

THE TORRES STRAIT REGIONAL AUTHORITY: IS IT THE ANSWER TO REGIONAL GOVERNANCE FOR INDIGENOUS PEOPLES?

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I Introduction

Since the abolition of the Aboriginal and Torres Strait Islander Commission ('ATSIC'), the Torres Strait Regional Authority ('TSRA') is the main legislative regional governance model in Australia for Indigenous peoples. During the Senate inquiry into the bill abolishing ATSIC, the TSRA was raised as a possible model for regional government in other regions. The Murdi Paaki Regional Council in western New South Wales cited the TSRA as a precedent for a flexible legislative model that could allow for the construction of representative Indigenous institutions.¹ Councillor Wunungmurra of the Miwatj Provincial Governing Council in the Northern Territory commented that it 'it would be better to have our own [governing body], similar to the Torres Strait Islanders, for the time being'.² The TSRA itself suggested that it could be used as a model for Indigenous regional governance elsewhere in Australia stating that it had 'demonstrated that a coherent framework for coordinated service delivery involving leadership within a regional development plan facilitates the achievement of better outcomes'.³

In its report a non-government majority of the Senate committee acknowledged the role that the TSRA could play as a model for other regions when it recommended that

the government defer plans to abolish the Regional Councils, and continue with consultation processes on developing new regional representative arrangements, recognising that in some areas, the preferred outcome may be to have organisations similar to TSRA and existing Regional Councils.⁴

The committee also noted that the Government had never explained why the TSRA approach – supported by both the Government and other Indigenous communities – could not be extended to other regions.⁵

As one of the few Indigenous regional governance models in Australia and the only legislative model, it is essential that greater consideration is given to the TSRA model and its implications for the development of regional governance elsewhere in Australia. This paper examines the overlapping governance structures that exist in the Torres Strait, including their history and the ongoing calls for reform to those structures. It goes on to consider whether the TSRA can provide a model for regional governance elsewhere in Australia and what lessons can be learnt from the Torres Strait governance model. With the abolition of ATSIC, these lessons are of vital importance in working towards filling the gap in Indigenous regional governance.

II The Torres Strait Region

The Torres Strait is unique in Australia in its geography, population and culture. The Torres Strait refers to the region lying between the Cape York Peninsula in northern Queensland and the southwest coast of Papua New Guinea. It covers an area of over 40 000 square kilometres, with the ocean making up just over 90 percent of this area, and forms part of the State of Queensland. The region consists of many islands and reefs, with 18 island communities and two mainland communities.⁶

Two thousand, five hundred and forty-six people, more than a quarter of those living in the Torres Strait, live on Thursday Island, which is only 3.5 square kilometres in size but is the Torres Strait's administrative and commercial centre.⁷ The inner islands – that is, Thursday Island and the islands that surround it – are the traditional lands of the Kaurareg people, who often identify separately to Torres Strait Islanders. In 1997 they estimated their adult population in the Torres Strait region to be over 200 people.⁸

The region is the only part of Australia that shares a border with a neighbouring country, with mainland Papua New

Guinea just 3.73 km from the northernmost point of the Torres Strait region and Indonesia just 73.5km away.⁹ Since the 1970s the Torres Strait has been identified as a special zone – the Torres Strait Protected Zone – by the Torres Strait Treaty between Papua New Guinea and Australia. It also has a history of being treated as a discrete administrative region by the Queensland colonial Government and, later, by the Commonwealth Government.¹⁰

In 2006 there were 47 325 Torres Strait Islanders in Australia, with 6958 or 15 percent residing in the Torres Strait region. Sixty-one percent of Torres Strait Islanders live in mainland Queensland while 16.3 percent reside in New South Wales. The remaining population is scattered throughout Australia. In the Torres Strait, Torres Strait Islanders make up 98 percent of the Indigenous population and 81.2 percent of the total population.¹¹

The Torres Strait is Australia's only Melanesian cultural region, distinct from both the Melanesians in Papua New Guinea and the Aboriginal people of Cape York Peninsula.¹² While Torres Strait Islanders have not always identified as a single cultural group, strong customs and beliefs, called *Ailan Kastom* have survived European contact.¹³

III Local Government Structures

In order to understand the TSRA, it is necessary to understand the pre-existing local governance structures upon which it was built. The Torres Strait has 18 local governments established under Queensland legislation. Seventeen of these, the Island Councils, are established under the *Community Services (Torres Strait) Act 1984* (Qld) and one, the Torres Shire Council, is established under the *Queensland Local Government Act 1993* (Qld).

The land in the region includes crown land, freehold land, land held under Deed of Grant in Trust ('DOGIT'), reserve land, native title and national parkland.¹⁴ DOGIT land in the Torres Strait is land granted for the benefit of Torres Strait Islanders, for the purpose of a Torres Strait Islander reserve or for public purposes.¹⁵ Each area of DOGIT land that has been granted in the Torres Strait is governed by an Island Council.

These two systems of local government – Island Councils and the Torres Shire Council – have existed in some form since the start of the 20th century and stem from attempts

to separate the governance of settler and Indigenous people in the Torres Strait. The Torres Shire Council covered areas (predominately Thursday Island) that were the domain of settler interests and the Island Councils covered areas with few non-Indigenous people.¹⁶ The Island Councils area remain predominantly Indigenous but the Shire area now has greater Islander participation with about 60 percent of its population being Indigenous. An Islander Mayor has been present on the Council since 1994 and Islander councillors have formed part of the Council since 1991 when a fully elected local representative structure was adopted.¹⁷

Elections for the Island Councils and the Torres Shire Council are held at the same time on a Saturday in March every four years, in line with all Queensland local government elections.¹⁸ The last elections were held on Saturday, 27 March 2004, with the TSRA elections held one week later on 3 April 2004. Approximately 170 people stood for 70 positions in the different local government bodies and the TSRA.¹⁹

