the basis of ensuring access is available to those who need it and ownership is available to those who desire it;
- all government funded programs should be subject to an independent assessment of outcomes; and
- the role of elected officials should be clearly delineated from that of the administration.

In its submission ATSIC endorsed these principles, but pointed out that they fail to take into account the notion of self-determination or the need to protect and promote the inherent right of traditional owners and native title holders. ATSIC proposed a set of five key principles, as follows<sup>ix</sup>:

- **The right to self-determination** based on inherent rights and the laws, traditions and cultures of the Indigenous peoples of Australia is central to the development of ATSIC as an organisation.
- **Aboriginal and Torres Strait Islander peoples should be able to engage with governments** on the basis of equality and mutual respect about policies and programs affecting them.
- **The goal of sustainable and equitable outcomes** for Aboriginal and Torres Strait Islanders peoples in respect of economic, social and cultural rights is a major priority in achieving social justice.

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<sup>ix</sup> Submission to the Review from the Aboriginal and Torres Strait Islander Commission, September 2003.

- **Flexibility of ATSIC structures and processes** is important in order to reflect and represent the full diversity of Indigenous cultures and situations in Australia, whether at family, clan, community, language group or national level.
- **The rights of traditional owners and native titleholders** needs to be protected through negotiated agreements regarding new regional structures, developments and plans.

The panel is broadly supportive of these principles, while acknowledging there will be ongoing debate about what is meant by the term self-determination. The recommendations in this report allow the representative arm of ATSIC to pursue its views about self-determination. The panel totally reinforces ATSIC's assertion of the right of Aboriginal and Torres Strait Islander people to engage and negotiate as equal partners based on mutual respect. The demand for equality and respect pervaded every consultation.

#### **Four areas requiring reform**

In order to realise the vision, consistent with the principles, the review panel considers that there are four major areas where action, or reform, is necessary so that ATSIC can achieve its goals and potential. These are:

- 1. The relationship between ATSIC and Aboriginal and Torres Strait Islander Australians**
- 2. The relationship between ATSIC and the Australian Government**
- 3. The specific roles of ATSIC and the different spheres of government in effective program and service delivery**
- 4. The relationship between ATSIC'S elected arm and its administrative arm.**

The rest of this report discusses these points.

#### **OVER-ARCHING RECOMMENDATIONS**

1. The existing objects of the ATSIC Act should be retained.
2. ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and be an agent for positive change in the development of policies and programs to advance the interests of Indigenous Australians.

### *Chapter 3*

## **THE RELATIONSHIP BETWEEN ATSIC AND ABORIGINAL AND TORRES STRAIT ISLANDER AUSTRALIANS**

### **An often tenuous relationship**

In some regions of the country, the relationship between ATSIC and the people it is designed to serve is tenuous at best. These sample extracts from submissions and comments from meetings broadly depict current disillusionment:

People are confused and frightened of the future. Whatever structure there is, we will work with it. But we've only been given ten short years to fix everything.

*Aboriginal participant, Nulla Wimila Kutja Regional Council meeting, SA*

The selection process itself is modelled on the Westminster system and does not take into account traditional methods of selecting leadership or spokespeople from within the community. In addition, the people elected through the ATSIC system are not necessarily the same people from within a community who have the traditional authority to represent the area. This imposed and artificial structuring of a leadership model creates a conflict with the traditional authority mechanisms within a geographic region. In this way, the authority of the ATSIC representative arm is often questioned.

*Submission from South West Aboriginal Land & Sea Council, WA*

If there has been a systemic failure, it is because the commission has been required to span too wide an activity, occasioned by the failure of mainstream services to adequately meet the needs of Indigenous people.

*Submission from Murdi Paaki Regional Council, NSW*

Councillors are not seen in representative roles. Our regional council budgets don't allow Councillors to go to community functions within our region.

*Aboriginal participant, Queanbeyan Regional Council meeting, NSW/ACT*

The National Board needs to be a board of leaders who can provide strong and effective leadership, inspire and have the confidence of all our people – including our women.

*Submission from the National Network of Indigenous Women's Legal Services*

Clearly emerging as a significant factor for the policy failure is the 'separatist' policy model that has shaped service delivery strategies leaving Indigenous people to largely be responsible for the delivery of critical services that are taken for granted by other Australians.

*Submission from the WA Government*

Sometimes we vote with our hearts and not our brains because some people who get elected are non-contributors.

*Aboriginal participant, Nulla Wimila Kutja Regional Council meeting, SA*

There are legitimate concerns with both voter turnout patterns, issues of women's representation, adequacy of experience and expertise across the range of Indigenous issues, authority and credibility, participation etc, in terms of ATSIC being a national Indigenous representative body.

*Submission from the Northern and Central Land Councils, NT*

For ATSIC, the failure to have a formal state government interface has been an impediment to ensuring a whole-of-government approach on issues such as Indigenous health and education. Many of the current issues that face Indigenous peoples are as a direct result of state government action, or inaction, and for ATSIC to be able to achieve any outcomes it must improve its working relationships with State and Territory governments.

*Submission from South West Aboriginal Land & Sea Council, WA*

As noted in the review panel's *Public Discussion Paper* of June 2003, there is widespread concern that the ATSIC board has not discharged its advocacy and representative functions effectively and that there has been a 'disconnect' between the board and regional councils, and regional councils and their communities and even more of a gap between communities and the board.

Many regional councillors expressed their frustration about the activities of the board, their negative perceptions about ATSIC's national leadership and their feeling of powerlessness to do anything about it. This went to the point where, although it was not a predominant view, a number of councillors and community leaders advocated a return to direct ministerial appointments to the board. It remains for ATSIC to attain widespread ownership, understanding and support from the very people it seeks to serve and represent.

Despite the disillusionment, regional council and community meetings showed strong support for ATSIC to be the peak advisory body on Aboriginal and Torres Strait Islander affairs to all spheres of government. However, they wanted stronger mechanisms for ensuring that community needs informed regional policy and that regional policies informed national policy. Some meetings went as far as suggesting that accountability and reporting mechanisms should be enshrined in legislation. Meetings also reflected a realisation that to do the task ahead the organisation needs greater capacity, especially in the area of policy advice and development, and a broader skills base than currently available. A common call was for support and resources to grow the capacity of elected representatives and of the administrative arm particularly at a regional level.

### **Perceptions about ATSIC's performance**

Perceptions of failure permeated every meeting held with the review panel. As outlined in the *Public Discussion Paper* (paragraphs 4.58 – 4.62), these perceptions are based on a number of factors. One is that ATSIC is an imposed western structure which, while trying to accommodate cultural boundaries, cannot achieve complete representation of all major cultural groups. This means that to many Aboriginal and Torres Strait Islander people it is only partly representative at best.

Another factor is that in many eyes ATSIC has not lived up to expectations. It was originally welcomed by many as the organisation that would have responsibility for all services for Aboriginal and Torres Strait Islander peoples.

ATSIC was intended to be a supplementary funding body and was never intended, of funded, to be the provider of all programs and services to Aboriginal and Torres Strait Islander people. Its establishment did not absolve mainstream agencies from their responsibility to meet their obligations to Indigenous citizens. The hopes pinned on the organisation – that it could and would effect instant change were not realistic.

The review panel also believes that the mainstream Commonwealth and State government agencies from time to time have used the existence of ATSIC to avoid or minimise their responsibilities to overcome the significant disadvantage of Aboriginal and Torres Strait Islander people. Because public blame for perceived failures has largely focused, fairly or unfairly, on the Aboriginal and Torres Strait Islander Commission, those mainstream agencies, their ministers and governments have avoided responsibility for their own shortcomings. This avoidance of accountability and responsibility must be overcome with the new ATSIC.

Local governments, while having less resources than and different responsibilities from other spheres of government, are also not immune from criticism. There is evidence that some local governments still refuse to provide, or claim ATSIC should provide, roads and other basic infrastructure and services that will benefit mainly Aboriginal and Torres Strait Islander constituents.

In the wider public arena, perceptions of ATSIC's performance have been influenced by a number of factors totally beyond its control. It is true that most Australians had not appreciated the extent of inequality and injustice suffered by Aboriginals and Torres Strait Islanders until the Royal Commission into Aboriginal Deaths in Custody started making its findings public. Its final report of 1991 graphically depicted the disadvantage suffered by Aboriginal and Torres Strait Islander people. Similarly, the inquiry into the separation of children from their families, which reported in 1997, uncovered a period of history and ongoing pain that Australian society had swept under the carpet. The High Court's *Mabo* decision of 3 June 1992 and the ensuing native title legislation opened a heated public debate that still continues in many quarters.

Some of the initial goodwill extended to ATSIC began to fade when these factors kept creating an impression that little progress was being made on the difficult issues.

The review panel considers that, to the extent ATSIC has succeeded, it has done so because Aboriginal and Torres Strait Islander people largely want it to continue as a representative organisation on their behalf. A more realistic recognition that ATSIC cannot be the vehicle to serve all Indigenous needs for government services is the starting point for defining the areas where ATSIC can work and make a difference. This means that ATSIC's role must be more positive, focused and clearly defined.

The review panel endorses the argument advanced at most Regional Council meetings with the review panel that for ATSIC to be effective there must be better mechanisms for local communities get their views ‘up the line’.

### **Parameters for ATSIC’s future**

As referred to in the Discussion Paper, a fundamental dilemma inherent in ATSIC is that it is a western political and administrative model alien to Indigenous family/clan/community structures. National, State and Territory and even some regional structures cut across a cultural view that ‘you can only talk for your own country’. The following is a fairly typical comment from the consultation meetings:

Governments always work against Aboriginal people. Our needs have been expressed time and time again – about the preservation of our culture, spirituality and language. We don’t want our self-determination taken away.... We are always expected to change to fit into a western system and way of thinking. We have to compromise our history and language and still the government will refuse to listen to our needs. We are forced into fitting into these models.

*Aboriginal participant Patpa Warra Yunti Regional Council meeting (SA)*

While the review panel acknowledges this dilemma, it also acknowledges that to be successful ATSIC must be able to operate within the power and governance structures of the nation in order to benefit its people. Indigenous leaders are also required to listen and respond to both traditional leaders and the diverse community structures that are a feature of Aboriginal and Torres Strait Islander life.

It is recognised that ATSIC and other Indigenous organisations operate in a very difficult and challenging environment. As the Centre for Aboriginal Economic Policy Research said recently <sup>x</sup>:

These organisations are relatively new, having only emerged in the last thirty years as ways of delivering government-funded services to Indigenous communities. They are also extremely complex ‘hybrid’ organisations which have to try and balance and mediate Indigenous social norms of personal reciprocity and support with more impersonal bureaucratic norms emanating from the government funding context.

While the latter comment is most applicable to community organisations, CAEPR points out that:

ATSIC too is a genuine hybrid organisation which has to mediate between the two very different worlds of small-scale Aboriginal and Torres Strait Islander societies and massive government bureaucracies. This...is no easy task.

CAEPR highlights another message that also came through the review process:

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<sup>x</sup> Centre for Aboriginal Economic Policy Research submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into Capacity Building in Indigenous communities, 2002.

... it is often the case that many Indigenous community members have enormous capacities, acquired from past experience and training, but they are somewhat reluctant to use those capacities in difficult organisational environments. Community members get burnt out in such environments and end up withdrawing from them, either as employees or active members of governing bodies.

The *Public Discussion Paper* records the concerns of prominent Aboriginals and Torres Strait Islanders about ATSIC's decision-making and public presence in Canberra. They believe this has shifted focus away from where it should be and has detracted from, or overshadowed, much of the good work being done at regional and community levels.

As it currently operates, the review panel sees ATSIC as a top down body. Few, if any, of its policy positions are initiated from community or regional levels. The regional operations of ATSIC are very much focused on program management.

To fulfil its charter, engage its constituents and strengthen its credibility, ATSIC must go back to its people. The representative structure must allow for full expression of local, regional and State/Territory based views through regional councils and their views should be the pivot of the national voice.

The panel proposes the establishment of a national body for ATSIC to achieve these aims.

### **Regional Plans**

Both written submissions and consultation meetings stressed the scope of regional planning processes to involve local communities in identifying and addressing the needs of their communities and to achieve integrated planning. They highlighted the potential for regional plans to be the mechanism for developing effective partnerships between Aboriginal and Torres Strait Islander communities and government agencies and mainstream organisations.

Several submissions stressed the potential that ATSIC has to influence policy and planning, especially at a regional level. The Social Justice Commissioner said <sup>xi</sup>:

ATSIC does not fully utilise its existing powers at either the national or regional level. There remains much potential for ATSIC to achieve many of the objectives identified in the ATSIC Review within its existing structures and powers.

The ATSIC Act embodies the critical concept of regional planning. Provisions in the ATSIC Act <sup>xii</sup> require regional councils to develop plans 'for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of the

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<sup>xi</sup> Submission to the Review from the Social Justice Commissioner, Human Rights and Equal Opportunity Commission, August 2003.

<sup>xii</sup> *Aboriginal and Torres Strait Islander Commission Act 1989*.

region', to have regard to the plan when preparing a budget for a regional council and to provide information on the implementation of the plan in their annual report.

The review panel considers that while some effort is made to comply with the legislative requirements for regional plans, it is apparent that the current regional planning framework is not achieving results. Factors involved in this failure include:

- The ATSIC Act requires plans that are far too broad in scope: plans are meant to effectively address all the circumstances of Aboriginal and Torres Strait Islander people.
- The plans may be more aspirational than having a clear outcomes focus.
- Local communities have sometimes not been involved in the planning process: a lack of knowledge affects the degree of commitment to the plans.
- Since funding to community organisations for Indigenous services has sometimes been based on historical funding arrangements, there has been insufficient incentive for both funded and unfunded community organisations to engage in the planning and implementation processes.
- Too often, the ATSIC regional plans have not been seen as relevant to government agencies, at times because they have not been involved in the planning process and therefore are not inclined to pick up the regional plans in their decision-making.
- There is little requirement for any agency of government to implement or even to observe the requirements of a regional plan and ATSIC does not have the power to compel involvement.
- ATSIC is not placed to use the plans to guide their activities. Having met the legislative requirement of developing them, regional councils realise that the breadth of issues is often overwhelming and they do not have the responsibility or resources to address all the needs outlined in the plans.

To their credit regional councils have recognised the need for change. As the Noongar Country Regional Council says in its Annual Report for 2001-2002:

The Regional Plan has been revised with the focus now concentrating on achieving measurable outcomes in a limited number of areas instead of trying to achieve immeasurable outcomes over a large number of areas.

The review panel has noted that no comprehensive identification of service delivery needs exists at the local community level. The regional plans in place have been developed with limited engagement of governments or their agencies and are fundamentally aspirational documents. It is to everyone's advantage for agencies other than ATSIC that provide important services into a region have input into the formulation of regional plans. This will provide wider ownership of the plans and could see them used as a tool to inform agencies at all levels of government in delivering programs and services. The requirements of target-setting, benchmarking and performance monitoring set under the new COAG framework dovetail neatly into the regional planning process.

ATSIC must take the initiative to involve other relevant players in the preparation of regional plans. Local government organisations are significant potential players. However, any discussion of the role of local government needs to recognise that most

local government councils are also subject to resource constraints. This is especially true in more remote parts of the country. Local government councils' ability to raise revenue from rates is commonly limited and, like ATSIC, expectations of them can be high.

The panel envisages that, with all government players actively involved, other government agencies at all levels should make use of the plans in the delivery of their own programs and services.

Indigenous funding based on historical funding arrangements and by way of funding grants should be discouraged. Future funding should focus on outcomes-based contracts for the purchase of services. Bilateral agreements, memoranda of understanding and purchaser/provider arrangements should be used to develop more effective working relationships and service delivery between ATSIC, funded service providers and governments.

