

ATSIC SETTING THE AGENDA

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The Indigenous Policy Environment

The idea that policy development and decisions are the result of rational and open process of consultation, negotiation and trade-offs, that seek to find an optimum balance between contending perspectives and needs, is a myth.

Policy making is a jungle that is very difficult to negotiate requiring detailed insights, networks and knowledge.

To be effective in the policy arena you must be clear about

- The objective sought,
- The content of the policy agenda,
- The nature of the policy jungle (who are they, who are involved, who are the stakeholders), and
- The room to manoeuvre given the political and economic context of the community, of the region, of the state and of the country, and the specific policy changes involved.

Policy advocacy requires a good knowledge of the area. Only when policy makers and advocates are backed by sound analysis and have an ability to argue with technocrats and specialists who have their own interpretation of the area shall we be successful. Policy advocacy must also focus on influencing the general public as well as a smaller number of policy-making elite; government of any persuasion will be reluctant to act against public opinion.

The area of public policy is probably the most vital for the marginalised and disadvantaged in our society, because public policies are the product of competing interests. And where the debate is usually framed as a win-lose, with the stronger usually being the winner. The playing field is not level. The current political and social environment in Australia would confirm that not all sectors of our society are interested in eradicating injustice and removing poverty. It is a challenge to the existing power structures and the structure of society; it seeks to change the status quo. In the end the bottom line of strengthening the poor and marginalised is clearly political.

The focus on positive and genuine development of the marginalised and disadvantaged in our community requires a process by which people progressively gain control over their own lives and the commodities that are required for that control, it is only in this context that the programs and policies will be sustainable. Poverty be it material, financial, exclusion, powerlessness or incapacity arises from the inability to access life's essentials. We are yet to embark on a mature debate on the holistic aspect of poverty and its impact on Indigenous Australia

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To understand and grapple with the debate we are having here, it is vitally important for all to reach a decision about the causes, otherwise only the symptoms will get treated. "Impact" will not be sustainable in the long term. If the causes are not tracked problems will persist. Treating only the symptoms will actually reinforce the root causes by undermining people's motivation and capacity to act and to claim their entitlements or to generate their own solutions. Exclusion in public decision-making is essentially a political issue closely linked to calls for better governance. Reducing marginalisation and, social and political inclusion therefore means enhancing the people's capacity to participate in public affairs. This must be recognised as a just and required goal.

People and organisations involved in seeking to advocate and develop policy to the benefit of the Indigenous peoples, face a goal, which is difficult to achieve, and where surrounding forces and trends are likely to be inhospitable and often openly hostile. The Indigenous policy environment of the last decade would attest to this contention

Responsibility and Accountability of Government

There has been considerable concern, criticism and misunderstanding of the whole of the government effort in the Indigenous affairs portfolio. This includes the role and responsibilities of the specific Indigenous affairs agencies and the line agencies.

The responsibility for delivery of effort is split between an innumerable number of agencies and the three levels of government. The lack of effective coordination and demonstrable outcome is not defensible given the level of funding over a significant period. Without an effective and efficient process for identifying the outcomes and progress made, this situation shall continue to be intolerable. If we are not clear on where we are, and where we are heading, or what our target is, the result is chaos. Every body is very busy, lots of activity, which may well be efficient, but is it effective? Are we heading in the right direction? These are questions must always be in the forefront of our minds.

These circumstances have led to significant tensions between all levels of government. Tension between government and the Indigenous affairs specific agencies, and in the Indigenous and general community. The lack of clarity and responsibility has caused significant misunderstanding and misinformation to the public.

There is ongoing debate between governments and agencies on responsibility - an ongoing debate in cost shifting which has contributed to the ambiguity and lack of accountability. Such a position must be corrected if progress is to be made. I would be surprised if the proponents of the successful 1967 referendum would have envisaged such lack of clarity and vagary of responsibility so prevalent in Indigenous affairs today. Each level of government, and in most cases each agency has sought to develop their own policy advice mechanisms, a committee, an advisory group, a consultative

forum or process. While this may be commendable in intent, in overall policy development and focus it has proven to be disastrous. The result has proven to be uncoordinated and unstructured policy development and ad hoc unstructured implementation without any clear objective. The impact on the Indigenous community and individuals has been devastating.