The Queensland Government has announced local government reforms that will affect the local government structures in the Torres Strait. The Torres Shire Council will stay in place. The Government intends to introduce legislation at the end of 2007 that will create a single, additional local government to replace the Island Councils, with Community Boards to be established to represent the Island communities.²⁰ In a move opposed by the TSRA, the two mainland communities of Bamaga and Seisia are likely to be merged with the three nearby Aboriginal communities of New Mapoon, Injinoo and Umagico to form the Northern Peninsula Area Regional Council, and the remaining 15 islander communities will form the Torres Strait Island Regional Council ('TSIRC').²¹ This will leave two Torres Strait local governments – the TSC and the similarly named TSIRC. While changes to the local governance structure are imminent, it remains important to examine the existing structure, upon which the Commonwealth Government's TSRA model has been built, in order to understand the model and its implications for Indigenous regional governance models elsewhere in Australia.

A Island Councils

The Island Councils have the functions of municipal government. This includes responsibility for maintaining, regulating and controlling health, order, housing, food supply, roads, planning and development.²² The Councils

also have additional functions such as appointing Island police officers to maintain peace and good order in the council area, and administering Island Courts to hear complaints about breaches of council by-laws and disputes governed by community usages and customs.²³ The Council's main source of funding comes from the Commonwealth and Queensland Governments.²⁴

Each Island Council generally consists of three councillors, including the chairperson, except for the Saibai Island Council, which consists of seven councillors representing the seven clans and two *buway*, or tribal groups, in the area.²⁵ The Chairperson for each council is appointed at the first meeting of the councillors following their election.²⁶

Only Torres Strait Island or Aboriginal people who have lived in the council area for at least two years can stand for election.²⁷ However, all eligible voters in the council areas, both Indigenous and non-Indigenous, can vote for candidates.²⁸

B Island Coordinating Council

The *Community Services (Torres Strait) Act 1984* (Qld) also established the Island Coordinating Council ('ICC') as a regional representative body for Islanders.²⁹ The ICC consists of the 17 Island Council chairpersons and one person elected at the same time as the council elections to represent the TRAWQ communities – Tamwoy, Rose Hill, Aplin, Waiben and Quarantine – on the northern side of Thursday Island.³⁰ This area is covered by the Torres Shire Council. The elected TRAWQ ICC position was created because the Islanders living in the area wished to be represented on the new ICC but did not want to establish an Island Council for the area in place of the Torres Shire Council.³¹

The functions of the Island Coordinating Council, according to the legislation, include:

- considering and advising any person on matters affecting the progress, development and wellbeing of Islanders;
- making recommendations to the Minister and the chief executive about matters affecting the progress, development and wellbeing of Islanders;
- accepting grants or loans from the Queensland or Commonwealth Government or other sources, and spending that money in accordance with the terms

of the grant or loan or, if there are no such terms, in securing the progress, development and wellbeing of Islanders; and

- establishing and operating lawful business for the promotion, progress, development and wellbeing of Islanders.³²

These functions are similar to that of the TSRA. However, unlike the ICC, the TSRA covers the entire Torres Strait region, including the areas under the Torres Shire Council.

C Torres Shire Council

The Torres Shire covers the northernmost part of mainland Cape York Peninsula and all the islands of the Torres Strait, extending north to the international boundary with Papua New Guinea. However, the Torres Shire Council's administrative control does not extend over the entire Shire Area as it does not include those areas that are covered by the Island Councils.³³ The remaining area, which includes Thursday, Prince of Wales and Horn Islands, is administered by the Torres Shire Council. The Council's administration centres are on Thursday and Horn Islands.³⁴

The population of the Shire is approximately 4600 - more than half the population of the Torres Strait region³⁵ - and includes many of the non-Torres Strait Islanders living in the Torres Straits.³⁶ More than half of the Shire's population (2546 people) live on Thursday Island.³⁷ The Torres Shire Council represents both Indigenous and non-Indigenous people. It emphasises its role as a political voice for all people living in the Shire.³⁸

The Shire's jurisdiction as a local government includes a law-making role for local laws and an executive role for the adoption and implementation of policy, the administration of local government and the enforcement of its local laws.³⁹ Its principal functions are the development of art and culture, economic development, environmental management, infrastructure and other major assets, public order, safety and health, community development and human services, housing, population change and growth management, and council management and governance.⁴⁰

All people living within the Shire can vote and stand for election in the Torres Shire Council.⁴¹ However, people enrolled to vote in an Island Council election cannot vote in a Torres Shire Council election.⁴² The elected members

of the Torres Shire Council consist of the Mayor and seven councillors, including the Deputy Mayor.⁴³ In 2005-06 the Council's total revenue was \$9.5 million and it employed 82 staff members.⁴⁴ Its revenue comes primarily from rates and utility charges, fees and charges, and grants, subsidies, contributions and donations.⁴⁵

IV The TSRA

The TSRA is a body corporate governed by Part 3A of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) ('*ATSI Act*'). It represents all Aboriginal people and Torres Strait Islanders living in the Torres Strait region, including both those covered by Island Councils and those covered by the Torres Shire. In doing so, it incorporates and builds upon the ICC.