With government having forward budgets, it is appropriate that funded organisations should also have funding certainty. The panel observed that funding uncertainty as well as the inability to roll unexpended funds into the subsequent year impacted on service delivery that would improve local communities. Triennial funding and accrual accounting should be introduced for ATSIC and its funded service providers.

It should be noted here that ATSIC's submission makes the connection between the development and implementation of needs-based regional plans and the building of strong local communities. ATSIC presents four case studies demonstrating the different ways that are emerging to make this connection. These are:

- Murdi Paaki Regional Council in western NSW which, in trying to shift decision-making from a centralised organisation to where people live, has successfully developed community working parties representing all Indigenous organisations within a particular community, along with elders, women and young people to undertake key planning processes.
- Miwatj Regional Council at Nhulunbuy, NT, in developing its own regional autonomy model, has proposed a regional representative structure that combines democratic election of some members and nomination of other members in accordance with traditional law, ensuring that all communities are appropriately represented. In this example there is to be an Elders' Council, made up of local traditional owners who will make decisions about land and cultural matters.
- The Thamarrurr Agreement at Wadeye in the Northern Territory is an example of grassroots connection to the wider planning process. It provides for 40 representatives, two from each of the 20 land-owning groups across an area of 5 000 square kilometres, to resolve conflicts and consider community aspirations using traditional processes. This agreement provides a model for the sort of formal linkages that can be established between governments and Indigenous communities through genuine engagement. (Wadeye is the second community site for the whole-of-government trials sponsored by COAG).

- The Cape York partnership involves close cooperation between community councils, community organisations, regional organisations, government departments and individual members of the Cape York communities in providing for local engagement and empowerment. The ATSIC Peninsula Regional Council, as the region's peak elected body, also plays an important role in Cape York developments.

State and national governments will continue to develop and implement programs that are of significance to Aboriginal and Torres Strait Islander people. Local communities will seek access to these programs, but it is not realistic to assume that State and national governments will always be able to provide programs that can be tailored to meet the individual needs of communities.

ATSIC can play an effective role in being the community interface with such State and nationwide programs to help them meet the needs of a particular community.

The review panel considers that regional plans should be based on the identification of community and regional needs and not be detailed documents about program delivery. Section 94 of the Act should be amended to provide a focus on the identification of major needs and priorities and the outcomes required and to remove the requirement for regional councils to develop individual plans to improve the 'economic, social and cultural status' of Indigenous people. The national body will be the appropriate forum to advance those broader aims. Regional councils are not resourced sufficiently to be able to improve the circumstances of Aboriginal and Torres Strait Islander people on all fronts and should not be tasked to plan for that.

Regional plans need to be living documents, regularly reviewed, focused on outcomes and providing for stability and consistency in funding services.

The establishment of an Aboriginal and Torres Strait Islander national body will give due recognition to the importance of regional plans in realising local and regional aspirations and informing ATSIC's national plan.

## **Governance**

Throughout the whole of the consultations participants identified governance as a key issue that had to be addressed by ATSIC and all funded Indigenous organisations as part of the move forward.

Discussion about governance goes right to the heart of ATSIC's role, structure and relationships.

Good governance is essential to the effective operation of any community. It involves social and political structures working to the benefit of all community members. It relies on genuine decision-making power resting with the community and community members having the skills and tools to work strategically towards agreed goals.

A number of submissions presented examples of how governance arrangements were enhancing the representation and participation of communities in their engagement with government and service providers. Murdi Paaki<sup>xiii</sup> maintains that the issue is:

...really about shifting decision-making powers from centralised control out to 'where people live'. The starting point is what the people themselves determine is necessary to improve their livelihoods and well being. It is about re-designing the rules of the game. It impacts on how policies are made, programs designed, and services delivered.

The impetus towards better Indigenous governance has been strengthened by the ground-breaking Indigenous Governance conference held in Canberra in April 2002. The conference, convened by Reconciliation Australia, ATSIC and the National Institute for Governance, drew 300 participants, 80 per cent were Aboriginal and Torres Strait Islander or other First Nations peoples.

Compelling evidence from around the world reveals that sustained and measurable improvements in social and economic well-being only occur when real decision-making power is vested in communities that build effective governing institutions reflecting the cultural values and beliefs of the people.

The Indigenous Governance conference stressed the need for governments at national, State, Territory and regional levels to give effect to this understanding. The review panel notes that several government submissions support moves for Indigenous governance to maximise 'cultural fit'.

Co-chair of Reconciliation Australia, Ms Jackie Huggins, recently said<sup>xiv</sup>:

Communities that make a conscious decision to go back to the beginning and explore where their institutions are out of sync with their cultures – not only traditional culture, but also day-to-day culture of how the community actually operates – are the ones that prosper over the long term.

At regional council meetings and in discussions with the panel, Aboriginal and Torres Strait Islander people expressed their desire to build their personal capacities and those of their organisations. While many supported a model for greater autonomy and for regional councils to be replaced by regional authorities, they indicated a need for more capacity building and resources in order to achieve this goal.

It is noted that the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs is presently concluding an inquiry into Capacity Building in Indigenous Communities. Some 66 submissions have been lodged with the inquiry.

The Office of the Registrar of Aboriginal Corporations (ORAC) has developed and is piloting an enhanced training program promoting good governance which it conducts across Australia, especially in rural and remote areas. The training program aims<sup>xv</sup>:

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<sup>xiii</sup> Submission from Murdi Paaki *Mid Passage towards self determination: A new ATSIC*, August 2003.

<sup>xiv</sup> Speech by Jackie Huggins AM to the Annual Cultural Heritage and Native Title Conference, Brisbane, 30 September 2003.

- ◇ to improve the knowledge and skills of committee members of community organisations and those who aspire to be committee members in good governance practices and procedures.
- ◇ to provide an opportunity for governing committee members to undertake accredited training – Certificate IV in Business (Governance) also known as ‘Managing in Two Worlds’.

The panel is very supportive of this work and of the initiative ORAC has shown. However, it has concerns about the regulator being the trainer. There is a potential for a conflict of interest to arise if ORAC continues with both roles. Many training organisations exist both public and private that could take on this responsibility. The training initiated by ORAC needs to be continued and ATSIC should be facilitating the expansion of the program.

### **International activity**

ATSIC’s international advocacy role is widely supported by Aboriginals and Torres Strait Islanders and judged as essential in keeping all Australians informed of global human rights issues and providing an Indigenous Australian voice overseas.

ATSIC has Non-Government Organisation observer status with the United Nations Economic and Social Council, which grants access for ATSIC to various UN forums. It has also made submissions to the UN Human Rights Committee, thus providing an Indigenous Australian perspective on developments in Australia. ATSIC has contributed to international standard setting in the development of a *Draft Declaration on the Rights of Indigenous Peoples*. It also participates in the annual sessions of the UN Working Group on Indigenous Populations and other international standard-setting activities.

The review panel agrees that ATSIC plays an important advocacy and representation role at international level. The Geneva based office however has clearly had little impact in disseminating information in Australia where the review panel found that many ATSIC councillors, staff and Indigenous leaders were either concerned about the value being achieved by its activities or were not even aware of its existence.

Regional council and community meetings highlighted the need for there to be better reporting back mechanisms by the representatives of ATSIC who are attending international forums, detailing the purpose of the involvement, and the outcomes.

### **Women’s representation**

The *Public Discussion Paper* drew attention to the under-representation of women in ATSIC’S representative structure and the review panel found that this was one of the issues that received significant debate in the review process.

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<sup>xv</sup> As outlined in ORAC’s submission to the review.

Regional council meetings expressed the desire to achieve greater representation of women on ATSIC's elected arm, and especially at regional council chair and, in particular, at the national executive level.

The meetings stressed the need for more capacity building initiatives for Aboriginal and Torres Strait Islander women, as well as campaigns to encourage women to nominate as candidates. Meetings supported maintaining the women's advisory committee set up under section 13 of the Act, but pointed to the shortcomings of such committees in being purely advisory and usually under resourced.

The ATSIC submission reports that its recently formed section 13 Women's Advisory Committee has argued that there should be equal representation of women at senior levels of ATSIC. However, the ATSIC national Board argues that while it is keen to see women play a greater role in regional councils and on the board, it does not support designated positions or mandated levels of representation for women. It says: 'Augmenting the participation of women can be achieved with the use of existing provisions – s.96 of the Act at regional level and s.13 at Board level.'

A submission from the s.13 Women's Advisory Committee <sup>xvi</sup> reinforces the problems caused by an imbalance of women's representation at senior levels of ATSIC's elected arm. It points to the inequity of a situation in which over half of the Indigenous people are not given their due voice in the higher levels of ATSIC governance. The committee continues:

...one possible result of this under-representation is that less attention has been given to issues related to families and women, including the needs of youth, the homeless and itinerants, substance misuse and family violence. In our view, a key objective of any new arrangements should be equal representation of women in terms of membership of regional councils, the proportion of regional council chairs, and in the proportion of commissioners on the ATSIC board. That is, 50 per cent of these officials should be women.

Putting in place a mechanism to achieve this may or may not have broad community acceptance, but it is nevertheless one way of addressing the marginalisation of women in Indigenous affairs.

The Women's Advisory Committee suggested two options for achieving greater representation of women were direct community election for all elected arm positions and grassroots campaigns for greater female representation (as has occurred in South Australia in recent times).

In their submission covering elections for commissioners and councillors, Professor Colin Bourke and Professor Eleanor Bourke identified how the current electoral systems led to male domination. They also propose that there should be a mandated level of 50 per cent representation for women through designated female positions on regional councils. To overcome the under representation of women at national level, the professors suggest there should be positive discrimination in favour of women by ensuring women are elected in those States/Territories with more than one

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<sup>xvi</sup> Submission from Kungala Wakai ATSIC Committee on Women's Issues, September 2003.

commissioner. Thus, in a State/Territory with two or three commissioners, one would have to be female.

The panel examined the information that was available from the Australian Electoral Commission (AEC) from the last ATSIC elections as to female involvement in the electoral process. (Note that the figures presented are for the initial round of 2002 ATSIC election and do not include the Torres Strait Regional Authority.)

**Table A. ATSIC office holder positions by gender**

	<b>Total positions</b>	<b>Male</b>	<b>Female</b>
<b>National Chair</b>	<b>1</b>	<b>1</b>	<b>0</b>
<b>Board Commissioners</b>	<b>16</b>	<b>15</b>	<b>1</b>
<b>Regional Council Chairs</b>	<b>35</b>	<b>32</b>	<b>3</b>
<b>Total full-time office holders</b>	<b>52</b>	<b>48</b>	<b>4</b>
<b>Regional Council Deputy Chairs</b>	<b>35</b>	<b>25</b>	<b>10</b>
<b>Regional Council Alternate Deputy Chairs</b>	<b>34</b>	<b>20</b>	<b>14</b>
<b>Total part-time office holders (elected by Regional Councils)</b>	<b>69</b>	<b>45</b>	<b>24</b>
<b>All Regional Councillors at 2002</b>	<b>383</b>	<b>269</b>	<b>114</b>

**Table B. ATSIC 2002 regional council elections with gender break down for nominees and successful candidates in 16 wards \***

Ward	Ward	Total	Ward	Ward	Ward	Ward	Ward	Ward
	<b>Vacancies</b>	<b>Nominees</b>	<b>Nominees</b>	<b>Nominees</b>	<b>Elected</b>	<b>Elected</b>	<b>Voters</b>	<b>Voters</b>
			<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Females</b>	<b>Male</b>	<b>Female</b>
Karuna	9	20	9	11	4	5	233	337
Tumbukka	7	20	14	6	5	2	288	441
Hobart	6	20	11	9	2	4	117	124
Papunya	7	14	10	4	5	2	835	618
Darwin	7	23	15	8	3	4	288	485
Brisbane Metro	5	31	22	9	4	1	594	550
Tableland-								
Douglas	3	10	7	3	3	0	324	427
Roma	12	54	39	15	10	2	975	1223
Cape York	4	10	5	5	3	1	330	355
Port Hedland	4	9	4	5	4	0	189	274
Yawooroong	5	14	11	3	2	0	348	263
Western Desert	4	9	7	2	4	0	211	257
Walunga	3	15	12	3	2	1	163	271
Gattang	8	34	22	12	5	3	637	903
Wangkumara	8	33	26	7	7	1	623	692
Greater Sydney	11	54	28	26	5	6	519	923
<b>Totals</b>	<b>103</b>	<b>370</b>	<b>241</b>	<b>129</b>	<b>71</b>	<b>32</b>	<b>6738</b>	<b>8340</b>

\* Please note that these figures are for the 2002 ATSIC elections prior to election of commissioners and, therefore, prior to back-filling of positions.

The inference that the panel draws from the AEC information supports comments that where women put themselves forward in sufficient numbers for office and campaigned together they are likely to be successful.

The review panel believes that the regional orientation and structure of the recommended model will help ensure greater participation of women in shaping the policies and programs of ATSIC.

Since the panel has placed emphasis on improving the regional focus, it may be considered necessary for ministerial intervention to occur where inadequate representation exists at that level.

If ministerial action were to be considered necessary by making appointments to the regional council, the number of such appointments should not exceed 20% of the membership of the council. This would be consistent with the proportion of ministerial appointees on the national executive. The size of the council would thus be increased by the number of such appointments.

The review panel also acknowledges that Indigenous women's family and kinship responsibilities – frequently extending over three generations - can often hamper their participation in ATSIC elections and elected positions. The panel recommends that ATSIC with the support of ATSIIS, immediately examine practical ways of addressing this problem and, in particular, should resource steps to identify the impediments to women getting into these positions and, following that identification, adopt strategies and a focused campaign to ensure the situation is remedied.

All members of the review panel support greater representation of women in ATSIC and support the encouragement of active grassroots campaigns as one means to promote the election of women. Ms Jackie Huggins also supports direct election and 50:50 mandated participation of women in elected positions, but these proposals are not supported by the other panel members.

## **Voting**

The question of voter turn-out at ATSIC elections was raised at meetings and in several submissions.

A study of the 2002 ATSIC elections by the Centre for Aboriginal and Economic Policy Research<sup>xvii</sup> argues that overall voter turnout is reasonable given the voluntary nature of ATSIC elections. The study:

..discerns a distinctive geography of both voter turnout and candidate interest, which are higher in sparsely settled northern and central Australia, and lower in southern more settled Australia.

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<sup>xvii</sup> W. Sanders. (2002) 'Participation and representation in the 2002 ATSIC elections', Discussion Paper No. 252/2003. Centre for Aboriginal Economic Policy Research, Australian National University.

The paper also argues that women's participation in ATSIC elections as voters, candidates and in being elected as regional councillors is quite high, but that there is some falling away in women's election to the 52 full-time salaried offices of commissioner and regional council chairperson. It notes some weakness in the representation of women as regional councillors in remote areas and an under-representation of councillors under the age of 35.

ATSIC regional councils were generally of the view that a greater turn out of voters in ATSIC elections would raise the standing of the organisation. One obvious way to increase voter turn out would be the introduction of compulsory voting.

Regional council meetings revealed divided opinion about compulsory voting. An argument in favour of compulsory voting was that people who received the benefits of programs and services should be required to support the process by identifying themselves and participating in ATSIC elections. This also increases the legitimacy of ATSIC and individual representatives.

The mechanisms for having a compulsory voting system would be twofold: a separate race-based roll or identification of Aboriginal and Torres Strait Islander people on the Federal roll, and a system of sanction for those not voting, with exceptions granted on the same basis as they are for Federal elections.

The review panel does not support a race-based roll (or ethnic identification on the Federal roll) or fines or punishments, including ultimately imprisonment, for not voting in ATSIC elections, and on this basis does not recommend compulsory voting.