The level of disadvantage and the appalling circumstances still being experienced by Indigenous people today and the pace at which this is being addressed is unacceptable. The ongoing level of funding being applied to Indigenous affairs without the demonstrated positive outcomes is unacceptable by any standard. The debate is then why. Why are we in this position? Are our policy parameters and focus wrong? Are our priorities wrong? How do we ensure that progress is made and further that that progress is sustainable and makes a difference, a positive difference to the day-to-day lives of Indigenous peoples?

The propaganda and narrow debate surrounding the \$2.39 billion Commonwealth budget allocation to Indigenous affairs needs to be carefully scrutinised and a true picture provided. A proportion of these funds are in fact in place to deny Indigenous people programs and benefits and that the policy parameters need to be objectively rethought. Without the knowledge and analysis of all governments efforts (Commonwealth, State and Local), the commentary and debate will continue to be subjective and narrow. The scrutiny on Indigenous agencies and their performance is a normal part of administration and is in fact welcomed, but it has been ongoing and continues to be so, nothing has changed.

What is disappointing is that the performance of mainstream agencies in addressing the issues has not been targeted for the same level of scrutiny; Indigenous agencies do not have responsibility or resources to address:

- Health: health and aged care
- Housing: family and community services
- Education: education and training
- Legal services: attorney generals
- Law and order: attorney generals
- Domestic violence: family and community services and Prime Minister and Cabinet
- Substance abuse: health and aged care

The recent Commonwealth Grants Commission Report although restricted by the Terms of Reference provided a good basis for objective operational and strategic evaluation of performance and effort. A perspective, which can be gleaned by an objective reading of the report, and the responses to date from government, provide some pertinent points, which should not be lost.

- The terms of reference were crafted so that the inquiry did not identify the absolute level of need or resources required to address the many competing needs, but it did provide a basis for considering redistribution of the existing effort.

- That mainstream agencies had withdrawn their level of specific resources at a greater rate than Indigenous specific programs were created to address their failings. A push to now redirect specific effort to the remote areas on the assumption that this will result in line agencies and state and local government meeting their responsibilities is problematic and needs careful and sustained attention.
- The silo mentality of the agencies, which compromised the capacity of programs to have effect and in fact, meet their objectives. The lack of effective coordination being endemic.
- That the transaction costs involved in getting levels of government and agencies to meet their obligations and responsibilities are substantial.

The area of Indigenous policies and programs are fraught with frustration. The following dot points identifying some of the commonly identified issues in respect of Indigenous programs and policies would strike a cord with many, but also provide a sounding board from which we should advance.

- Most Indigenous affairs policies and programs have not been designed on the basis of genuine Indigenous consultations.
- Most programs are guided by specific departmental or Ministerial concerns.
- Indigenous affairs programs are duplicated, fragmented, overlapping and counter-productive.
- Design of most programs is often ad-hoc
- Very few social programs for Indigenous people are designed with reference to clearly defined, meaningful and measurable targets.
- Most programs are not designed/implemented according to a clear list of priorities in Indigenous affairs.
- Co-ordination is often adhoc with no clear guidelines.
- Co-ordination is also sometimes used as a synonym for convening meetings rather than carrying out implementation.
- Departments put insufficient focus upon client outcomes.
- Consultation with the Indigenous community to facilitate needs based planning, appears to be on a crisis management basis.
- Very few program evaluations have yet occurred.
- Program achievements are not linked to program objectives.

There have been a number of Council of Australian Government initiatives to address the issues that beset Indigenous policy; the two most recent initiatives have been the National Commitment to Improve Service Delivery to Aboriginal and Torres Strait Islander People and the recent Reconciliation initiative. The former articulated a number of principles and operational objectives and guidelines. The initiative did not have the impact that was intended, as it required a fundamental change to the underlying policy parameters. Some of these shortcomings were addressed in the recent Reconciliation Initiative, including a focus on capacity building, on leadership, on program review and on economic independence.

We, as yet do not have all the answers. What is clear is that our current efforts are not having the required effect. I must balance these comments with

the recognition that there are numerous examples where significant progress has been made, where communities have succeeded. I would suggest this is a result of persistent and resilient individuals within the Indigenous community.

The performance has been at best patchy, but the progress made by some communities and individuals cannot be curtailed or undermined by the lack of performance in other communities. The notion of diversity and the fact that one approach does not fit all must be acknowledged and given practical effect.

What we do have is an environment in which a degree of lateral thinking is coming to the fore, where new and fresh ideas are being actively considered. We therefore have the opportunity to acknowledge and learn from what we have been doing and move on, constructively.

The Self Determination Principle

There has been much debate surrounding the principle of “self determination”, what it means and the merits of self-determination as a policy approach. Self-determination cannot be labelled a failure; it has yet to be implemented.