A Aims, Functions and Powers

The TSRA identifies its aims as:

to strengthen the economic, social and cultural development of the Torres Strait to improve the lifestyle and wellbeing of Torres Strait Islanders and Aboriginal people living in the region. The Authority's vision is to empower Torres Strait Islander and Aboriginal people to determine their own affairs based on the unique Ailan Kastom (Island Custom) bilong Torres Strait which is the source of unity and strength.⁴⁶

Its statutory functions include:

- recognising and maintaining the special and unique *Ailan Kastom* of Torres Strait Islanders living in the Torres Strait;
- formulating and developing programs for Torres Strait Islanders and Aboriginal people living in the Torres Strait, and monitoring the effectiveness of its own and other bodies' programs for them in the region;
- developing policy proposals to meet their national, State and regional needs and priorities;
- assisting, advising and cooperating with their communities, organisations and individuals at these levels;
- advising the Minister for Families, Community Services and Indigenous Affairs on matters related to Torres Strait Islander and Aboriginal affairs in the area;
- taking necessary action to protect sacred or significant Torres Strait Islander or Aboriginal cultural material and information; and

- collecting and publishing statistical information as requested by the Australian Bureau of Statistics.⁴⁷

The TSRA has the power to do anything that is 'necessary or convenient to be done for or in connection with the performance of its functions'. This expressly includes accepting gifts, grants, bequests and devises made to it, acting as a trustee of money and other property, negotiating and cooperating with other Commonwealth, State, Territory and local government bodies, agreeing to grants or loans from the State of Queensland, and entering into other agreements with a State or Territory.⁴⁸ The TSRA must also perform its functions and exercise its powers in accordance with written directions from the Minister. However, the Minister cannot direct the TSRA about the content of advice to State, Territory or Commonwealth bodies.⁴⁹

The TSRA also serves as the Native Title Representative Body ('NTRB') for the Torres Strait region under the *Native Title Act 1993* (Cth) ('*NTA*'). As an NTRB, the TSRA has specific functions under the *NTA*. These include:

- facilitating and assisting the researching, preparation and making of native title applications;
- assisting native title corporations and native title holders in consultations, mediations, negotiations and proceedings about native title applications, future acts, indigenous land use agreements or rights of access; and
- assisting in dispute resolution within groups about the making of native title applications or the conduct of consultations, mediations, negotiations or proceedings.⁵⁰

B Board Members and Staff

The TRSA consists of both an elected arm, or board, and an administrative arm. The board comprises 20 elected members:⁵¹ the 18 ICC members elected under the *Community Services (Torres Strait) Act 1984* (Qld) ('*Community Services Act*') and two members elected under Division 5 of the *ATSI Act*. The members are paid on a part-time basis, except for the Chair, who is paid on a full-time basis.⁵² The two elected members represent areas, or 'wards', that are not covered by the Island Councils or the TRAWQ member of the ICC; that is, Ngurupai (Horn Island), Muralug (Prince of Wales Island) and Port Kennedy on Thursday Island.⁵³ The democratic nature of the TRSA has been questioned as

the other 18 members are not directly elected to the TSRA.⁵⁴ Island Councillors are elected to represent local interests, not as regional representatives; they are appointed by the Minister for Indigenous Affairs to the TSRA,⁵⁵ though presumably people are aware of this flow-on effect when they vote.

The *ATSI Act* provides that TSRA elections are held every three years within a period determined by the TSRA election rules and on a day fixed by the Minister.⁵⁶ Traditionally, this is one week after the council elections, which prior to 2000 were held every three years.⁵⁷ In 2003 the two elected TSRA councillors' terms were extended by one year so that the elections coincided with the quadrennial council elections in 2004.⁵⁸ Only Torres Strait Islanders or Aboriginal people can vote in a TSRA ward election.⁵⁹ To be able to vote, a person must also be living in the relevant area and on the Commonwealth electoral roll, or as otherwise permitted by the rules.⁶⁰ Voting is by secret ballot and is preferential but it is not compulsory.⁶¹

In order to stand for election to a TSRA ward, a person must be entitled to vote in the ward. They cannot stand for election if they are a TSRA member of staff or consultant, or if they are bankrupt or subject to a personal insolvency agreement. They are also excluded if they have been convicted of an Australian offence for which they were sentenced to imprisonment for one year or more or convicted of an Australian dishonesty offence for which they were sentenced to imprisonment of 3 months or longer, and two years have not passed since they have been released from prison. If the person was not actually imprisoned, then they are eligible to stand for election once two years have passed since the conviction. The person can also apply to the Federal Court for a declaration that despite a conviction, the person should not be disqualified from standing for election.⁶²

The members elect a Chairperson and Deputy Chairperson at their first meeting after an election.⁶³ They meet at least four times in a financial year but can meet more often if the Chairperson believes it necessary. The Chairperson must also convene a meeting if requested to do so by at least eight TSRA members, and the Minister can convene a meeting at any time. Questions arising at the meeting are determined by a majority vote of the TSRA members present at the meeting and the person presiding at the meeting, usually the Chairperson, also has a casting vote. The TSRA can regulate the conduct of the meetings as it sees fit, including

in accordance with Torres Strait Island or Aboriginal tradition and custom, but minutes of the meeting must be kept. It can also permit members to participate in a meeting via telephone, closed-circuit telephone or other method of communication.⁶⁴

The day-to-day administration of the TSRA is managed by the TSRA General Manager. The General Manager is appointed for a period of up to five years by the Minister for Indigenous Affairs, with the agreement of the TSRA.⁶⁵ The TSRA also engages staff under the *Public Service Act 1999* (Cth). In the 2005-06 financial year, the average number of staff engaged by the TSRA was 57.⁶⁶ Together with the General Manager, the staff constitute a Statutory Agency with the General Manager as head.⁶⁷ The TSRA can delegate most of its functions and powers to the TSRA General Manager or a TSRA staff member. The General Manager can then sub-delegate the function or power unless prohibited by the TSRA to do so in the original delegation.⁶⁸

C Funding Arrangements

The TSRA is mainly funded through federal Parliament appropriations.⁶⁹ The General Manager is responsible for the TSRA's financial management. The TSRA has a 'Charter of Representation, Performance and Accountability' in place to formalise the separation of the policy-making power of the elected board from the financial management by the administrative arm, and to avoid conflict of interest situations when it comes to grants and loans.⁷⁰ In the 2005-06 financial year the TSRA's total income was \$56.6 million of which \$53.7 million came from federal government and its total expenditure was \$57 million.⁷¹