There were a number of arguments against compulsory voting. The first revolved around the fact that to pursue compulsory voting an Indigenous electoral roll would have to be developed. There was in some regions a fear about the targeting of Aboriginal and Torres Strait Islander people by those who perpetuate racial vilification (examples were quoted). The second concern was about the penalties imposed on people when they did not vote.

The panel was concerned by the fears held by people in some parts of Australia about the improper use of an electoral roll to generate racial vilification.

The implications that the penalties for failure to vote might include monetary fines on people already financially disadvantaged, and possibly even imprisonment, strongly militate against compulsory voting.

Whilst the review panel considers that making ATSIC voting compulsory would arguably increase the legitimacy of the organisation and its individual elected representatives, the panel is not recommending at this time compulsory enrolment and compulsory voting for ATSIC elections.

On other arrangements that apply for ATSIC elections, the review panel is supportive of the general arrangements for regional council elections with its system of wards and the s.141 review arrangements whereby a review panel is constituted after each election to make recommendations on any necessary changes.

## **Aboriginality**

The issue of Aboriginality was raised by the panel initially as part of the consideration of voting. During consultations, the issue of proof of Aboriginality for the purpose of accessing specific programs and services was raised.

Regional council meetings showed some support for standardising a ‘proof of Aboriginality’ form for use by government agencies in assessing eligibility for Commonwealth and State programs and services identified for Aboriginal and Torres Strait Islander people. This suggestion arose because of people’s concern about non-Indigenous people claiming the benefits of Indigenous specific programs and the fact that different agencies are developing their own separate forms.

The *Aboriginal and Torres Strait Islander Act 1989* defines an Aboriginal person as ‘a person of the Aboriginal race of Australia’ and a Torres Strait Islander as ‘a descendent of an Indigenous inhabitant of the Torres Strait Islands’. A paper from the Department of the Parliamentary Library<sup>xviii</sup> points out that program administration and some legislation and court judgements use the longer definition as someone ‘who is a member of the Aboriginal race of Australia, identifies as an Aboriginal and is accepted by the Aboriginal community as Aboriginal’. Some people at regional council meetings with the panel stressed that the third component of this definition often placed pressure on local community organisations to make a judgement on people who were not descendents from their local communities. They suggested the third phrase should be changed to words such as:

‘be accepted as such by the community from which they come’.

In addition, some regional councils wanted a single proof of Aboriginality form that would meet the requirements of all agencies and programs. This would end the duplication of forms and ease some of the burden on organisations that are asked to certify these forms on a daily basis.

The panel is not in a position to emphatically suggest any solutions to this issue which is outside of its terms of reference. However, it would appear essential for ATSIC in conjunction with governments and their agencies to address this issue.

## **Torres Strait Islander representation**

Prior to 1994 the Torres Strait region was represented within ATSIC in the same way as the mainland with its own regional council and a zone commissioner on the ATSIC board.

In 1994, after relentless representations from the region for its own authority separate from ATSIC, the relationship between the Torres Strait Islands and ATSIC changed significantly. The ATSIC Torres Strait Regional Council was replaced with an

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<sup>xviii</sup> *Defining Aboriginality in Australia*, Department of the Parliamentary Library Current Issues Brief No 10 2202-03.

autonomous Torres Strait Regional Authority (TSRA) which now has its own budget and provides a similar role to ATSIC for the Torres Strait Islanders living within the defined Torres Strait region. The needs of Torres Strait Islanders living in mainland Australia continue to be provided by ATSIC supported by a Torres Strait Islander Advisory Board (TSIAB) appointed by the Minister and an Office of Torres Strait Islander Affairs (OTSIA) within the ATSIC central office.

Despite the achieved autonomy of the operations and budget of the TSRA it continues to be represented on the ATSIC Board by a zone commissioner who has equal standing with all other commissioners. This is an anomaly that is difficult to justify and should be corrected. The review supports the thrust of recommendations 22 and 23 of the 1997 report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs *Torres Strait Islanders: A New Deal* that read:

The Committee recommends that the Chair of the Torres Strait Islander Advisory Board (TSIAB) be elected by the members of the TSIAB from amongst their number. The Chair should be appointed to the Aboriginal and Torres Strait Islander Board of Commissioners and should replace the Commissioner for the Torres Strait Zone. *[Noting the second part of this recommendation is irrelevant under the model proposed by the panel.]*

and

The Committee recommends that the *Aboriginal and Torres Strait Islander Commission Act 1989* be amended so that functions currently specified for the Office of Torres Strait Islander Affairs (OTSIA) be transferred to the Torres Strait Islander Advisory Board (TSIAB). The new function of OTSIA should be to provide secretarial support to TSIAB and assist TSIAB undertake its functions.

There are also apparent anomalies in subsection 94(1) of the ATSIC Act which requires that regional councils ‘assist, advise and cooperate’ with the TSRA in the implementation of regional plans and pass on certain information to the TSRA. There is a strong argument that the TSIAB should replace the TSRA in s.94(1).

In relation to the report *A New Deal* the government response indicated that many recommendations would be implemented. The government has a number of implementation options under the framework suggested in this report and the panel does not intend to canvass them all here. However, the panel is generally supportive of the thrust of the reports recommendations. It is worth mentioning one specific matter and that is the proposal to have an extra TSIAB member from Queensland in consideration of the proportion of Torres Strait Islanders who live on the mainland who are resident in that State (58%). There is an argument that this should be quickly addressed by the Minister.

## **The regional council framework**

The current regional council structure is the foundation of ATSIC and is a well-established and recognised framework for representation and service delivery. It is acknowledged that the council boundaries are not perfectly matched to cultural boundaries and never can be. Nevertheless, many submissions from Aboriginal and Torres Strait Islander people and organisations expressed a level of support for the existing council structures and boundaries.

In responding to the regional authority proposal in the discussion paper, which involved a reduction to 17 regional bodies, many submissions expressed concern about, or opposition to, such a reduction particularly as it would distance the councils from the communities they serve.

On the other hand, there is still some call for a greater number of councils. The previous experience with the management of the regions when ATSIC had 60 regional councils argues against expanding the present numbers.

The current Act, however, has an inflexible approach to the boundary of the Torres Strait Regional Authority.

At the present time the boundary of the TSRA includes two of five DOGIT (Deeds of Grant in Trust) communities on the northern tip of Cape York. These five DOGIT communities are in close proximity to each other. Each community has its own local council structure under Queensland legislation, with varying levels of duplication of services and facilities and varying levels of quality of those services and facilities.

It appears that the services and facilities that have been made available in Cape York by the TSRA are significantly more beneficial to the residents of those townships than those that are available to the Aboriginal townships.

Discussions with people at the TSRA and with the DOGIT communities have illustrated that the inflexible boundary between the TSRA and the Northern Peninsula Area has been a problem for any negotiations to address this issue. This inflexibility will also militate against any effective improvements that the Queensland Government may wish to address during its current review of the operations of the DOGITs.

The panel recommends that the fixed boundary for the TSRA be removed so that the boundary may be reviewed by the ATSIC boundaries commission whenever a review of boundaries is undertaken under section 141 of the Act.

### **Opting out of the regional council election framework**

In the *Public Discussion Paper*, the review panel raised the issue of the Minister approving alternative arrangements for election or selection of regional councillors.

This issue was raised because of concerns within some Indigenous communities that the standard ‘one size fits all’ model for community representation did not reflect Aboriginal or Torres Strait Islander systems of governance or representation.

The current and proposed system of election of representatives onto a regional council is a western cultural system of community representation that is seen as a fair mechanism for securing community representation. Aboriginal and Torres Strait Islander communities have a wide variety of cultural approaches to securing community leadership. The panel recognises that it would not be feasible to try to replicate each of those cultural approaches in a legislative package.

What also affects any consideration of this approach is that the boundaries that have been created for the regional councils do not coincide with the boundaries of any of the Indigenous groups or groupings and are unlikely ever to do so. This adds to the difficulty in facilitating the creation of a representative structure that may take into account traditional Aboriginal and Torres Strait Islander culture.

The panel recommends that the legislation be amended to provide to Aboriginal and Torres Strait Islander peoples the opportunity to negotiate with each other to create a representative structure within the boundaries of the regions or wards which more appropriately reflects the cultural leadership of the residents.

It has discussed the possibility that the test for the Minister agreeing to an 'opt out' arrangement could be similar to that contained in Section 21 of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The test in this legislation is that the Minister can approve a new arrangement if 'a substantial majority of adult Aboriginals living in an area' are in favour.

If that precedent were followed, the legislation could allow for a proposal to be advanced, concerning alternative arrangements for the election of regional councillors, where the Minister was satisfied that it had a high level of support within the region or ward.

## **RECOMMENDATIONS**

3. The structure of ATSIC shall be altered to provide for a national body and a national executive as outlined on pages 14-15 and explained on page 78-80.
4. ATSIC regional plans should be focused on needs, outcomes, outputs and capacities, not the broad sweep currently set out in the Act.
5. ATSIC must take the initiative to involve other relevant players, particularly all relevant government agencies, in the preparation of regional plans.
6. All spheres of government and government agencies need to be actively involved in assisting with the development and implementation of ATSIC regional plans.
7. Section 94 of the ATSIC Act should be amended in accordance with the above recommendations.

8. Funding to Aboriginal and Torres Strait Islander organisations based on historical funding arrangements, by way of funds grants, should be discouraged.
9. Future funding by ATSIC should focus on outcomes-based contracts for the purchase of services.
10. Bilateral agreements, Memorandums of Understanding (MOUs) and purchaser/provider arrangements should be used to develop more effective working and service delivery relationships between ATSIC, funded service providers and governments.
11. Professional development programs should be adequately resourced and implemented immediately for both the elected and administrative arms of ATSIC to enable the organisation to cope with the new administrative arrangements and to deal effectively with new working relationships.
12. A skills audit of all staff should be undertaken by ATSIC in order to identify the existing level of policy development skills within the organisation.
13. Adequately resourced policy skills development programs should be instituted for ATSIC staff. ATSIC should develop a model employer program for itself which particularly provides for the development of the skills of its staff in rural and remote regions.
14. ATSIC's advocacy and representation at the international level should continue but must ensure that it reflects the views of its constituents.
15. ATSIC should review the nature and quality of its communication to the elected membership of ATSIC about its international advocacy and representation activity.
16. The ATSIC Board, with the financial and other support of ATSIIS, should immediately examine practical ways, including active campaigns and other strategies, to address the under-representation of women in ATSIC elected positions; if it has not been completed, this work should continue under any new arrangements for ATSIC.
17. ATSIC should adopt and resource approaches that have been identified through the implementation of recommendation 16 to ensure that the under-representation of women is remedied.
18. ATSIC voting should continue to be voluntary.
19. ATSIC's activity to encourage voter participation should continue.
20. An Indigenous electoral roll should not be introduced.
21. ATSIC in conjunction with all levels of government should address the issue of proof of Aboriginality as a matter of priority.

22. The members of the Torres Strait Islander Advisory Board should continue at this time to be appointed by the Minister.
23. The Torres Strait Islander Advisory Board (TSIAB) should elect its own chair from its membership and that this person become a full-time chair of the TSIAB representing mainland Torres Strait Islanders.
24. The TSIAB chair should be a member of the proposed ATSIC national body.
25. Recommendation 23 from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs *A New Deal* report (to transfer the Office of Torres Strait Islander Affairs to assist and support the Torres Strait Islander Advisory Board) should be implemented.
26. The Minister should consider appointing an additional Torres Strait Islander Advisory Board member from Queensland.
27. The ATSIC Act should be amended to allow flexibility in the boundaries of the Torres Strait Regional Authority.
28. The Minister should consider amending section 94 of the ATSIC Act to substitute the Torres Strait Islander Advisory Board for the Torres Strait Regional Authority.

## Chapter 4

# THE RELATIONSHIP BETWEEN ATSIC AND THE AUSTRALIAN GOVERNMENT

As a creation of the Federal Parliament, the relationship between ATSIC and the Australian Government will remain one of ATSIC's most vital relationships. As far as the Minister for Indigenous Affairs is concerned, there is no other agency in Australia more important. It is imperative that cooperative collaboration occurs between the Minister and the ATSIC Board.

This relationship has often been difficult in the past to the extent of an ATSIC board carrying a motion of no confidence in a minister and more recently with the resignation of the deputy chair and the suspension of the chair by the then Minister after a prolonged period of negative media reports. A *Current Issue Brief* from the Department of the Parliamentary Library describes the situation this way<sup>xix</sup>:

‘Minister Ruddock’s announcement of the changes to ATSIC also came amidst months of bad news stories for the peak Indigenous body – detailing allegations of fraud and serious conflicts of interest in decision making over ATSIC funding amongst some of the organisation’s highest ranking officials, and the conviction on assault charges of Chairman Clark.’

During this time the government created a new agency, Aboriginal and Torres Strait Islander Services (ATSIS) out of the administrative arm of ATSIC to put funding issues at arm’s length from the ATSIC elected arm. In a speech on 30 August 2003<sup>xx</sup>, the then Minister, the Hon Philip Ruddock MP, described the action as ‘an interim measure pending the outcome of the ATSIC review’ which would allow the ATSIC board to determine policies and priorities for targeted funding ‘without the risks of conflicts of interest to which they were previously exposed’.

The splitting of the commission occurred just after the review panel had completed its first round of public consultations and just prior to the publication of the review panel’s *Public Discussion Paper* so the paper did not canvass opinions on the subject, but did raise the questions about the roles and responsibilities of the elected and administrative arms, accountability, transparency and avoidance of conflicts of interest.

### Policy advice and Cabinet processes

In its *Public Discussion Paper*, the review panel pointed to a significant decline over time in ATSIC's input and access to the Cabinet policy development process. As noted at paragraph 5.6, the ‘number of Cabinet documents ATSIC has access to, co-ordination comments on submissions by ATSIC and submissions prepared by ATSIC, have all declined significantly over recent years’. ATSIC attributes this to putting

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<sup>xix</sup> ‘Make or Break? A Background to the ATSIC changes and the ATSIC Review’. Department of the Parliamentary Library Current Issues Brief No 29 2002-03.

<sup>xx</sup> Speech to the Bennelong Society by the then Minister for Immigration and Multicultural Affairs and Indigenous Affairs, the Hon Philip Ruddock, 30 August 2003.

forward views which are unacceptable to the Government: others argue that it flows from the quality of input from ATSIC (when it is made) and concerns about ATSIC's ability to maintain confidentiality and its preference for advocacy in the public arena.

At a meeting of the panel with senior leadership of ATSIC it was conceded that ATSIC had failed on a number of occasions to respond in a timely fashion or to respond at all to requests for ATSIC input by Australian Government agencies.

The review panel has not attempted to reconstruct the range of issues considered by government over the past several years in an effort to measure whether there was scope for ATSIC to be more greatly involved. Nor, given 'need to know' principles, has the panel attempted to test the range of views that exist, each of which seeks to identify why ATSIC's involvement has diminished. Instead, the review panel has considered what might be done in the future, so that some indicators will be available to interested participants and observers as a starting point in any attempt to assess the extent of ATSIC's involvement in this key area of public policy development.

In the view of the panel, it is not realistic to lay down some standard set of measures by which ATSIC's involvement, or performance, can be gauged. Nor will it ever be possible for those outside government to examine all the material that a Cabinet has considered in a period, something that in other circumstances might lead to an ability to 'second guess' whether ATSIC should have been more involved.

The review panel considers that a better course is to build in measures that will ensure visibility within the process. The panel considers that one relatively simple first step would be for the Cabinet Secretariat to report annually, within the annual report of the Department of the Prime Minister and Cabinet, on the following:

- ◇ how many draft Cabinet documents ATSIC has been consulted on;
- ◇ how many Cabinet documents ATSIC has provided comments on.