A large proportion of the TSRA's total budget is spent in the form of grants to Island Councils and the ICC. Of the grants made for the 2005-06 financial year – \$47.2 million – \$34 million was granted to Island Councils, \$7.7 million to the ICC and \$2.7 million to the TRAWQ Community Council. The remaining \$2.7 million in grants was contributed to the Horn Island Aboriginal Corporation (\$925 350) Mura Kosker Sorority Inc (\$151 484), the Port Kennedy Association Inc (\$170 116), the Torres Strait Islanders' Media Association (\$717 839), the Torres Strait Youth & Recreational Sporting Association Inc (\$414 170), the TSNP Legal Services (\$419 300) and various other grants of \$10 000 or less. Of the remaining \$9.8 million in the TSRA's total operating expenses, \$4.3 million was spent on employees, \$4.9 million on suppliers

and \$0.6 million on depreciation and the write-down and impairment of assets.⁷²

V History of the TSRA

The TSRA grew out of the Torres Shire Regional Council, which was a regional council under ATSIC. ATSIC was established in 1989 to:

- ensure maximum participation of Aboriginal persons and Torres Strait Islanders in formulating and implementing government policies affecting them;
- promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;
- further their economic, social and cultural development; and
- ensure co-ordination in formulating and implementing policies affecting Aboriginal persons and Torres Strait Islanders by the various levels of governments.⁷³

ATSIC's board consisted of Commissioners from 17 zones, headed by a Chairperson elected by the board. Each zone included between one and four regions, with 35 regions in Australia. Each of the 35 regions elected a regional council, which acted as an independent body that consulted with their local communities to formulate a regional plan, advised and cooperated with government agencies in implementing the plan, and represented and advocated for their Aboriginal and Torres Strait Islander constituents. Membership of regional councils was determined by regional elections and each regional council would elect its chair. The regional councils were grouped into 'zones', with the regional councillors in each zone electing one zone commissioner. The Torres Strait region formed its own zone.⁷⁴ ATSIC also included a Torres Strait Islander Advisory Board ('TSIAB') to represent the interests of Torres Strait Islanders living outside the Torres Strait. Members of the TSIAB were appointed by the Minister for Indigenous Affairs.⁷⁵

The TSRC came into effect after the March 1991 Queensland local government elections, which also triggered the ICC and TSRC election.⁷⁶ From its start, the TSRC was different to other ATSIC councils. Following Torres Strait Islander calls for independence in the late 1980s and an interdepartmental committee on the Torres Strait, the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) ('ATSIC Act') included special provisions for council representation in the Torres

Strait region that built upon the existing ICC.⁷⁷ The TSRC had a similar structure to that of the TSRA, with members of the ICC automatically being members of the TSRC along with two elected members for areas not covered by the ICC.⁷⁸

In other respects the TSRC was much like the other ATSIC councils. Executive powers and functions were exercised at the national level by the ATSIC commissioners, rather than by the TSRC. However, the TSRC was in a unique position as both a zone and a region, in that it could elect its own commissioner whereas other councils were combined into local groups to elect a commissioner.⁷⁹

The TSRA was created in 1994 to replace the TSRC following a review of the *ATSIC Act*.⁸⁰ The review steering committee, chaired by the then chairperson of ATSIC, Lois O'Donoghue, consulted with regional councils, Indigenous communities, government agencies and ATSIC staff. It recommended, amongst other things, that the number of regional councils be reduced, that the regional councils' powers be increased to allow greater control over funding priorities, that all commissioners be elected from regional councillors and that regional council chairpersons be appointed on a full-time basis.⁸¹ The Government implemented many of the recommendations in several amending Acts in 1993.⁸²

The review also considered the provisions that provided for ICC members to be members of the TSRC. It suggested that there was 'a case for a movement towards further autonomy for the Torres Strait' and recommended that a Torres Strait authority be developed within the framework of the ATSIC Act but with its own 'single line appropriation'.⁸³ Following on from this the *ATSIC Amendment Act 1993* (Cth) amended the *ATSIC Act* to replace the TSRC with the TSRA, which formally came into existence on 1 July 1994. While the TSRA remained under the *ATSIC Act*, it was established as an independent body with similar functions to ATSIC for the Torres Strait region.

Since the 1998-99 Federal Budget the TSRA has negotiated its budget directly with the Minister for Indigenous Affairs and the Department of Finance,⁸⁴ prior to that its budget was negotiated with the Chair of ATSIC and the Minister of Aboriginal and Torres Strait Islander Affairs.⁸⁵

When ATSIC was abolished in 2004-05, the TSRA was the only regional body that was maintained under the renamed Act. The Government transferred the responsibilities of ATSIC

and the Aboriginal and Torres Strait Islanders Services to mainstream government agencies in 2004 and abolished the ATSIC Board and regional councils in 2005. It also established the Office of Indigenous Policy Coordination within another government department and the National Indigenous Council, which is an appointed (rather than representative) body that advises government on Indigenous issues.⁸⁶ The provisions pertaining to ATSIC and any other reference to it were removed from the *ATSIC Act*, and it was renamed the *ATSI Act*.⁸⁷

The Government's stated reason for retaining the TSRA in the *ATSI Act* was that, unlike ATSIC, it was working effectively in meeting the needs of its community.⁸⁸ Ron Day, Chairperson of the Murray Island Council and Board member of the TSRA, suggested that the TSRA's relative success was due to its localised nature: the region, organisation and community are all smaller, with members of the community more connected to each other.⁸⁹

VI Calls for Restructure

While the TSRA has been held up as a possible model for regional governance elsewhere in Australia, it has itself also been the subject of review, with calls being made for greater autonomy and representation of Torres Strait Islanders living in mainland Australia.⁹⁰ Even at the time of its creation in 1994, the TSRA saw itself as a step towards achieving greater regional autonomy. Its corporate plan for 1994-1995 states that the TSRA was created as 'a transitional arrangement providing a basis for a progressive negotiated movement towards greater regional autonomy'.⁹¹

In 1996 and 1997, a major inquiry into the governance structures of the Torres Strait region was conducted by the House of Representatives Standing Committee on Aboriginal & Torres Strait Islander Affairs. In its report, *Torres Strait Islanders: A New Deal – A Report on Greater Autonomy for Torres Strait Islanders* ('New Deal Report'), the Committee made 25 recommendations to promote greater autonomy for Torres Strait Islanders. In his foreword to the report the Committee Chair, the Honourable Lou Lieberman MP identified several vital issues that he considered dominated the evidence presented to the Committee:

- Australia's federal system did not serve the people of the Torres Strait well.
- Any move to greater autonomy would have to be

acceptable to the Commonwealth and Queensland governments as well as the local people, which in itself is a diverse group.

- Torres Strait Islanders living on the mainland may be disadvantaged by a solution for greater autonomy.⁹²

The Committee's core recommendations were the creation of a Torres Strait Regional Assembly to represent all residents of the Torres Strait area and replace the ICC, TSRA and TSC, and a Cultural Council to advise the Assembly on how to promote and maintain the *Ailan Kastom* of Torres Strait Islanders.⁹³ Members of the Assembly would consist of representatives elected from the Island Councils, with non-Indigenous residents being able to vote and run for office, as well as representatives elected from Thursday Island and Horn and Prince of Wales Islands.⁹⁴ The Cultural Council would consist of Torres Strait Islanders from the Torres Strait and the mainland.⁹⁵ The Committee also recommended that mainland Torres Strait Islanders continue to be represented by the now defunct ATSIC, but that members of ATSIC's Torres Strait Islander Advisory Board should be elected rather than appointed by the Minister and that the Chair of the Board should be elected by Board members and appointed to the ATSIC Board of Commissioners to replace the Commissioner for the Torres Strait Zone.⁹⁶

The Committee's recommendations did not receive an entirely positive reception in the Torres Strait. The Committee underestimated the support that existed for the TSC and the recommendation that the Queensland Government abolish it met with significant opposition, including from the Torres Strait Islander Mayor of the TSC. The recommendation that mainland Torres Strait Islanders be represented by ATSIC also faced some resistance. With a significantly greater number of Torres Strait Islanders living outside of the Torres Strait, many Islanders favoured an Australia-wide Torres Strait Islander authority under which Islanders would be represented separately from Aboriginal Australians.⁹⁷

In June 1998 the Commonwealth and Queensland Governments issued a joint response to the Committee's report, which took into account these concerns.⁹⁸ Both Governments expressed support for greater Torres Strait Islander control over the internal affairs of the region, but both acknowledged the need for consultation with Torres Strait Islanders, including those on the mainland and residents of the Torres Strait prior to further steps being taken.⁹⁹ The Commonwealth Government supported in

principle the establishment of a combined body to replace the ICC and the TSRA, leaving the incorporation of the TSC to be considered after an amalgamation of the first two bodies had occurred. The Queensland Government indicated it would have difficulties supporting the abolition of the TSC and that it could not support any amalgamation until it had a more comprehensive understanding of the views of Torres Strait Islanders.¹⁰⁰ Both Governments supported continuing representation of mainland Islanders by ATSIC; however, the Commonwealth did not support the election of TSIAB members, instead preferring the retention of ministerial appointments.¹⁰¹

Following the Committee report and the Governments' response, the chairs of the TSRA and the ICC, the mayor of the Torres Shire Council and other community representatives came together to form the Greater Autonomy Task Force ('Task Force'). The Task Force held discussions within the community about the governance of the region. In October 2001 it produced an agreement, known as the Bamaga Accord, which set out a proposal for a Torres Strait Regional Assembly that would encompass all residents in the Torres Strait.¹⁰² The Assembly would represent a merger of the TSRA and the ICC and be made up of 21 members directly elected from, and by, their communities. The Chairperson would also be directly elected. An Executive made up of representatives from six sub-regions, or groups of communities, would exercise portfolio responsibilities. The Island Councils and the TSC would continue to exercise local government functions.

However, at a public meeting in May 2002 there was no longer complete support for the Bamaga Accord and the Task Force was disbanded. In its place, the Greater Autonomy Steering Committee was established to develop alternative models of governance for the region.¹⁰³ The Steering Committee had no ex-officio members and consisted of Pedro Stephen, who was the mayor of the Torres Shire Council, Getano Lui Jnr, George Mye, Emanuel Namoa, Gabriel Bani and Bertha Nathanelu.¹⁰⁴

The draft TSRA Bill, which had been developed in 2001 to separate the TSRA from ATSIC, was also put on hold pending the findings of the Steering Committee.¹⁰⁵ Suggested amendments to the draft Bill were submitted by the TSRA to the then Minister for Indigenous Affairs, Philip Ruddock, in 2003 asking him to progress the Bill with amendments providing for only six members of the TSRA, who would be directly elected.¹⁰⁶ However, both he and his successor,

Amanda Vanstone, did not act on the submission and later approaches by the TSRA.¹⁰⁷

In 2005 the Steering Committee made recommendations, endorsed by the ICC and TSRA, for an alternative governance model, which it presented to the Senate Select Committee on the Administration of Indigenous Affairs. These recommendations supported retaining the Island Councils and forming a Federation of Island Councils, which would encompass both State and federal responsibilities and funding in the short term, with a view to achieving territory status for the region within three years.¹⁰⁸

The future of the Torres Strait Regional Authority is unclear. However, it is apparent that there is considerable dissatisfaction with the existing structure and a desire to establish a new governance model in the region. The move by the Queensland Government to amalgamate the Island Councils will force changes to the governance structures in the Torres Strait, including the TSRA, which is dependent on the existing structure of Island Councils. We are yet to see whether this will be simply by reference to the new Community Boards or whether there will be greater change, such as the TSRA being replaced by the new Queensland local government structure.