However, no process of ATSIC involvement at officer level into the deliberations of Cabinet can substitute in effectiveness for a strong collaborative relationship between the elected arm of ATSIC and the Minister for Indigenous Affairs (and other relevant ministers from time to time). This is particularly the case when the areas of policy and program development are significant. The primary relationship between ATSIC and the government (and its policies) is the one ATSIC has with the Minister. The Minister for Indigenous Affairs should be the main contact point between the Cabinet and ATSIC and should attend all meetings of the ATSIC national body for an appropriate time, and meetings of the national executive when necessary.

### **Policy skills**

A properly resourced program of professional development is required for the elected and administrative arms of ATSIC.

As reflected in regional council meetings and discussed in the June 2003 *Public Discussion Paper*, observers generally have considered that ATSIC in recent years has lacked policy development skills. This is true at the national policy level, but may

be even more pronounced at the regional level. Many of the staff who now support ATSIC regional councils do not consider themselves to have these skills and indicated to panel members that, were this to become a key part of their role, they would require considerable training and support, at least in the early stages.

The panel considers that a skills audit of all staff should be undertaken by ATSIC (or ATSIIS, as an interim step, leading up to any new arrangement) in order to identify clearly the existing level of skills in the area of policy development at all levels of the organisation. Following that, a focused and adequately resourced policy skills development program needs to be instituted.

### **Central agency advice**

Regional council meetings revealed that perceptions of the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA) ranged from a view that it should not exist at all or should not be providing advice that competed with ATSIC, to a distrust about the advice it was providing and a lack of awareness of how it operated. Claims that it is ‘second-guessing’ or ‘shadowing’ ATSIC and not always acting in the Indigenous best interest were common. Concerns also covered the perception that OATSIA’s location within the Immigration and Multicultural Affairs Department implied that Aboriginal and Torres Strait Islander people could just be pigeon-holed in a manner that did not recognise or properly respect their status as Australia’s first people. A typical comment during the consultation was:

‘It’s insulting to be part of a department that includes Immigration and Multicultural Affairs. We’re not migrants, but the first peoples of this country.’

*Aboriginal participant, Nulla Wimila Kutji Regional Council meeting*

The role of OATSIA - originally established to provide a whole-of-government perspective on issues that cannot be addressed solely through the policy and advocacy advice of ATSIC- is not widely understood, particularly in Aboriginal and Torres Strait Islander communities.

The review panel believes that providing the Indigenous perspective remains the prime role of ATSIC. However, the panel sees an essential role for a central agency group to advise the Australian Government (in particular, the Prime Minister or portfolio Minister). The central group’s role should be to facilitate and advise on:

- ◇ a broad whole-of-government perspective where Indigenous interests are concerned, basically where ATSIC’s advice, quite properly may not be impartial;
- ◇ achieving whole-of-government approaches to addressing Indigenous needs;
- ◇ achieving the cooperation of all spheres of government (Australian, State, Territory and Local) in addressing Indigenous needs; and
- ◇ progressing COAG initiatives.

To effectively fulfil this purpose, the panel considers that OATSIA should be located within the Department of the Prime Minister and Cabinet. This would strengthen the group's capacity to contribute to COAG processes especially in the longer term, keep a tight focus on its responsibilities, and accord national Indigenous issues the status they deserve and require.

### **Advice on Implementation of Legislation**

Subparagraph 7(1)(e)(i) of the ATSIC Act gives the Commission the function of advising the Minister on 'matters relating to Aboriginal and Torres Strait Islander affairs, including the administration of legislation;...'. The terms of reference ask the panel to consider a range of ATSIC's current roles and functions, including the commission's role in providing 'advice on implementation of legislation'.

The panel notes that the wording of the function in subparagraph 7(1)(e)(i) is in the same terms as the original ATSIC bill provision that was considered by the 1989 Senate Select Committee on the Administration of Aboriginal Affairs. At that time, the National Farmers' Federation raised its concerns about the provision, including in relation to the possibility that ATSIC would be responsible for advising the Minister in relation to the ATSIC Act itself<sup>xxi</sup>.

The ATSIC Task Force advised the committee that, while ATSIC would be a principal source of advice to the Minister, the Minister 'would be neither restricted to, nor bound by the advice received from ATSIC'.

The then Minister for Aboriginal Affairs wrote to the committee with a similar view, and according to the committee's report, 'went on to stress that the ATSIC bill did not restrict the advice available to the Minister to that provided by ATSIC'.

The review panel notes that section 7 of the Act identifies several other functions which, taken together, suggest a clear intention to give ATSIC as wide a scope as possible in advancing the interests of Aboriginals and Torres Strait Islanders. In particular, the ATSIC Act gives the commission the functions of monitoring the effectiveness of programs, including those conducted by bodies other than ATSIC (paragraph 7 (1)(b)) and a policy development role (paragraph 7(1)(d)).

It is not clear to the review panel that any benefit would be gained by limiting ATSIC's roles and functions in these areas. Indeed, the panel believes that there is scope for ATSIC to develop this work as its advocacy role grows. While ATSIC is unlikely ever to be the sole source of advice to the Minister concerning the administration of legislation, it would be incapacitating to remove the current function concerning legislation, possibly even in relation to those policy and program areas that are separately identified in section 7.

In taking this view, it is noted that ATSIC is not the sole source of advice on implementation of legislation. The panel has also taken into account the range of

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<sup>xxi</sup> Senate Select Committee on the Administration of Aboriginal Affairs, February 1989. *Administration of Aboriginal Affairs* Parliamentary Paper No 474 of 1989.

issues raised by the 1997 Taylor review<sup>xxii</sup>, on advice and support to the Minister, which detailed some problems that had occurred in the Minister receiving timely and comprehensive advice on legislative matters.

The panel believes that ATSIC's current function in subparagraph 7(1)(e)(i) of the ATSIC Act to advise the Minister on 'matters relating to Aboriginal and Torres Strait Islander affairs, including the administration of legislation;...' remain.

### **Adequacy of ministerial powers**

This issue was referred to the panel in a letter from the Minister, following public disquiet at certain expenditure decisions of the ATSIC Board. The review panel's *Public Discussion Paper* outlined the powers that the ATSIC Act gives the Minister (see paragraphs 3.9 to 3.20 of the Discussion Paper). The Minister had asked the panel to consider whether a new ministerial 'veto' power should be provided.

In summary, currently the Minister has power to:

- require the commission to provide information (to him) on any matter specified (paragraph 7(1)(f) of the Act);
- give 'general directions' to the commission, under section 12 of the Act (the commission must comply with those directions);
- suspend, and ultimately terminate, a commissioner's appointment in certain circumstances dealt with in section 40 of the Act.
- terminate a commissioner's appointment in certain cases, including for 'misbehaviour' where the Minister has determined specified behaviour is taken to be misbehaviour;
- to appoint the Chief Executive Officer (CEO) of ATSIC, if 'the commission agrees to the appointment (sub-section 46 (1)).

The Minister also exercises financial powers and ATSIC's budget estimates require ministerial approval to have any effect.

The circumstances that generated a consideration of a veto power arose out of the ATSIC Board making direct funding decisions. The decision of the panel that a separation of roles should be legislatively incorporated into the ATSIC Act avoids the necessity to pursue further the issue of a ministerial power of veto.

In relation to dismissal of elected officials, there was disquiet expressed in consultations about the Minister's powers. However, no clear proposal emerged for an alternative process that would directly replace the Minister's current role, but strong support was evident for ATSIC elected officials to also have the ability to remove elected chairs, by a 'no confidence' procedure.

The panel believes the Minister should retain the capacity to dismiss elected officials. It would go some way to addressing the concerns of Indigenous people if the Minister

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<sup>xxii</sup> Taylor, R. M. (1997) *Review of Policy Advice and Support to the Minister for Aboriginal and Torres Strait Islander Affairs*.

was provided with an explicit power to establish an inquiry with coercive powers to investigate matters, prior to consideration of whether there were grounds for dismissal.

Partiality in decision-making has been an issue with ATSIC both at the level of elected representatives and at staff level. The panel elsewhere in this report has proposed that protocols be developed dealing with the issue of partiality in decision-making and has proposed that breaches of the protocols constitute misbehaviour by making such protocols legally binding.

### **Commonwealth Grants Commission (CGC)**

As noted in the first chapter and also in the panel's *Public Discussion Paper*, the CGC completed an extremely valuable report on Indigenous Funding in 2001. The panel accepts the conclusion of that report regarding needs and funding which stated that 'these issues cannot be encompassed in national funding formulas.' The panel believes that the focus for ATSIC must be on identifying the needs of local communities and securing the resources that will address those needs. The panel therefore considers that further work by the CGC could serve an important function in developing formulas for the allocation of funding on an ATSIC regional basis. There are obvious arguments for considering relative measures of needs – based on objective data – when allocating funding. This is not to say that measures of needs are the only issue to consider as the CGC report cautioned.

The results of the CGC work should be considered by ATSIC and all levels of government in the development and delivery of programs and services to their populations, including the allocation of Indigenous-specific funding (whether as direct programs or as allocations to other levels of government).

The NT Government in its first round submission prior to the release of the discussion paper argued that all Commonwealth Indigenous-specific funding should be allocated on the basis of comparative need based on work by the CGC. The review panel takes the view that information on relative need should be an important part of the mix of information that is used by policy makers and program and service delivers to obtain the best outcomes.

The number of people in regions and States and Territories is an important factor to be considered when benchmarking need and allocating resources. Concern has been raised with the panel that there are problems in the census data on Indigenous people, particularly in areas where data collection is more difficult. The Australian Bureau of Statistics needs to ensure that its data collection and methodologies do not further disadvantage an already disadvantaged people.

## **RECOMMENDATIONS**

29. Government funding of services and the development of programs should be consistent with the regional plan.

30. Funding for ATSIC and for its service providers should be on a triennial funding basis with the adoption of accrual accounting practices for the organisation.
31. The Cabinet Secretariat should report annually, within the annual report of the Department of the Prime Minister and Cabinet, on ATSIC's involvement in the Cabinet process.
32. A small group should be established within the Department of the Prime Minister and Cabinet, replacing the current office of Aboriginal and Torres Strait Islander Affairs (OATSIA) located within the Department of Immigration and Multicultural and Indigenous Affairs, to provide a whole-of-government focus on Indigenous issues.
33. ATSIC'S function in subparagraph 7(1)(e)(i) of the ATSIC Act should remain.
34. A ministerial veto power in relation to decisions of the national body or the national executive should not be introduced.
35. The Act should be amended to give the Minister the power to order an Inquiry, with appropriate coercive powers, to determine whether a member of the national body should be removed from office.
36. The Commonwealth Grants Commission should be tasked to develop measures of relative need in Aboriginal and Torres Strait Islander communities at the regional council level, taking into account funds provided by Indigenous-specific and mainstream programs and funds provided by all levels of government.
37. The work referred to in recommendation 36 should be undertaken by the Commonwealth Grants Commission on an ongoing basis.

## *Chapter 5*

# **THE SPECIFIC ROLES OF ATSIC AND THE DIFFERENT SPHERES OF GOVERNMENT IN EFFECTIVE PROGRAM AND SERVICE DELIVERY**

### **State/Territory government submissions**

There is a crisis in Indigenous Australia that is both long standing and deep-seated. It is not the sole responsibility of any one government or administration, nor will any one policy change or reform resolve it. Rather, it requires sustained commitment at all levels and a strong partnership at the grassroots with communities and leaders.

*Submission from the Northern Territory Government*

The all too familiar litany of social and economic statistics provide enough evidence of the failure of public policy to effectively deal with the intractable Indigenous disadvantage that has reduced many Indigenous people to living on the margins of one of the most developed nations. This environment is causing governments to look for new approaches to deal with their serious issues. Indigenous leaders are also calling for a new approach to confronting the social and economic disadvantage that afflicts their people. This current environment presents an opportunity to develop a paradigm shift in Indigenous affairs at the national, state and local levels.

*Submission from the West Australian Government*

All State/Territory government submissions reflected a strong commitment to the objectives of ATSIC. Most tended to regard ATSIC as an Australian Government instrumentality and argued for the devolution of power back to State/Territory administrations. Several confirmed that they now saw ATSIC as a source of advice to governments at all levels.

All acknowledged the need for whole-of-government approaches to addressing the needs of Aboriginal and Torres State Islander people and explained what mechanisms were proving effective in their State or Territory. They wanted more effective interface with ATSIC for ensuring the success of such approaches, including the use of bilateral agreements or memoranda of understanding (MOUs).

Submissions emphasised the diversity of Aboriginal and Torres Strait Islander society and also the diversity of structures that jurisdictions had developed to work with ATSIC and communities. They also expressed support for enhanced Indigenous governance and capacity building at all levels within ATSIC and Indigenous communities.

The WA Government spelt out the need for adequate resources to enable the development of Indigenous governance and community participative arrangements. It said the representative structure should enable Indigenous representatives to be well briefed and informed to undertake negotiations with governments and their agencies, and to monitor the implementation of regional plans and agreements. It advocated a

collaborative model and suggested as ‘clearly emerging as a significant factor for the policy failure is the ‘separatist’ policy model that has shaped service delivery strategies leaving Indigenous people to be largely responsible for the delivery of critical services that are taken for granted by other Australians’. It suggested that the use of ATSIC as an alternative form of service delivery ‘has contributed to Aboriginal and Torres Strait Islander people being marginalised.....’

The South Australian Government spelt out its preference for a model which would enhance the role of regional councils at the local level and maintain the national influence of the national board. The Tasmanian Government stressed that ‘the national structure should ensure accountability to Aboriginal people and Torres Strait Islanders, and not just governments.

The SA Government said: ‘While States and Territories currently have no control over significant Commonwealth funds provided through ATSIC programs, the poor outcomes of Indigenous programs result in a ‘fiscal drag’ for the States and Territories, particularly in the areas of health, justice, police and welfare services.’ It called for a model that would provide recognition of the role of States and Territories for the delivery of services to Indigenous people. It suggested that service delivery could be devolved through a single bilateral agreement with the Commonwealth, based on outcomes. It could cover key areas of services delivery, e.g. employment, education, justice, housing, and specify funding provision to the appropriate line departments to delivery programs. In each area (or schedule) appropriate performance indicators could be agreed by which outcomes could be measured. The national indicators of disadvantage recently endorsed by COAG could be a starting point for these measures.

The Tasmania Government also referred to the ‘fiscal drag’ for States and Territories resulting from the poor outcomes of Indigenous programs. It said<sup>xxiii</sup>:

While States and Territories currently do not have control over significant parts of spending for Indigenous programs, the poor results affect the State’s capacity to respond effectively to the over representation of Indigenous people in health, justice, police and welfare services.

The New South Wales Government sought a commitment from the Australian Government not to withdraw existing Australian Government-funded programs without first holding discussions and negotiations with the respective State and Territory governments. It said:

The practice of the Commonwealth Government diverting effort from jurisdictions which have made significant contributions to Indigenous programs to other jurisdictions to meet emerging needs where States have not made sufficient contribution is counter productive to encouraging increased effort from State or Territory governments.

The NSW Government cited the NSW Service Delivery Partnership Agreement signed in November 2002 between the NSW Government, ATSIC and the NSW

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<sup>xxiii</sup> Submission from the Tasmanian Government, October 2003, p.1.

Aboriginal Land Council as its commitment to improving coordination and enhancing services delivery outcomes for Aboriginal and Torres Strait Islander peoples in that State.

The Northern Territory Government submission called the review a ‘once in a lifetime’ opportunity to embed the necessary coordination in institutional structures. It said mechanisms must be in place to address the current jurisdictional overlap, which was unworkable and impeding achievement of tangible outcomes. Indigenous communities should not be forced to deal with multiple levels of government in relation to similar problems. The current ‘culture of duplication’ had to be replaced by genuine coordination and funds pooling. It also argued that ATSIC regional authorities could have the capacity to bid for and win tenders to deliver government programs, whether they be national, State/Territory or joint programs.