VIII Lessons from the Torres Strait

This consideration of the Torres Strait reveals several problems in transplanting the TSRA model of regional governance to other regions in Australia. First, the Torres Strait region has several unique characteristics that support its structure of regional governance meaning that a similar model of governance may not work as effectively in other regions. Torres Strait Islanders make up the vast majority of the population of the Torres Strait. Geographically, the region consists mainly of islands and is largely contained within a Strait, clearly distinct from other regions. Politically, there is interest from the Federal Government in maintaining stability in the region, given its proximity to the Papua New Guinea border.

In contrast, Indigenous communities on mainland Australia frequently form part of a minority in a larger, non-Indigenous community. The preliminary estimates from the 2006 census indicate that Indigenous Australians make up 2.5 percent of the Australian population. Of the 36 Indigenous regions¹⁰⁹ covering areas other than the Torres Strait, the Indigenous

community make up more than half the population in only seven regions, and Indigenous people constitute more than three quarters of the population, as is the case in the Torres Strait, in only two regions – Jabiru and Apatula in the Northern Territory. The Indigenous population constitutes less than two percent of the total population in seven regions and 10 percent or less in more than half of the regions.¹¹⁰

In addition, the TSRA is based on a long history of Island Councils and Queensland legislation that governs those councils. The structure of the TSRA, with its board comprising the Chairs of the Island Councils, is dependent on the existence of these long-standing local governance bodies, unique to the Torres Strait. The breakdown of TSRA expenditure above shows the extent to which the TSRA acts as a funding conduit to the ICC and Island Councils, rather than a body that directly implements its own policies. The evidence given by Joseph Elu, Chairperson of Seisia Island Council and member of the TSRA Board, to the Senate Select Committee on the Administration of Indigenous Affairs, further supports this view. He stated, 'we have always treated TSRA as a funding conduit only. The money comes from TSRA and there is transparency and scrutiny there, but the actual program delivery is done by people on the ground'.¹¹¹

Finally, it seems that there is disagreement within the Torres Strait as to the level of success of the TSRA in governing the region and a number of concerns have been expressed about the existing structure of governance. The most obvious problem identified with the TSRA as a model for regional governance is that it is seen by many as only a step to greater autonomy, as is illustrated by the numerous calls for reform over the past decade and the unimplemented New Deal Report. However, the concerns regarding the TSRA are not limited to calls for greater autonomy. The functions of the ICC and the TSRA overlap considerably and this has led to complaints of overregulation by the different federal and Queensland laws and duplication of work by both of these bodies.¹¹² Another concern raised by some Torres Strait Island leaders at the Senate Committee on the Administration of Indigenous Affairs is that there is a need to directly elect members to the TSRA board. The need for the Minister to declare members of the ICC as members of the board was said to represent a break in democracy and there were calls for separate local council and regional elections so that those roles are clearly delineated.¹¹³

Nevertheless, communities looking to develop regional governance models may draw on aspects of the TSRA regional governance model. The TSRA itself has identified several strengths of its own framework that may assist in the development of other models of regional governance. These include the importance of having a regional focus in assessing needs, determining priorities and managing public investment services, and strong local community representation at the regional level.¹¹⁴ Mr Ron Day, Chairperson of the Murray Island Council and member of the TSRA board, also spoke in favour of the regional and community focus in evidence given to the Select Committee on the Administration of Indigenous Affairs. In particular, he highlighted the small geographic and organisational size of the TSRA, particularly as compared to ATSIC, and stated, 'here we are, a small island group, where everybody is more related and, when it comes to practising politics, everybody understands where everybody is going. That is where we feel more empowered'.¹¹⁵ In the same hearing, Mrs Margaret Mau, Chairperson of the Dauan Island Council and member of the TSRA Board, also emphasised the importance of having small communities represented in the regional authority.¹¹⁶ Other strengths identified by the TSRA include the clear delineation of institutional arrangements, roles, responsibilities and outcomes in a specific legislative framework, and direct funding from the Department of Finance and Administration in the form of a single line of budget.¹¹⁷

The TSRA model also shows the important of coordination and partnerships across all levels of government – local, state and federal. Such cooperation is clearly necessary to ensure effective regional governance. While some Torres Strait Island leaders argue that the mirroring of ICC local representation and the TSRA regional representation enables local needs and funding priorities to be efficiently considered at the regional level, others believe that the relationships between the different levels does not work. Consideration of regional governance elsewhere in Australia should involve consideration of these criticisms. In particular, as set out above, some feel that the overlapping functions of the ICC and the TSRA lead to unnecessary duplication and others argue that roles of local councils and regional representation are not delineated clearly enough.

A final lesson that can be learnt from the TSRA model is how crucial it is that any regional body is considered democratic by its community. As mentioned above, some Torres Strait Island leaders do not feel that the TSRA is a democratic body

that truly represents the Torres Strait as board members are elected island councils and then appointed by the Minister to the TSRA.

VIII Conclusion

It is clear that the TSRA model has much to offer communities considering models of Indigenous regional governance. In particular, communities can draw from the TSRA's regional focus in policy development, clearly delineated roles and coordination across all levels of government. However, problems may arise in merely transplanting or adapting this or any other model. As with other regions, the Torres Strait has a unique history and its population, geography and political environment are not found elsewhere in Australia. In addition, key weaknesses in the current TSRA structure have not yet been addressed.

Some key features of regional governance are best developed locally or from within a region. Doing so allows the regional governance model to suit the specific conditions of a region, and also provides some legitimacy to the model. A top-down model can result in distrust and questions as to the democratic nature of the model, as is shown by the unease felt about the TSRA appointment process. Further, the abolition of ATSIC demonstrates that a model imposed by government on a community can just as easily be taken away by that government. An Indigenous regional governance model developed by the communities that will be governed is more likely to result in a model that is suited to the needs of those communities; that is less vulnerable to unilateral change; and that is accepted as democratic and legitimate by the community it governs.