The Northern Territory Government said that it was uniquely placed to address the issues under consideration by the review given that 30 per cent of its population was Indigenous, and 72 per cent of that population resides on Aboriginal-owned land. It made the point that:

Demographic projections alone confirm that the current crisis facing Indigenous Australia is not only, on current trends, set to get even worse, but that without significantly increased government support and targeted intervention, it will result in massive opportunity costs and severe impacts on social cohesion.

*Submission from the Northern Territory Government.*

The Queensland Government also supported a collaborative approach and expressed the view that the preferred model should be the outcome of negotiations with the States. It argued that the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA) should be strengthened.

The Victorian Government expressed concern about the current arrangement and noted that:

The current review of ATSIC and the recent ‘separation of powers’ reform appear to be progressing in a policy vacuum. The original model for ATSIC was based around a theoretical construct that argued maximising participation of Indigenous people in the formulation and implementation of policies that affect them, and promotion of self management and self sufficiency would lead to improved economic, social and cultural outcomes.

The Victorian Government spelt out its desire for a new ATSIC that would be capable of working in partnership with Indigenous communities ‘to develop and implement agreed priorities and strategies primarily at the local level’. It also expressed its opinion that the ‘new ATSIC’ would be one player in a large field of Indigenous and mainstream organisations and that the ‘imposition of one size fits all planning and advisory processes are to be avoided’. The Tasmanian Government indicated similar views.

The ACT Government stressed the need to raise the level of women's representation on regional councils and on the national board to reflect the proportion of women in the community. It says the ATSIC board should adopt that goal as a target to be achieved in the shortest possible timeframe and ATSIC should investigate the causes of under-representation and develop strategies to address them. It suggests as an interim measure that women's advisory committees should be established for each regional council, and the board, and that annual reports from ATSIC should include reports on their activities and the advice they have provided.

The ACT Government submission spoke of its commitment to ATSIC as the peak elected Aboriginal and Torres Strait Islander body and the fact that it is the only jurisdiction to have held a joint meeting of elected governing bodies. It also called for the establishment of an ATSIC regional council in the ACT.

The NSW Aboriginal Housing Office (AHO) submission highlights the benefits flowing from a bilateral agreement between the NSW Government (AHO), ATSIC and the Australian Government for the pooling of funds from the regional component of the ATSIC Community Housing and Infrastructure Program (CHIP), the NSW component of the Aboriginal Rental Housing Program and additional untied Commonwealth State Housing Agreement funds. This agreement, signed in 1998, provides for AHO to be the key agency for the planning, delivery and management of Aboriginal housing programs and services for Aboriginal people in NSW. It has successfully brought together a range of functions previously performed across several State and Commonwealth agencies. The result is that coordination of delivery has improved with more emphasis on achieving sustainable outcomes. The report of the Commonwealth Grants Commission commented positively on this model. AHO considers the model could be applied to the delivery of other programs. AHO'S submission advocates that ATSIC should remain the primary source of advice to government, and that the responsibility for Indigenous programs, particularly housing programs, remain within ATSIC's appropriation.

In considering these State and Territory submissions the panel formed the view that there was a willingness of State and Territory governments to cooperate in the reform of the delivery of services to Aboriginal and Torres Strait Islander peoples, preferably backed by bilateral agreements or MOUs with the Australian Government. No doubt such agreements would be predicated on a transfer of funds. The review panel in its discussion paper canvassed devolution as one of the options for reform of ATSIC, but acknowledged that such an approach could only be achieved by agreement between the Australian and State/Territory governments.

The panel believes that if governments wish to pursue the devolution option then it would be consistent with the vision of ATSIC for ATSIC to be party to such agreements, and that accountability for the delivery of such services was both to the provider of the funds (the Australian Government) and the representatives of the beneficiaries (ATSIC).

The two major programs delivered by ATSIC/ATSIS are the Community Development Employment Program (CDEP) and the Community Infrastructure and Housing Program (CHIP). These programs take up two-thirds of ATSIC's budget. ATSIC also delivers a suite of smaller programs many of which are Indigenous-

specific such as culture and language support programs and the return of skeletal remains. The majority of ATSIC's direct program delivery role is not effectively under the control of the elected arm.

The delivery of the majority of services to Indigenous Australians is in any case predominantly carried out by State and Territory governments supported by the Australian Government directly or through ATSIC as a supplementary funder.

This mix of funding and program delivery is often confused, illogical, not effectively coordinated, blurs responsibility, creates duplication and produces sub-optimal outcomes. The delivery of services and programs is not dovetailed into ATSIC's regional plans.

A round table, convened initially at officer level, is needed at the earliest opportunity between the Australian, State and Territory governments with the involvement of ATSIC, to discuss and reach formal written agreement on the most effective delivery of coordinated services delivering better outcomes for Aboriginal and Torres Strait Islander Australians. The respective responsibilities of each government and agency should be clarified and the processes for achieving the most effective collaboration identified. This course of action should be driven through COAG. Any consideration of restructuring ATSIC's program delivery role should be made in the context of this task and not dealt with in isolation. The way forward for ATSIC's regional planning role should be examined and determined in the context of the structure of program delivery in all spheres of government.

The question therefore of whether ATSIC should continue to deliver its existing programs or focus entirely on its advocacy and policy role is an important one.

Contributions to the review on this issue ranged from providing ATSIC with no programs at all, to providing ATSIC with total responsibility for all Australian Government Indigenous programs and all funding subject to the total discretion of the board.

The panel believes that the first option is undesirable and the second option is unachievable. There is a range of alternatives between these options, one of which would be to provide ATSIC with an untied allocation of resources to leverage outcomes.

Significant reasons that the panel identified as supporting the retention by ATSIC of existing programs were:

- To bring negotiating coin to the table when dealing with State/Territory governments.
- That there was no persuasive evidence that the programs would be delivered more effectively by any other agency.
- There was concern that they would be delivered less effectively by other agencies.

- That the funding for these programs might simply disappear into the system if they were not delivered by ATSIC Existing resources could be diverted away from purchasing Indigenous-specific outcomes or disappear through a range of processes, including cost-shifting and absorption of funds into mainstream programs where the focus on Indigenous-specific outcomes is lost over time.
- That the devolution of any ATSIC programs to other agencies should not happen until there had been an examination of the roles of all agencies roles in program delivery.

An alternative proposal which had significant Indigenous support in written and oral submissions was that ATSIC should not have to deliver programs and essential services that should be the responsibility of others, but still have programs that were 'Indigenous-specific'. The panel believes that this proposal merits consideration as part a broader consideration of services.

Significant reasons for supporting this proposal were that:

- The deteriorating effectiveness of ATSIC as an agent for Indigenous input into policy development by governments and perceptions of misuse of funds was directly related to ATSIC's preoccupation with program delivery.
- Without a major program delivery role ATSIC would have a clear and focussed responsibility for its primary task of advocacy, policy and program development within government.
- ATSIC program funds were being used to substitute for what should be provided by mainstream programs.
- Governments and agencies that were actually responsible for the delivery of services and programs to all Australians would be held properly accountable.
- Instead of ATSIC being attacked by politicians for its alleged failures, ATSIC could more forcefully and effectively hold politicians to account for theirs.
- The demographic situation in Indigenous Australia, particularly the population growth and 40% of people under 15, will require significant attention from mainstream programs for realistic service delivery capacity to be mustered.
- The issue of 'the separation of powers' would be largely removed with ATSIC reconstituted into a single body.

The panel recommends that at this time ATSIC should retain its existing programs pending a determination of ATSIC's program role in the context of the broader examination of service delivery referred to above.

This process should ensure that ATSIC can contribute directly to policy and program development at State and Territory as well as national level by writing ATSIC involvement into the relevant MOU's and bilateral agreements covering the delivery

of important services such as housing, health, and education. The panel is of the view that wherever possible, MOUs should translate into substantive agreements.

There are a number of points that require comment here about ATSIC's leverage - particularly with States and Territories - through existing programs, to deliver better outcomes on-the-ground. CHIP is perhaps the most significant program in this context (the role/leverage provided by CDEP is more questionable) with a budget of about \$200 million. It is these resources, arguably, which 'buy' ATSIC a place as a party to bilateral housing agreements between the Australian Government, ATSIC and States and Territories, and a place at the table on the Standing Committee on Indigenous Housing which reports to the Housing Ministers' Advisory Council.

A key question is would ATSIC as part of the Commonwealth family but without programs like CHIP remain as a party to these negotiations, agreements and arrangements? The panel believes the answer is 'yes' provided that the Australian Government insists on ATSIC being at the table. The Commonwealth family, broadly speaking has the leverage to exercise influence over policy and programs at the State/Territory level. In addition to this the State and Territories and local government must commit, preferably through COAG, to involving ATSIC.

Agreements in this arena need to ensure that allocations occur at the level of the ATSIC region. This should ensure a fair distribution of resources generally and that resources are not directed to areas where the easiest outcomes are obtained. The benchmarking of relative need by the CGC at the level of ATSIC region also provides a basis for measuring changes in outcomes in a way that can be directly measured against program inputs and the way in which programs are delivered providing feedback for future policy and program development. The NSW Government submission argued that the analysis about program matters should be completed before 'putting forward options for new models of ATSIC.' The panel respectfully takes the view that a reformed ATSIC is better placed to represent Indigenous views in the analysis and decision-making processes about program responsibilities. A number of States and Territories argue they will not liaise with ATSIC on the basis it is the only Indigenous voice. The panel accepts this, noting that it is up to all governments to involve ATSIC as the only national elected representative voice for Indigenous people.

The panel believes the determination of relative needs at a regional level by the Commonwealth Grants Commission would be an important benchmark for consideration in the allocation of government resources. Relative need is not the only consideration when allocating resources, but appropriately determining, assessing and transparently addressing need must be a critical part of the funding process.

Any change of program funding that might be put in place as a result of the suggested review process, should have a no disadvantage test applied. This would be to prevent potential loss of resources to address Indigenous needs. Transparency of process would be vital to securing support for changes. Transitional arrangements need to be put in place to ensure that Indigenous community organisations are not just suddenly cut off from funds.

## **Achieving an interface with all levels of government**

The Victorian Government's submission states: 'The fact that much of the partnership with Indigenous Victorians has been forged in structures and processes that involve the ATSIC Victorian leadership is a clear recognition of their unique status as elected representatives of their Communities'.<sup>xxiv</sup> However, it must be noted there is a reluctance by some States and Territories to fully recognise ATSIC.

The South West Aboriginal Land and Sea Council states<sup>xxv</sup>

The intention of the ATSIC Act was to make the commission the government's primary source of advice and therefore the leading agent through which Aboriginal persons' and Torres Strait Islander' interest would be represented at the Federal level. It is vital that Indigenous interests be actively and representatively given voice in the federal arena.

The reality has been somewhat at odds with the intent of the legislation, with each agency and effectively each program seeking to establish its own mechanisms for obtaining Aboriginal persons' and Torres Strait Islanders' input into the policy development process. This has resulted in a plethora of committees, advisory groups and consultative forums. This has allowed governments to forum shop so that when they do not like the advice of one Indigenous committee or advisory group, they seek opinions from another until they find an answer that they like. This proliferation of advisory forums has also meant that the policy advice from ATSIC has been undermined and disregarded. This forum shopping has driven wedges and divisions within Aboriginal and Torres Strait Islander communities and between Aboriginal people, Torres Strait Islanders and governments of all persuasion.

It should be acknowledged that there will obviously need to be appropriate engagement with other Indigenous bodies and individuals involved in Indigenous governance and the delivery of services such as education, health and legal aid. The Victorian Government submission makes the point:

A simple focus on ATSIC overlooks the multiple relationships between Indigenous communities and State government. A single point of advice and negotiation or a single planning process such as the ATSIC regional plans developed in isolation from service delivery will not drive improved outcomes in Aboriginal affairs in Victoria.

ATSIC, along with other Indigenous organisations, has succeeded in ensuring that governments now more actively involve Aboriginal and Torres Strait Islander people in their policy, program and service developments and delivery arrangements. Having been a major part of this success, ATSIC now has become identified with the delivery of a small number of programs, for example CDEP and CHIP. It has, however, become a marginal player in the business of advising governments on both policy and development. This is exactly the reverse of the position that was intended for ATSIC

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<sup>xxiv</sup> Submission from the Victorian Government, September 2003, p.3.

<sup>xxv</sup> Submission from the South West Aboriginal Land and Sea Council, August 2003. pp.25-26.

The review panel considers there is an issue in all of these relationships about influence and control. There is no doubt that Indigenous people should have a great deal of influence over the programs and services that are specifically designed to address their needs. This is something endorsed by governments and, arguably, the wider community. In giving effect to this, however, it needs to be appreciated that governments will not abrogate ultimate responsibility for governing.

Within the Australian system of government, the roles of ATSIC and the various spheres of government need to be clearly delineated. Positive working relationships need to be formed in the context of these roles. ATSIC does have a key role in influencing mainstream agencies, policies and programs. This is because, as the Northern Territory Government argues: ‘mainstream agencies have key roles in resolving the complex challenges that need to be faced in addressing Indigenous disadvantage.’

In its *Public Discussion Paper* the panel canvassed the option of creating legislatively a state advisory council in each State/Territory to provide an interface with the State/Territory governments. The panel does not support the establishment of such a statutory body. If the focus of the new ATSIC is to be the community through regional councils then the objective must be to encourage the State/Territory governments and their agencies to deal directly with the regions. The creation of a state advisory council could result in governments and their agencies dealing directly with the council to the detriment of the regions. That is to be discouraged.

It is open to the State/Territory governments to establish their advisory councils drawing on the ATSIC regional structure. The panel also acknowledges that the State/Territory governments may wish to have an advisory body that is broader than representatives of the ATSIC regions.

### **COAG Initiatives**

As a result of the Council of Australian Governments (COAG) agreements of November 2000 and April 2002 a national coordination framework is being set in place for addressing Aboriginal and Torres Strait Islander disadvantage. This establishes targets, benchmarks and performance monitoring strategies. It presently includes eight trials, one in each State and the Northern Territory, of ‘whole-of-government’ approaches to service delivery in partnership with the Indigenous communities in the region.

COAG has commissioned the Productivity Commission to produce a regular report against the key indicators developed by the Steering Committee for the Review of Commonwealth/State Service Provision. The first report is due later this year.

It has become clear to the review panel that a greater level of coordination of government agencies at all levels is necessary to address the significant levels of Indigenous disadvantage. In addition, mainstream programs delivered by all levels of government need to take more of the weight. The COAG trials are an important initiative in this direction. In developing the model for a new ATSIC, the review

panel is suggesting a model that could lead to an effective replication on a more permanent basis of the lessons learnt from the COAG trials.

The current COAG trials were referred to in several submissions. The Victorian Government submission suggested:

In developing a recommended model for the 'new ATSIC', it is recommended that the review panel draw on the approaches being developed in the trials to achieve greater community engagement, flexible, responsive service provision and a streamlined bureaucracy.

It is clear that the trials are at too early a stage to enable the panel to draw any firm conclusions as to how the lessons may be learned in developing a new ATSIC. One clear issue is that until the COAG trials started, there had been little effective co-ordination of government programs that would achieve a measurable improvement in the levels of disadvantage suffered by Indigenous people. Not only are the COAG trials of coordinated activity proceeding but the panel is aware that a number of governments are also trialling intra-agency co-ordination of Indigenous services.

The COAG trials are being driven by heads of government agencies. The panel cannot envisage a situation where those trials will be replicated in all communities in Australia in the current operating format.

The panel believes that the new ATSIC and the proposed central agency policy group could play a significant role in such 'all of government' co-ordination.