Endnotes

- * Edwina MacDonald is a Sydney lawyer and former Senior Research Director, Gilbert + Tobin Centre of Public Law, Faculty of Law, University of New South Wales. She would like to thank George Williams and Sean Brennan for comments on earlier drafts. This article contributes to an Australian Research Council funded project on Regional Governance and Indigenous communities that the Jumbunna Indigenous House of Learning, University of Technology Sydney, and the Gilbert + Tobin Centre of Public Law, University of New South Wales, have undertaken in partnership with Reconciliation Australia.
- 1 Muurdi Paaki Regional Council, Submission to the Select Committee on the Administration of Indigenous Affairs, August

2004, 5-6.

- 2 Councillor Wunungmurra, Evidence to the Select Committee on the Administration of Indigenous Affairs, Cove (Nhulunbuy), 25 August 2004, 9.
- 3 Torres Strait Regional Authority, Submission to the Senate Select Committee on the Administration of Indigenous Affairs, July 2004, 5.
- 4 Senate Select Committee on the Administration of Indigenous Affairs, Parliament of Australia, *After ATSIC - Life in the mainstream?* (2005) recommendation 4.3.
- 5 Ibid 72.
- 6 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *A Report on Greater Autonomy for Torres Strait Islanders: A New Deal* (1997) 7; Torres Strait Regional Authority, *2005-2006 Annual Report* (2006) 30. The 18 island communities are the communities of Boigu, Dauan, Saibai, Badu, Mabuaig, Kubin (on Moa Island), St Pauls (on Moa Island), Iama (Yam Island), Masig (Yorke Island), Poruma (Coconut Island), Warraber (Sue Island), Mer (Murray Island), Ugar (Stephen Island), Erub (Darnley island), Hammond Island, Muralug (Prince of Wales Island), Ngurupai (Horn Island) and Thursday Island (Waiben). The two Torres Strait communities on the mainland northern peninsula are Bamaga and Seisa.
- 7 Australian Bureau of Statistics, *2006 Census QuickStats: Thursday Island (Urban Centre/Locality)* (2007).
- 8 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 6; William Arthur, *Indigenous autonomy in Australia: Some concepts, issues and examples*, Centre for Aboriginal Economic Policy Research Discussion Paper No 220 (2001) 12.
- 9 Torres Strait Regional Authority, *About the Torres Strait* <<http://www.tsra.gov.au/www/index.cfm?ItemID=83>> at 16 September 2007.
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- 12 Peter Jull, 'The Political Future of the Torres Strait' (1997) 4(7) *Indigenous Law Bulletin* 4.
- 13 It was not until European contact that Torres Strait Islander communities were identified as a single cultural group: House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 6; Torres Strait Regional Authority, above n 6, 9.
- 14 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 6, 5.
- 15 *Torres Strait Islander Land Act 1991* (Qld), s 12.
- 16 William Sanders, *Torres Strait governance structures and the*

- Centenary of Australian Federation: a missed opportunity?*, Centre for Aboriginal Economic Policy Research Discussion Paper No 184 (1999) 3; William Sanders, *Torres Strait Elections, 2000 and 2004: Changes in Political Leadership and Style?*, Centre for Aboriginal Economic Policy Research Discussion Paper No 268 (2004) 1.
- 17 Sanders (2004), above n 16, 1, 12. From 1952 to 1991 the council consisted of a Queensland Government administrator advised by a State government appointed local executive committee: William Sanders, *Reshaping governance in Torres Strait: the Torres Strait Regional Authority and beyond*, Centre for Aboriginal Economic Policy Research Discussion Paper No 74 (1994) 7.
- 18 *Community Services (Torres Strait) Act 1984* (Qld) ss 42, 140; *Local Government Act 1993* (Qld) ss 268-89; Australian Electoral Commission, *Annual Report 2003-2004* (2004) 58.
- 19 Queensland Government, 'Council Elections', *Department of Local Government, Planning, Sport and Recreation* <<http://www.lgp.qld.gov.au/?id=66>> at 2 April 2007; Sanders (2004), above n 16, 2.
- 20 Queensland Government, *Local government reform* (2007) 33, 37.
- 21 John Kris, *TSRA News Column*, Torres Strait Regional Authority, 14-21 August 2007, <<http://www.tsra.gov.au/media-centre/chairs-column/2007-chairs-column/14-august.aspx>> at 9 October 2007.
- 22 *Community Services (Torres Strait) Act 1984* (Qld) s 45.
- 23 *Community Services (Torres Strait) Act 1984* (Qld) ss 74, 78, 79.
- 24 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 6, 27.
- 25 *Community Services (Torres Strait) Regulation 1998* (Qld) reg 4, 5. The Saibai system was designed by the Saibai people to recognise their culture: Queensland, State Minister for Aboriginal and Torres Strait Islander Policy, (Press release, 24 March 2000), cited in Arthur, above n 8, 15.
- 26 *Community Services (Torres Strait) Regulation 1998* (Qld) reg 16.
- 27 *Community Services (Torres Strait) Regulation 1998* (Qld) reg 10. To stand for election to the Saibai Island Council, a person must be a member of a *buway* and have lived in the area for at least three months.
- 28 *Community Services (Torres Strait) Act 1984* (Qld) s 43.
- 29 *Community Services (Torres Strait) Act 1984* (Qld) s 139.
- 30 *Community Services (Torres Strait) Act 1984* (Qld) s 140.
- 31 Sanders (2004), above n 16, 1.
- 32 *Community Services (Torres Strait) Act 1984* (Qld) s 141.
- 33 *Community Services (Torres Strait) Act 1984* (Qld) s 44.
- 34 Torres Shire Council, *Annual Report 2005/06* (2006) 1.
- 35 Ibid 1.
- 36 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 6, 20.
- 37 Australian Bureau of Statistics, above n 7.
- 38 Ibid 20.
- 39 *Local Government Act 1993* (Qld) s 20.
- 40 Torres Shire Council, *Operation Plan 2006-2007* (2006) 8.
- 41 *Local Government Act 1993* (Qld) ss 220, 276. There are some disqualifications preventing a person becoming a councillor, including bankruptcy and the commission of certain offences: s 221.
- 42 *Community Services (Torres Strait) Act 1984* (Qld) s 44.
- 43 Torres Shire Council, above n 34, 15.
- 44 Ibid 32, 41.
- 45 Ibid 32.
- 46 Torres Strait Regional Authority, above n 9.
- 47 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142A.
- 48 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142C.
- 49 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142E.
- 50 *Native Title Act 1993* (Cth) Pt 11, Div 3.
- 51 Under s 142R of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) the TSRA can consist of 20-23 members, as fixed by the Minister. It can still operate if there are fewer members than this. However, if membership drops to below seven members, the Minister can remove the members and appoint an Administrator.
- 52 *Aboriginal and Torres Strait Islander Act 2005* (Cth) ss 143K, 143J.
- 53 Torres Strait Regional Authority, above n 6.
- 54 See, eg, Evidence to Senate Select Committee on the Administration of Indigenous Affairs, Parliament of Australia, Thursday Island, 26 August 2004, 24 (Getano Lui Jr AM).
- 55 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142S.
- 56 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142Y.
- 57 Section 6 of the *Local Government and Other Legislation Amendment Act (No 2) 1999* (Qld) amended s 269 of the *Local Government Act 1993* (Qld) to provide for quadrennial elections.
- 58 Australian Electoral Commission, above n 18.
- 59 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142U.
- 60 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 143G(2).
- 61 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 143B-D.
- 62 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 142V.
- 63 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 143L.
- 64 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 144E.
- 65 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 144G-H.
- 66 Torres Strait Regional Authority, above n 6, 114.
- 67 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 144R.
- 68 *Aboriginal and Torres Strait Islander Act 2005* (Cth) s 144F.
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- 70 Torres Strait Regional Authority, *A Charter of Representation, Performance and Accountability* (2003).
- 71 Torres Strait Regional Authority, above n 6, 92.
- 72 Torres Strait Regional Authority, above n 6, 118, Appendix 1.
- 73 *Aboriginal and Torres Strait Islander Act 1989 No 150 1989* (Cth) s 3.

- 74 Parliamentary Library, Parliament of Australia, *Bills Digest No 139 2001-2002* (2002).
- 75 *Aboriginal and Torres Strait Islander Act 1989 No 150 1989* (Cth) s 84.
- 76 Sanders (2004), above n 16, 10.
- 77 Sanders (1999), above n 16, 10.
- 78 *Aboriginal and Torres Strait Islander Act 1989 No 150 1989* (Cth) s 116.
- 79 Sanders, above n 17, 10-11.
- 80 Section 26 of the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) required the Commission to review the operation of the Act and report to the Minister.
- 81 Aboriginal and Torres Strait Islander Commission, *Review of the Operation of the Aboriginal and Torres Strait Islander Commission Act 1989* (1993).
- 82 *Aboriginal and Torres Strait Islander Commission Amendment Act 1993* (Cth); *Aboriginal and Torres Strait Islander Commission Amendment Act (No 2) 1993* (Cth); *Aboriginal and Torres Strait Islander Commission Amendment Act (No 3) 1993* (Cth).
- 83 Aboriginal and Torres Strait Islander Commission, above n 81, 36-37.
- 84 *Aboriginal and Torres Strait Islander Commission Amendment (TSRA) Act 1997* (Cth), Schedule 1.
- 85 William Arthur, *Towards a comprehensive regional agreement: Torres Strait*, Centre for Aboriginal Economic Policy Research Discussion Paper No 147 (1997) 9.
- 86 Senate Select Committee on the Administration of Indigenous Affairs, above n 4, 3. The Office of Indigenous Policy Coordination was originally created within the Department of Immigration and Multiculturalism and Indigenous Affairs but has since moved to the Department of Family, Community Services and Indigenous Affairs.
- 87 *Aboriginal and Torres Strait Islander Commission Amendment Act 1995* (Cth).
- 88 The Hon Gary Hardgrave, *House of Representatives Hansard*, 27 May 2004, 29318.
- 89 Evidence to Senate Select Committee on the Administration of Indigenous Affairs, above n 54, 4-5 (Ron Day).
- 90 See, eg, calls for representation in State and Federal Parliament, and for the Torres Strait to have its own Parliament in Evidence to Senate Select Committee on the Administration of Indigenous Affairs, above n 54, 4-5 (John Kris, Chairperson, Torres Strait Regional Authority; Maluwap Nona, Member for Horn Island and Prince of Wales Island, Torres Strait Regional Authority).
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- 92 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 6, ix-x.
- 93 Ibid Recommendations 1 and 7.
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- 110 Australian Bureau of Statistics, above n 11, 21.
- 111 Evidence to Senate Select Committee on the Administration of Indigenous Affairs, above n 109, 5 (Joseph Elu).
- 112 See, eg, ibid 5 (Robert Sagigi), 23 (Getano Lui Jr AM).
- 113 See, eg, ibid 24 (Getano Lui Jr AM).
- 114 Torres Strait Regional Authority, above n 3, 7.
- 115 Evidence to Senate Select Committee on the Administration of Indigenous Affairs, above n 54, 5 (Ron Day).
- 116 Ibid 11 (Margaret Mau).
- 117 Torres Strait Regional Authority, above n 3, 7-8.