Once the trials are progressed to the point where particular conclusions can be drawn then governments, through COAG, will be in a position to pursue more extensive coordination arrangements. The panel strongly endorses the COAG trials and believes that when performance assessment of them is available the lessons learnt from the process must be acted upon. Even when the trials are completed and assessed, the panel believes that COAG needs to maintain appropriate interest in and oversight of Indigenous affairs.

A preferred model of governance from the perspective of many Indigenous communities would be based on two principles:

- local people know more and care more about the needs and aspirations of their own communities than anyone else, and want
- the shortest straight line between those needs and aspirations and the resources to meet them.

The COAG trials are effectively testing a model that places regional Indigenous governance in a direct relationship with governments and their agencies. The lessons learnt from the trials may indicate options for a way forward. The panel believes that the development of the COAG trials emphasises the desirability that Aboriginal and Torres Strait Islander affairs should be a standing item on the COAG agenda. Consistent with this approach, it would be desirable if the chair of ATSIC's national body would be invited to COAG whenever it discusses Indigenous issues.

As noted in the *Public Discussion Paper*, there is a growing movement toward regional Indigenous bodies dealing directly with government, its agencies and the private sector. The structure and operations of a new ATSIC will need to be flexible enough to accommodate and assist these initiatives when there is community support for them.

## **MCATSIA**

With the focus of COAG on Indigenous issues there is a question about the ongoing role of the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA).

As spelt out above, the panel is strongly of the view that COAG needs to maintain its key role in Indigenous issues. This is imperative to ensure that governments continue to give priority to addressing the unacceptable disadvantage experienced by Indigenous people.

The focus of COAG is complemented by the work of central agencies in each jurisdiction. Those agencies (e.g. the Department of the Prime Minister and Cabinet, Premiers departments, etc) are the support for each head of government in their COAG work and are essential in ensuring the COAG agenda is taken forward by mainstream agencies. They take a role through the COAG Senior Officials meetings in completing the detail for heads of government and then in their respective jurisdiction in directing agencies on COAG outcomes.

Central agencies in all jurisdictions must take a lead role. They have the influence to ensure whole-of-government activity is directed at improving the overall circumstances of Indigenous people. When central agencies carry out this role, Indigenous issues are unlikely to be marginalised or swamped in the mix of government activity.

As the ATSIC 2001-2002 Annual Report notes, COAG has ‘resolved that all ministerial councils would develop action plans, performance reporting strategies and benchmarks against which to monitor service delivery to Indigenous Australians.’ In this context, MCATSIA is in danger of duplicating the work of other ministerial councils. In these circumstances the role for MCATSIA should be reviewed.

## **Local government**

Local government structures have been in place in Australia since the 19th century, but they do not work uniformly well. In parts of Australia, they are highly effective and professional bodies with skilled and well-resourced staff. In more remote areas, their revenue base is limited and it is more difficult to have sufficient skilled staff and resources to meet all the demands placed on them.

The panel is concerned that during the whole of this review and the consultation processes no local government authority other than the Aboriginal Tiwi Islands

Council and the Paroo Shire Council, QLD, made any submission. This occurred notwithstanding that a copy of the discussion paper was sent to every local government authority throughout Australia. This absence of engagement with this review indicates that a much stronger effort needs to be made for better engagement between ATSIC and this important level of government.

Local government at the national level, through the Australian Local Government Association (ALGA), has made considerable effort to be more closely involved in Aboriginal and Torres Strait Islander issues that have implications for local government, especially over the last decade. In conjunction with ATSIC and other interested parties, ALGA has developed guides to assist local government councils to be able to understand and work with issues including native title and also to help in developing broadly based agreements and partnerships at a local level. The 1999 publication *Justice and Equity for All* highlights case studies of partnerships at the local level across Australia. In recent years, ALGA has also developed a draft national Memorandum of Understanding (MOU) with ATSIC but the finalisation of this MOU appears to have been complicated by the ATSIC/ATSIS split. An ALGA representative attends COAG and MCATSIA, the COAG Senior Officials' committee and the senior officials' group that supports MCATSIA.

The panel believes that local government authorities should be engaged in the whole-of-government involvement in the development of ATSIC regional plans. It should be recognised that numbers of individual councils are positively engaging with ATSIC and Indigenous constituents. The panel is of the view that there is room for much more positive engagement.

An example of the desire of ATSIC regional councils to work more closely with local government is evidenced in a 2002/03 regional council annual report:

The Western Desert Regional Council continued to allocate Municipal Services funding for the provision of municipal services and administration for the communities of the region. Funding enabled communities to maintain power, water, sewerage, and community rental housing services inclusive of administration costs that are inherent with supplying these services. Council supports the investigation of the future impact of alternative municipal service delivery through regional agreements with peak bodies/Shire Councils.

### **Bodies other than ATSIC in the Commonwealth portfolio**

During the panel's consultations regional council meetings emphasised the need for the bodies under the Aboriginal and Torres Strait Islander umbrella to work better together. They called for a holistic approach across the portfolio.

The bodies to which reference was made were the Indigenous Land Corporation (ILC), Indigenous Business Australia (IBA) and Aboriginal Hostels Limited (AHL). Regional councils asked to be included in the decision-making process of these other Indigenous bodies. In particular the ILC was referred to as a body that inadequately consulted or considered the views of the regional councils. Some meetings told of difficulties that had arisen through the lack of proper consultation with the right

traditional owners, often giving rise to disputes between groups who had a connection to the same country.

Views about possible rationalisation of bodies in the portfolio varied from leaving all the bodies as they are to returning some or all of the functions and resources to ATSIC. Overall, most support was for leaving the bodies as they are, but with a belief that greater interaction between some bodies - particularly the ILC and regional councils - would lead to better alignment with regional plans and priorities and better outcomes. The ATSIC elected arm was strongly of the view that it should be able to have greater input to the allocation of ILC resources. There was a view that officers from the ILC sometimes failed to provide information to regional councils when grants, purchases of land or the like were made in regions.

The other bodies, Indigenous Business Australia (IBA) and Aboriginal Hostels Ltd (AHL) have very specific roles and responsibilities. The consensus was that these organisations should maintain those roles.

The panel believes that these agencies should all have an observer status at meetings of the national body and thus be able to be involved in contributing to policy decisions that will interact with their agency.

The panel also believes that all these agencies should participate in the development of the regional plans that are to be developed by the regional councils. In that way, the funding decisions of the other Indigenous bodies would be consistent with the regional plan that is intended to address on a co-coordinated basis the disadvantage in the region.

### **Incorporation of Indigenous organisations**

A number of concerns have been raised that there are too many organisations with limited skills bases and in some cases, there are too many organisations competing to deliver the same or similar services in the same geographic area. When organisations are running into problems, there is no straightforward mechanism to assist those organisations to improve and survive short of appointing an administrator.

The consultation meetings strongly supported enhancing the work of the Office of the Registrar of Aboriginal Corporations (ORAC) in its work of capacity building of Indigenous organisations. The consultations asked for capacity building to include:

- ◇ governance training for boards
- ◇ capacity building for Indigenous organisations
- ◇ appointment of mentors to boards as non-voting members to use their skills and experience in advising the boards
- ◇ legislating biannual elections of boards of Indigenous organisations to reduce costs to those organisations
- ◇ requiring a level of expertise within committees prior to incorporation.

Many meetings expressed concern about the fact that ATSIC is not told when organisations are in trouble until it is too late. There is real concern that the

legislation only allows for an administrator to be appointed. This can be damaging for an Indigenous organisation if there is no opportunity to fix an organisation until matters are taken out of their hands.

There is strong support for a program that would allow an organisation that is structurally sound but which has had poor management and/or poor board direction to be turned around into a successful organisation. It is noted that often it is only after a new board has been elected that it is identified that an organisation is in financial difficulties. In order to protect the financial integrity of the new directors the only action that can be taken under the existing law is for an administrator to be appointed. Resources which could be used to fix problems and deliver services can be expended in professional fees to the administrator. This is unsatisfactory.

The Office of the Registrar of Aboriginal Corporations has been performing a very positive capacity building role. Due to ORAC's role as a regulator, however, the panel is of the view that the task of capacity building should be performed by someone other than ORAC, due to the potential for perceptions of conflict of interest to arise with the regulator being the trainer. There are a number of public and private sector organisation that could perform capacity building tasks.

The panel notes that many Indigenous organisations are incorporated under mainstream State/Territory laws. There has been a recent review of the Aboriginal Councils and Associations Act and the Australian Government is considering implementation through legislative change. ORAC is going through a process of identifying inactive ACA Act organisations, with a view to deregistration. Given the above, consideration should be given to some future steps.

After ORAC has completed its process of identifying inactive organisations, consideration should be given as to whether in future it is necessary to have a separate incorporation regime. If the answer was in the negative a first step could be to close off the capacity for organisations to incorporate under the ACA Act. This could be accompanied by grandfathering provisions for existing organisations with some encouragement for transition to mainstream incorporation.

It should be noted that Indigenous people themselves raised their concerns with the panel about multiple incorporation regimes.

In relation to existing Indigenous organisations incorporated under the range of laws, there is a recognition that the move to contracted delivery of outcome-based services may itself result in some reduction of the number of Indigenous service providers in some areas.

### **Accountability**

As noted in the June 2003 *Public Discussion Paper*, the review panel believes the real test of accountability within ATSIC is whether, at the community level, Aboriginal and Torres Strait Islander Australians are actually getting the outcomes that the investment by agencies at all levels of government is designed to achieve.

Incorporation of reporting and accountability mechanisms into the ATSIC Act and the involvement of organisations or agencies skilled in audit and evaluation were options canvassed.

The panel believes that there needs to be a strong focus on the performance and accountability of all programs and service providers (Indigenous-specific and mainstream) in the extent to which they are achieving outcomes for Indigenous people.

As the acting Chair of ATSIC said on 1 October 2003:

Our vision for ATSIC is an organisation which makes other government agencies truly accountable when delivering services to Aboriginal and Torres Strait Islander peoples. ATSIC should also be the main Indigenous adviser for government agencies which provide the services.

ATSIC currently has a high degree of internal accountability with regard to its programs. The Office of Evaluation and Audit (OEA) currently has the power to evaluate and audit the operations of the commission and other portfolio bodies. The panel believes that it would be appropriate to widen the scope of OEA activity so that it can evaluate and audit the performance of programs and services in all spheres of government, where Australian Government resources are involved, with respect to the outcomes for Indigenous people.

The panel acknowledges the important work being done by the Productivity Commission for COAG in its *Report on Government Services* on Indigenous-specific outcomes and does not wish to see this work duplicated or have OEA overlap. It sees the OEA role as complementary to that of the Productivity Commission.

If significant change is to be identified then outcomes need to be evaluated at a regional level and the Productivity Commission should be tasked with that analysis.

The panel has noted the recent role of the Productivity Commission in cross-jurisdictional Indigenous work, and also that COAG has tasked the Commission to develop the Indigenous Disadvantage Indicator Framework, against which it will report each year.

The approach of COAG commissioning such work is clearly desirable to avoid arguments of constitutional validity and to ensure full cooperation throughout Australia. Leaders of governments have frequently expressed their concern at the disadvantage suffered by Aboriginal and Torres Strait Islander Australians and noted that, even with substantial spending, there is only limited improvement visible. In order to analyse what is working and what isn't, a decision by COAG to provide such a role for the Productivity Commission will confirm the significance of the issue and that governments are committed to fixing it.

The panel believes that it would be desirable that this work be done at the regional level to maintain a focus on regional improvements.

The panel notes that some \$2.4 million (\$0.6 million a year) over a four-year period has been earmarked for the Productivity Commission's work on developing the Indicators Framework. Similarly, it envisages that additional funding will be required for this role. An indicative figure of \$1 million a year on an ongoing basis is considered by the panel to be an appropriate starting point. By its nature, the work will require continuing activity over time and, depending on the scale of work sought within a particular year, this figure will require adjustment over time.

## **RECOMMENDATIONS**

38. COAG should convene a round table between the Australian, State and Territory governments and ATSIC to identify and clarify program and service delivery roles and responsibilities.
39. The COAG round table approach outlined in recommendation 38 should be used to identify the most effective processes to achieve key Indigenous policy outcomes.
40. ATSIC should retain its existing programs pending a determination of its role in the context of this broader examination of service delivery.
41. ATSIC's regional planning role should be examined and determined, also in context of the above task.
42. The Australian Government should ensure that ATSIC's involvement should be written into all relevant MOUs and bilateral agreements that involve Indigenous issues.
43. COAG meetings should in future include Aboriginal and Torres Strait Islander Affairs as a standing item.
44. The ATSIC chair should have observer status at COAG meetings for all discussions on Aboriginal and Torres Strait Islander Affairs.
45. The role of MCATSIA should be reviewed.
46. COAG should commission the Productivity Commission to undertake a rolling program of evaluations at the regional level.
47. The Indigenous Land Corporation, Indigenous Business Australia and Aboriginal Hostels Limited remain under their current arrangements.
48. These three agencies should participate in the development of the regional plans that are to be prepared by ATSIC's regional councils.
49. Funding decisions of those three agencies should be consistent with relevant ATSIC regional plans.

50. The function of governance training and capacity building of Aboriginal and Torres Strait Islander organisations should not be performed by ORAC.
51. ATSIC should increase the level of governance training and capacity building of Aboriginal and Torres Strait Islander organisations and provide it through appropriate training organisations.
52. Consideration should be given in the longer term to having all Aboriginal and Torres Strait Islander organisations incorporated under general corporations laws.
53. The *Aboriginal Councils and Associations Act 1976* should be amended to allow for an appropriate business turnaround mechanism to be used by organisations.
54. The role of the Office of Evaluation and Audit be expanded to enable it to evaluate and performance audit the programs and services of all service providers including all agencies of government where the Australian Government has provided resources for the provision of services for Aboriginal and Torres Strait Islander people.

## Chapter 6

# THE RELATIONSHIP BETWEEN ATSIC'S ELECTED ARM AND ITS ADMINISTRATIVE ARM

The ATSIC/ATSI division cannot be sustained without progressively marginalising ATSIC and relegating it to the role of an advisory body. The two organisations that preceded ATSIC – the National Aboriginal Consultative Committee (NACC) and the National Aboriginal Conference (NAC) – demonstrated that advisory power alone did not promote self-determination and did not meet the expectations of Aboriginal and Torres Strait Islander peoples.

It is therefore important that the administrative funding body is accountable to and responsible to the ATSIC governing body. There is widespread opinion that the two arms should be reunited, with a legislative and administrative delineation of their respective roles.

In the panel's view, the preferred future for ATSIC is a single organisation with a legislative delineation of roles between the elected arm and the administrative arm.

ATSIC and ATSI could be brought back together whilst maintaining an appropriate 'separation of powers' by legislatively defining functions. This could be achieved through amendment of Division 2 of Part 2 of the ATSIC Act. The separation of powers regarding funding matters could be achieved through amendment of one small provision (s.7(1)(a)) to provide that only the administrative arm of ATSIC had powers to implement programs.

The balance of functions and powers granted to the commission in sections 7, 10, 11 and 13 would be matters for the national body and its executive, with the administrative arm assisting the elected arm in carrying out the Commission's tasks.

Powers in sections 14, 15, 16, 17 and 20-22 would be matters for the administrative arm as they involve dealing with funds and assets.

The concept of the elected boards driving strategic policy and providing oversight of operations has not been the *modus operandi* for the board and staff of ATSIC. The delineation of roles should give the elected arm of ATSIC a new direct focus on policy – as against its previous focus on the details of program delivery. In the new environment regional councillors will need to become far more focused on issues of regional planning, policy development, and the delivery of programs and services by other agencies. These changes will involve substantial cultural change and are likely to pose a challenge to the existing skill base of both the elected ATSIC and ATSIC's administrative arm. The skills levels of the requisite staff to implement such a level of governance is not present at this time.

To make these changes successful it will require a financial investment in a significant effort to raise the level of skills.

It is the intention of the panel that accepted principles of governance underpin the operation of the new ATSIC. It is acknowledged by the panel that it will be desirable for there to be developed culturally appropriate variations to the standard principles of governance.

If the Government is minded to have two organisations permanently then most of the provisions in Division 2 of Part 2 of the ATSIC Act sit very oddly with this arrangement. They will require appropriate amendment in any case if ATSIS is to continue as a separate body.

ATSIC currently maintains the legal powers to do everything it always could do, notwithstanding the Government does not want it at this point to have responsibility for certain matters.

### **Working relationships**

It has been indicated to the panel that there has not been sufficient attention given to corporate governance training for the elected arm of ATSIC. The Government has put in place a 'separation of powers,' but this has not yet been accompanied by the development of skills of elected officials sufficient to understand and work within such framework, even though resources have been allocated for that.

The elected and administrative arms need to treat each other with respect and acknowledge, in carrying out their roles, the responsibilities that each has to Indigenous people and communities, the organisation and government.

ATSIC has a documented protocol for working relationships between the elected and administrative arm. The panel believes that the legislation should require such protocols and that breaches of a protocol, by any person, should constitute misbehaviour. Protocols should cover issues such as the making of impartial decisions, whether in relation to funding or other matters.

### **Staff**

There is support within ATSIC's elected arm for staff to be appointed under the ATSIC Act and not under the *Public Service Act 1999* (PSA). The panel acknowledges that there are some merits to this view, especially in relation to personal support staff for board members. However, the public service provides people with a career path and this assists the commission to have a broader category of prospective employees and thus helps to ensure that it has the best people working for it.

During the consultation processes, concern was raised by elected representatives about their involvement in decisions on the employment of staff. It is important for the elected representatives to respect that the CEO is responsible for all staff and their employment. That is a matter that should be reinforced in any legislative changes. Any legislative change should not preclude an elected representative being on a selection panel that recommends to the CEO for his consideration prospective senior

staff. It must be clear that elected representatives are present on selection panels in an advisory capacity and are not decision-makers; any such decisions must remain a matter for the CEO.

The Public Service Commissioner has advised the panel that he sees ‘no difficulty in elected members of ATSIC being included on selection panels for ATSSIS employees, provided that it is established that there is no actual or perceived conflict of interest and that the members are required to operate in accordance with the legislative framework for APS recruitment.’ He has confirmed the panel’s understanding that a selection committee provides a recommendation to an approved delegate but it is the delegate who is responsible for the final decision and for ensuring that the selection process meets the legislative requirements. The issue fundamentally remains one of governance arising from elected persons being directly involved in the selection of administrative staff. This may also be dealt with through the proposed behaviour protocol that is referred to elsewhere in this report, a breach of which would constitute misbehaviour.

There was also considerable support for the elected representatives to be able to employ their own staff, in particular policy staff, and/or to buy appropriate external advice. Again, the panel would only see this as necessary if the concept of two separate organisations were to be retained.

As already identified the current and proposed future arrangements will require considerable skills enhancement. Regional council meetings stressed the importance of developing the capacity of all elected representatives and all staff within ATSSIS. They identified priority areas as being:

- ◇ policy development
- ◇ community capacity building
- ◇ good governance
- ◇ media
- ◇ service delivery skills.

Meetings also reflected a realisation that to do the task ahead the organisation needs greater capacity, especially in the area of policy advice and development, and a broader skills base than currently available. A common call was for support and resources to grow the capacity of elected representatives and of the administrative arm particularly at a regional level.

Many of the staff who now support ATSIC regional councils do not consider themselves to have these skills and indicated to panel members that, were this to become a key part of their role, they would require considerable training and support, at least in the early stages.

The panel considers that a skills audit of all staff should be undertaken by ATSIC (or ATSSIS, as an interim step, leading up to any new arrangement) in order to identify clearly the existing level of skills in the area of policy development at all levels of the organisation. Following that, a focused and adequately resourced policy skills development program needs to be instituted.

It almost goes without saying that ATSIC needs to attract, develop and retain Indigenous employees. ATSIC should be a model employer providing greater training and assistance to its staff, especially in regional and remote areas. In this, it must be acknowledged that ATSIC faces a particular challenge in attracting qualified and experienced staff in regional areas.

### **Chief Executive Officer**

The CEO should be appointed by the Minister after obtaining the agreement of the national executive. The executive should also be involved by the Minister in any decisions on the continuing employment arrangements of the CEO.

The CEO must be answerable to the Minister for the provision of advice and information on policy, legislation and programs. The CEO must also be answerable to the national body and its executive for the management of the organisation, for the implementation of the national body's policies, and for the development and implementation of operational policies for the organisation.

The CEO should be working with the national body and its executive through the chair in developing the proper functioning of the national body including the appropriate support to and operational oversight of committees of the national body.

In relation to the current administrative arrangements, regional council meetings demonstrated strong support for separate CEOs for ATSIC and for ATSIIS. This demand would only prevail while a separation of the organisations exists. However, if there were to be an early legislative reform then the appointment of separate CEOs would not be necessary.

### **RECOMMENDATIONS**

55. ATSIC should be a single organisation with a legislated delineation of roles.
56. Governance training programs should be developed by ATSIC to lift the skills levels of the elected and administrative arms to implement an appropriate level of governance.
57. Culturally appropriate variations to the standard principles of governance should be adopted.
58. The ATSIC Act should require that protocols be developed covering working relationships for the elected and administrative arms of ATSIC. Partiality in decision-making should form part of such protocols.
59. Breaches of these protocols, either by elected officials or staff members, should constitute misbehaviour.
60. ATSIC staff should continue to be engaged under the *Public Service Act 1999*.

61. ATSIC's CEO should be appointed by the Minister after consultation with the national executive.
62. The ATSIC Act should be amended to reinforce that the ATSIC CEO is responsible for all staff and their employment.
63. The remuneration of elected members should continue to be determined by the Remuneration Tribunal.
64. The remuneration of elected members through sitting fees should be reconsidered and replaced with annualised remuneration. The remuneration should reflect any additional duties that are undertaken by different categories of elected member.
65. Elected members should cease to hold office if they fail to attend without reasonable cause one half of the meetings scheduled each year.
66. The chair and the deputy chair of the national body and the chairs of the regional councils may be removed by a no-confidence vote in them, carried by a statutory majority of their respective electing bodies.
67. The ATSIC Act should be amended to provide that where a substantial majority of Aboriginal and Torres Strait Islander people living in an ATSIC region or ward agree to a system for selecting regional councillors that is different from the system set out in the ATSIC Act, the Minister may approve such a system for determining the regional councillors for that region or ward.

## *Chapter 7*

# **THE RECOMMENDED MODEL**

### **An Aboriginal and Torres Strait Islander national body**

An Aboriginal and Torres Strait Islander national body will become the governing body of ATSIC. It will set the policy, priorities and directions for ATSIC and its own executive. Its composition – the regional chairs, the chair of the Torres Strait Islander Advisory Board and the national chair and deputy chair and any members appointed by the Minister - will provide a much more balanced process for driving ATSIC and put real power back into the regions.

The national body will determine its own agenda. Regional councils, through their chairs, will be able to contribute directly to the formulation of national ATSIC policy and public debate on issues such as Indigenous rights, native title and the delivery of education, health and other services into the regions.

The review panel is recommending that the national body should meet at least twice during a four-year term. The national body may choose to meet more frequently than this, particularly in its formative stages. At some future time, when the national body grows in experience and confidence in its ability to govern ATSIC, it may be felt that a smaller executive is desirable. A smaller executive should definitely be considered if it is determined that the national body will meet as often as once a year.

The panel notes that the current ATSIC Board and all regional council chairs held a combined meeting in June 2003 to discuss the ATSI/ATSIC changes and to meet with the review panel. The panel was advised that this kind of meeting had rarely occurred in ATSIC's existence. The feedback, particularly from regional council chairs, was that this meeting was a very positive development that enabled regional councils to express their views directly to all the national board members. The fact that few such meetings had occurred before highlights further systemic failure that may be contributing to the 'disconnect' between the regions and the national body.

An Aboriginal and Torres Strait Islander national body will enable ATSIC to evolve over time, shaped directly by Aboriginal and Torres Strait Islander people. The panel also recommends that Australian, State and Territory parliamentarians and other key leaders from the public and private sectors should be invited to attend when appropriate to provide opportunities for personal contact, information sharing and to contribute to policy and program development. Representatives of the other bodies within the Indigenous affairs portfolio, e.g. the Indigenous Land Corporation, Indigenous Business Australia, Aboriginal Hostels Ltd and the Australian Institute of Aboriginal and Torres Strait Islander Studies should be given observer status at the forums.

The national body could also be a very effective opportunity for regularly focusing national attention on Indigenous issues through the media.

The national executive should consist of a maximum of ten members. They shall be the chair, the deputy chair of the national body (who will also be chair and deputy

chair of the executive), and six members elected by the national body from its membership.

Two additional members may be appointed by the Minister to the executive from the pool of all regional councillors. If these members were not already on the national body they would become members of the national body by virtue of their appointment to the executive. The panel's proposal for ministerial appointments ensures that appointees will have been elected in the first instance by Indigenous people. This power allows the Minister, if necessary, to enhance the breadth of talent represented on the executive and is constrained to allocating positions to a maximum of 20% of the executive membership.

The panel recommends the TSRA have non-voting membership of the national body. This is based on the following factors: the TSRA operates as an independent body with very limited interaction with ATSIC, and the TSRA has a separate line in the budget. The panel notes that the TSRA is advocating for enhanced autonomy from ATSIC by seeking its own legislation.

Apart from the chair and the deputy chair, the other executive members shall continue to hold the positions of chair of their respective regional council. The chair and deputy would be the only full-time members of the executive. The positions of the chair and deputy chair on their regional councils would become vacant and would need to be backfilled.

The panel considered it would be preferable to give the national body the widest possible choice in electing the most appropriate members to constitute the executive. For this reason, the panel has not suggested mandated geographic representation. However, as the national body elects eight members of the executive, a geographically representative executive could be chosen, if this was the will of the national body. However as previously noted, if it is determined that the whole national body will meet as frequently as once a year there would be a strong case for a smaller executive.

One of the main tasks of the national body will be the development of a national plan which would be similar to the present ATSIC corporate plan. The national plan could include ATSIC's mission, goals, priorities, strategies and intended strategic alliances.

The remuneration of the elected members will be determined by the Remuneration Tribunal. The system of sitting fees for regional councillors should be replaced by an annual amount of remuneration determined by the Remuneration Tribunal. Any such review should take some account of the responsibilities of councillors who have roles additional to attending regional council meetings.

All regional councillors must, within in each year, attend at least half the council meetings that they are eligible to attend. If they fail to attend that number without reasonable cause, they will cease to be a regional councillor. The vacancy will be filled by count back.

During the consultations, the regional councils expressed support for a power to remove an elected chair and deputy chair by a vote of no-confidence in them. The

panel believes that the national body and the regional councils should be given increased authority over their full-time elected officials. The chair and the deputy chair of the national body and the chairs of the regional councils should be able to be removed by their electing bodies being able to cast a vote by a statutory majority. This procedure would not apply in relation to ministerial appointments to the national executive.

With respect to the term of office for regional councillors it is noted that many State and Territory parliaments have moved from three to four year terms. At the national level, the timing of elections is one aspect of the current debate about proposed changes for the Parliament. The panel proposes that the term of the elected arm of ATSIC be increased from three years to four years consistent with the trend set by other elected bodies in Australia.

### **A single organisation**

In terms of the elected and administrative arms, the panel's view is that the preferred future for ATSIC is a single organisation with a legislated delineation of roles between the elected arm and the administrative arm.

ATSIC and ATSIIS could be brought back together whilst maintaining an appropriate 'separation of powers' by legislatively defining functions. This could be achieved through amendment of Division 2 of Part 2 of the ATSIC Act. The separation of powers regarding funding matters could be achieved through amendment of one small provision (s.7(1)(a)) to provide that only the administrative arm of ATSIC had powers to implement programs. (As set out in more detail in the previous chapter further detailed changes to the Act would allocate, to the elected and administrative arms, all the functions and powers exercised by the commission.)

The delineation of roles should give the elected arm of ATSIC a new direct focus on policy – as against its previous focus on the details of program delivery. In the new environment regional councillors will need to become far more focused on issues of regional planning, policy development, and the delivery of programs and services by other agencies.

It is the intention of the panel that accepted principles of governance underpin the operation of the new ATSIC.

### **Other options**

As outlined in the *Public Discussion Paper*, the panel considered a number of alternative governance models each one of which had its strengths and weaknesses.

The panel also considered the abolition of ATSIC with all of its activities being devolved to relevant mainstream agencies. For the reasons outlined in this report and the discussion paper, the panel was not supportive of this option.

The panel considered a retention of the status quo with an entrenchment of the ‘separation of powers’. This was rejected as it was considered that the current structure itself contributed to a degree of dysfunction in ATSIC.

The panel considered removing all programs from ATSIC and leaving it with only the roles of advocacy and policy advice. In respect of the important group of ATSIC programs that have a specific Indigenous focus it was difficult to identify a more appropriate agency for the delivery of such programs. Again, for the reasons outlined in this report, the panel did not support this option.

The panel considered the option of devolving major service delivery programs (e.g. CDEP and CHIP) to mainstream agencies, leaving ATSIC with program activities that had a specific Indigenous focus. This option has not been precluded by the approach the panel has recommended providing it is considered as part of a broader examination of program delivery by all agencies.

The panel considered the option of abolishing the regional councils and creating 16 regional authorities based on the existing zones. Each regional authority could operate in a manner not dissimilar to the TSRA with the national office of ATSIC operating as a central agency for the regional authorities. Despite the proposed creation of regional advisory committees within each authority area there was considerable concern expressed at a further reduction in direct regional representation. The panel, for reasons outlined in the report, did not support this option.

Finally, the panel considered converting all 35 regional councils into regional authorities. There would have been significant ‘critical mass’ and administrative difficulties with this model and again, for the reasons outlined in the report this option was not supported.

However, as already observed, there is no ‘perfect model’ and adoption of the model proposed does not preclude the inclusion, at a future time, of aspects of these models. Comment has been made for example on the need for ATSIC in the future to accommodate the establishment of autonomous regional governance structures dealing much more directly with government and relevant agencies.

### **Financial implications**

The panel has not sought specific costings for the suggested changes. The panel is of the view that the overall financial implications arising from this report are of small magnitude. There are some potential savings and there are some new measures, structures and functions proposed in this report that will require additional resources. The overall structural changes recommended for ATSIC should be able to be accommodated within the existing budget for ATSIC/ATSIS.

### **Potential costs**

The work of the Commonwealth Grants Commission, based on the cost of their previous work in this area, should cost in the order of \$2-3 million per annum. The figure would depend on the details of the task set by the Government for the CGC.

Regarding the proposed additional work for the Productivity Commission, the panel has indicated earlier in the report that an indicative amount of \$1 million per annum would be an appropriate starting point given the cost of the existing work.

With respect to the additional work for OEA, a cost estimate has not been placed on that as resourcing will depend on the scope of the role set by the Government and the annual schedule of work they have to complete.

Paying regional councillors an annual amount rather than sitting fees may result in a small increase of expenditure through payments to councillors. Any savings achieved through structural changes to ATSIC such as removing the zone commissioners could offset this.

## *Appendix One*

### **TERMS OF REFERENCE**

The former Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock MP established the ATSIC review panel on 12 November 2002. He asked for a reassessment and recommendations on:

... how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programs to assist them. In doing so the reassessment will consider the current roles and functions of ATSIC including its roles in providing:

- advocacy and representation of the views of Aboriginal and Torres Strait Islander people;
- programs and services to Aboriginal and Torres Strait Islander people; and
- advice on implementation of legislation.

Mr Ruddock asked in particular for the reassessment to consider the appropriate role for regional councils in ensuring the delivery of appropriate government programs and services to Indigenous people, and to consider and report on any potential financial implications.

On 25 February 2003, Mr Ruddock asked the panel:

...to give particular attention to the structure of the relationship between the government and the Commission. This should include the adequacy of the Minister's powers and the merits of a possible ministerial veto in relation to specific ATSIC decisions.

Following circulation of the panel's *Public Discussion Paper* of June 2003, Mr Ruddock clarified the Government's expectation in relation to the second stage of the review panel's work and provided a list of questions relating to role and functions, structure and relationships, advocacy and representation, program delivery and administration of legislation. In a letter of 27 July, he asked that the panel should:

...seek to analyse and clearly articulate alternative models for the future involvement of Indigenous people in the process of the development of Commonwealth policies and programs to assist them. The extent to which such models would facilitate the involvement of Indigenous people in the development of state/territory and local government programs is also a relevant issue, especially in relation to regional councils or their successors, having regard to the panel's accurate observation that primary responsibility for most programs of interest and benefit to Indigenous Australians rests with state/territory governments.

*Appendix Two*

**MEMBERSHIP OF REVIEW PANEL**

**Ms Jackie Huggins AM** is Deputy Director of the Aboriginal and Torres Strait Islander Studies Unit of the University of Queensland and Co-Chair of Reconciliation Australia.

**The Hon John Hannaford** is Director of ADR Solutions Pty Ltd, Adjunct Professor with the Negotiation and Dispute Resolution Program at the Law School of the University of Technology, Sydney, and serves as director of a number of companies. Mr Hannaford was a Member of the New Wales Parliament (1984 – 2000) and held a number of Ministerial portfolios including Attorney General and Minister for Justice

**The Hon Bob Collins** is the former Senator for the Northern Territory (1987-1998) and former Minister for Transport and Communications and Minister for Primary Industries and Energy.

## *Appendix Three*

# CONSULTATION

### **The national consultation**

The review panel undertook two major rounds of public consultation, the first feeding into the development of the *Public Discussion Paper* of June 2003, and the second round focusing on the issues and options identified in that paper.

Advertisements calling for participation were placed in national newspapers, *Koori Mail* and *National Indigenous Times* and regional newspapers. Some 8,000 copies of the *Public Discussion Paper* were mailed out, containing advice on how people could play a part in the process, including registering their views through the consultation 1800 hotline. The review panel also announced that it would be visiting state and territory capitals and a number of regional centres during July and August. (Appendix 1 lists all public meetings.)

A website featured the discussion paper, the submissions received (unless authors requested them not to be posted) and a feedback mechanism for comments to be received.

The months of July, August and September saw the panel members meeting, together or individually, with a wide range of stakeholders across the nation.

Panel members met with all 35 ATSIC regional councils (at either full council meetings, zone meetings of councils, or sub-committee group meetings). A number of regional councils chose to invite community members and representatives from other key organisations to participate. Panel members also met with the ATSIC board, with ATSIC's recently established s.13 Women's Advisory Committee, the Torres Strait Regional Authority and the Torres Strait Islander Advisory Board.

In some instances, panel members met with individuals who had expressed interest in meeting with the panel.

In all, more than 100 written submissions were received during the second consultation stage. These can be accessed on the website [www.atsicreview.gov.au](http://www.atsicreview.gov.au). In addition, the secretariat recorded verbal submissions made via the free call number.

### **General comments**

The review panel received constant criticism at regional council meetings about the short amount of time available to consult with people. People asked, given that this had been the first independent review of ATSIC 'what is the hurry?' Regional councils expressed concern that the timeframe prevented them consulting appropriately with their constituents on the options and issues raised by the discussion paper. There were requests at regional council and community meetings for the opportunity to comment on reforms that the government proposed to implement.

There was considerable commonality of issues raised in both stages of the consultation, but with a greater focus on possible future models in the second round.

The public meetings attracted predominantly Aboriginal and Torres Strait Islander participants and provided excellent forums for the discussion of local, as well as State/Territory and national, concerns.

Aboriginal and Torres Strait Islander people drew attention to the diversity of their cultures, experiences and views. They stressed the need for the cultures, languages, histories and opinions of Aboriginal and Torres Strait Islander peoples to be acknowledged and respected as an important factor in paving a way forward for a new, improved ATSIC.

Meetings conducted during Stage 2 of the consultation process included:

<b>Date</b>	<b>Place</b>	<b>Participants</b>
17 July	Perth WA	Noongar Country Regional Council
18 July	Perth WA	Perth Noongar Regional Council
22 July	Smithton Tas	Tasmanian Regional Aboriginal Council
23 July	Alice Springs NT	Central Zone (Alice Springs, Papunya, Yapakurlangu Regional Councils) and Land Council representatives
24 July	Heywood Vic	Tumbukka Regional Council
25 July	Mollymook NSW	Queanbeyan Regional Council
29 July	Gregory Downs QLD	Gulf and West QLD Regional Council
30 July	Mt Isa QLD	Community meeting
31 July	Hughendon QLD	Townsville Regional Council
1 Aug	Corindi NSW	Many Rivers and Kamilaroi Regional Councils
4 Aug	Port Lincoln SA	Wangka Wilurrara Regional Council
5 Aug	Shepparton Vic	Binjirru Regional Council
5 Aug	Shepparton Vic	Meetings with Aboriginal organisations
6 Aug	Caloundra QLD	South East Queensland Regional Council
7 Aug	Rockhampton QLD	Central Queensland Regional Council
8 Aug	Rockhampton QLD	Community meeting
8 Aug	Sydney NSW	Sydney Regional Council
12 Aug	Bathurst Island NT	Tiwi Islands community
12 Aug	Brisbane QLD	Community meeting
13 Aug	Darwin NT	Northern Territory North Zone (Miwatj, Jabiru, Yilli Rreung, Garrak Jarru Regional Councils)
14 Aug	Cairns QLD	Cairns and District Regional Council
16 Aug	Charleville QLD	Goolburi Regional Council
18 Aug	Thursday Is QLD	Torres Strait Regional Authority
18 Aug	Canberra ACT	ATSIC Board
19 Aug	Cobar NSW	Murdi Paaki Regional Council
20 Aug	Mudgee NSW	Binaal Billa Regional Council
20 Aug	Leonora WA	Wongatha Regional Council
21 Aug	Kalgoorlie WA	Western Desert Regional Council
22 Aug	Canberra ACT	Section 13 Women's Committee
25 Aug	Barmera SA	Patpa Warra Yunti Regional Council
25 Aug	Perth WA	Yamatji Regional Council
26 Aug	Coober Pedy SA	Nulla Wimila Kutju Regional Council
26 Aug	Broome WA	South Hedland Regional Council
27Aug	Derby WA	Western Australia North West Zone (Wunan, Kullarri and

28 Aug	Derby WA	Malarabah Regional Councils) Western Australia North West Zone (Wunan, Kullarri and Malarabah Regional Councils)
28 Aug	Cairns QLD	Peninsula Regional Council
29 Aug	Ballina NSW	Community meeting
4 Sept	Warburton WA	Western Desert Regional Council
11 Sept	Yarrabah QLD	Bama-Ngappi-Ngappi Aboriginal Corporation
11 Sept	Yarrabah QLD	Yarrabah Aboriginal Council (DOGIT community)
11 Sept	Yarrabdah OLD	Yarrabdah CDEP Group
11 Sept	Innisfail QLD	Baddagun Corporation
12 Sept	Injinoo QLD	Injinoo, Umagico and New Mapoon Aboriginal Councils (DOGIT communities)
13 Sept	Palm Island QLD	Palm Island Aboriginal Council (DOGIT community)

## *Appendix Four*

### **LIST OF SUBMISSIONS**

The review panel received a total of 56 written submissions in the consultation leading into the development of its *Public Discussion Paper* of June 2003 (listed in Annex B of the paper).

More than 100 submissions resulted from circulation of the discussion paper. These came from government agencies, Aboriginal and Torres Strait organisations, community groups and individuals.

#### **Written submissions received in Stage 2 of public consultation:**

Aboriginal and Torres Strait Islander Commission  
Aboriginal Advancement League, North Adelaide, SA  
Aboriginal and Torres Strait Islander Service, Canberra, ACT  
Aboriginal Hostels Limited, Keith Clarke, Canberra, ACT  
Action for Aboriginal Rights, D. Beryl Phillips, Malvern, Vic  
Australian Capital Territory Government  
Australian Sports Commission, Canberra, ACT  
Australians for Native Title and Reconciliation, Catherine Kyne  
Australians for Native Title and Reconciliation  
Australians for Native Title and Reconciliation, Lowe Bill Byrne, Enfield, NSW  
Australians for Native Title and Reconciliation, Queensland, Brisbane  
Beaumont, Barbara, Williamstown, Vic  
Bell, Cr Damien, Heywood, Vic  
Bennelong & Surrounds Residents for Reconciliation, Judy MacGregor, Hunters Hill and Ryde, Sydney, NSW  
Berghout, Bob, Lambton, NSW  
Blackman, Ken, Hampton, Vic  
Bourke, Colin and Eleanor, Dadswell Bridge, Vic  
Buchanan, Geoff, Heathmont, Vic  
Burns, Virginia, Box Hill North, Vic  
Campbell, Val, Mt Pritchard, NSW  
Catholics in Coalition for Justice and Peace, Sydney, NSW  
Central Zone (ATSIC), NT  
Community and Public Sector Union, Canberra, ACT  
Dalton, Paddy, Morwell, Vic  
Davey, Kym, Mile End, SA  
Department of Health and Ageing, Canberra, ACT  
Felton, Philip, North Balwyn, Vic  
Gill, Nigel, Lavington, NSW  
Gillespie-Jones, Kate, Canterbury, Vic  
Goolburri Regional Council, Roma, QLD  
Gulf and West Queensland Regional Council  
Hammond, David, Moonah, Tas  
Hampson, Jim, Moruya, NSW  
Harry, Abigail, Balcatta, WA  
Hills, Neil, Sylvania, NSW

Hope, Steven, North Carlton, Vic  
 Hughes, Mrs L, Lavender Bay, NSW  
 Indigenous Business Australia, Canberra, ACT  
 Indigenous Hospitality House, North Carlton, Vic  
 Indigenous Land Corporation, Canberra, ACT  
 Indigenous Tasmanians Aboriginal Corporation, Hobart, Tas  
 Ingram, Millie, Belmore, NSW  
 Johnson, Wally, Ivanhoe, Vic  
 Kamilaroi Regional Council, Tamworth NSW  
 Kungala Wakai ATSIC Committee on Women's Issues  
 Kyle, Lloyd, Mount Isa, QLD  
 Lupton, Peter  
 Maguire, Richard & Maria, Wentworthville, NSW  
 Manners, Merlin  
 Many Rivers Regional Council, Coffs Harbour, NSW  
 McKelvey, David, Wooloongabba, QLD  
 Millane, Bernie, Box Hill North, Vic  
 Muir, Joy, Airport West, Vic  
 Mulga Mallee Regional Council, Kalgoorlie, WA  
 Murdi Paaki Regional Council, Lightning Ridge, NSW  
 National Network of Indigenous Women's Legal Services Inc, Cloverdale, WA  
 New South Wales Government  
 New South Wales Aboriginal Housing Office  
 Newcastle Aboriginal Support Group, Broadmeadow, NSW  
 North Coast Institute, Neil Black, Port Macquarie, NSW  
 Northern and Central Land Council, NT  
 Northern Territory North Zone, Darwin, NT  
 Nulla Wimila Kutju Regional Council, Port Augusta, SA  
 Office of Evaluation and Audit (ATSIC) ACT  
 Office of Registrar of Aboriginal Corporations  
 Oxfam Community Aid Abroad  
 Page, David and Jo, Flynn, ACT  
 Paroo Shire Council, Cunnamulla, QLD  
 Parry, George, Blackalls Park, NSW  
 Patmore, Bruce, Mornington, Tas  
 Patpa Warra Yunti Regional Council, Adelaide, SA  
 Perth Regional Council, WA  
 Proportional Representation Society, Canberra, ACT  
 Queensland Government  
 Reconciliation and Treaty Supporters of Warrnambool, Vic  
 Reconciliation Australia, Canberra, ACT  
 Sator, Trevor, Cook, ACT  
 Savage, Kevin, Torres Strait, QLD  
 Sharma, Dr Kamlesh, Amaroo, ACT  
 Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sydney, NSW  
 South Australian Aboriginal Housing Authority  
 South Australian Government  
 South West Aboriginal Land & Sea Council, Perth, WA  
 Sydney Regional Council  
 Symons, Douglas, Carlingford, NSW

Tait, Billy, Townsville, QLD  
Tasmanian Aboriginal Centre, Hobart, Tas  
Tasmanian Government  
Tasmanian Regional Aboriginal Council, Hobart, Tas  
Tiwi Islands Local Government, Bathurst Is, NT  
Torres Strait Regional Authority, Thursday Island, QLD  
Townsville Regional Council, QLD  
Victorian Government  
Victorian Zone (ATSIC)  
Walsh, Leonie, Carlton, Vic  
Western Australian Government  
Western Australian North Zone (ATSIC)  
White, Allan, Cunnamulla, QLD  
Williams, Roy, Lismore, NSW  
Women's Reconciliation Network, Marrickville, NSW  
Woodley, Benny  
Yamatji Regional Council, Geraldton, Western Australia  
Yapakurlangu Regional Council, Tennant Creek, NT  
Yilli Rreung Regional Council, Darwin, NT

*Appendix Five*

**GLOSSARY OF ACRONYMS**

ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACOSS	Australian Council of Social Services
AHL	Aboriginal Hostels Limited
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
NAO	Australian National Audit Office
ANKAAA	Association of Northern, Kimberley and Arnhem Aboriginal Artists
ANTA	Australian National Training Authority
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Services
CDEP	Community Development Employment Projects
CEO	Chief Executive Officer
CGC	Commonwealth Grants Commission
CHIP	Commonwealth Housing and Infrastructure Program
CLC	Central Land Council
COAG	Council of Australian Governments
COALS	Coalition of Aboriginal Legal Services
DCITA	Department of Communications, Information Technology and the Arts
DEST	Department of Education, Science and Training
DEWR	Department of Employment and Workplace Relations
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DOGIT	Deeds of Grant in Trust
FACS	Department of Family and Community Services
IBA	Indigenous Business Australia
ICCT	Indigenous Communities Coordination Taskforce
ILC	Indigenous Land Corporation
ILF	Indigenous Land Fund
MCATSIA	Ministerial Council for Aboriginal and Torres Strait Islander Affairs
NACCHO	National Aboriginal Community Controlled Health Organisation
NAHS	National Aboriginal Health Strategy
NATSIVA	National Aboriginal and Torres Strait Islander Visual Arts
NIDA	National Indigenous Development Alliance
NLC	Northern Land Council
NPA	Northern Peninsula Region
OATSIA	Office of Aboriginal and Torres Strait Islander Affairs
OEA	Office of Evaluation and Audit
ORAC	Office of the Registrar of Aboriginal Corporations
OTSIA	Office of Torres Strait Islander Affairs
PM&C	Department of the Prime Minister and Cabinet
TSIAB	Torres Strait Islander Advisory Board
TSRA	Torres Strait Regional Authority

*Appendix Six*

**MAJOR REFERENCES**

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Commonwealth of Australia, *National Report to Parliament on Indigenous Education and Training, 2001.*

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