The difference between self-determination and self-management is a fundamental and one, which has been blurred by emotive, and dishonest rhetoric. Self-determination is a right and self-management is not. The former is empowerment, the latter control. Self-determination is a fundamental human right to enjoy the right to make a choice limited by ones own options. Whereas, self-management which is based on a conditional arrangement between a governing party and another (often through a prescriptive agreement which has limited options) is more about extended privilege and recruitment of the recipient party to an arrangement whereby their right to autonomous decision making is severely impeded. We have had a form of self-management, communities allowed to manage within an externally determined series of programs policies and guidelines, which bear little resemblance to what the true needs of Indigenous communities and individuals are.

A Way Forward.

There is possibly consensus on the overall long-term goals – to foster socially just, sustainable economies with accountable, inclusive systems of governance, which deliver real and lasting benefits to Indigenous people. Improvement in people’s livelihoods and physical well being in sustainable ways requires building up the capacities of people and people’s organisations.

What we are taking about here is empowerment. Empowerment in the sense that, individually and collectively Indigenous people are able and willing to make claims on processes as well as instigating their own. It calls for a different mode of operation when compared with the traditional Australian sense of investing in water supplies, health care, education and economic support programs and so on. What is required is the adoption of strategies and

methodologies, which build up the capabilities, the capacities of the community, of organisations and of individuals not agencies.

“Capacity Building is a risky, murky, messy business with unpredictable and unquantifiable outcomes, uncertain methodologies, contested objectives, many unintended consequences, little credit to its champions and long time lags.”¹ This quote goes a long way towards explaining the difficulty that we have in coming to terms with the notion of capacity building. The programs and program structure and priorities, tend to enshrine the ‘service delivery’ approach to community development. Service delivery is of course essential; there is no argument about this basic need. But, it by itself is not sufficient to ensure meaningful and lasting positive change.

What distinguishes capacity development from the service delivery approach is its holistic nature. The sustainable social, political, economic cultural and environmental development of a community involves a very complex system or interrelated elements; capacity development recognises the importance of thinking about individuals, organisations, programs, policies, etc, as part of a broader whole rather than as discrete, or loosely connected concerns.

The loosely connected programs are the focus of our effort. And these programs as well as the accountability requirements are largely driven by the political environment (quarantining of funds, etc). So any attempt to alter the situation will need to work on a number of fronts. We are talking not only about projects on the ground, but also about fundamental change, transformation in the way we do our business.

The continued adherence to the service delivery model – at the expense of seeking additional approaches to dealing with endemic social and economic issues confronting some Indigenous communities will mean that the required transformation is still some way in the future.

We need to break with business as usual and focus on what will make a difference. What is not focussed is that no one has the responsibility to focus on the real issues, the level of dysfunction and lack of capacity in the Indigenous community to address the issues, to engage the mainstream agencies, to operate and run the programs that are required in the mid to long term to address the issues. Many communities are not in a position to run the programs. The flaw here is the focus on the community service or the project model of service delivery, and it is just that service delivery, not development or human capital, which is so vitally important for sustainable and meaningful positive change.

The Project Mantra

¹ Peter Morgan; *Some Observations and Lessons on Capacity Building*, 1999

The focus on program delivery from the “community service model” or the “project” mantra continues to be central to the service delivery methodology preferred by government and instrumentalities.

The central assumption of this approach is that it is possible to construct a defined future but this does not reflect how societies change. At worst projects,

- impose a linear way of thinking on cultures which may have alternative modes of understanding,
- introduce financial time frames which have no bearing on the time availability of the people,
- do not recognise the consequences of unintended effects,
- place effective power in the hand of those who define the project,
- introduce an imbalance between tangible outputs and human processes with a bias towards the former because of financiers expectations,
- recognise then ignore necessary links to other activities to meet pre determined deadlines,
- restricts free choice during the process and introduces a mindset which is predisposed toward authoritarian style of interaction,
- promotes a process which equates progress to disbursement and, accountability with accounting for financial or material resources
- lead to an abrupt termination instead of a staged withdrawal as appropriate conditions are created
- keeps all participants in a constant state of insecurity inducing the need for acquisition of projects for self-sustainability, overriding community perspectives.
- work against community and organisational continuity and consistency
- is too short term in relation to the ultimate goal and confuses means with ends thereby inputs being equating to impact.
- does not allow learning through trial and error. While ignoring learning from post project effects.

Despite all the limitations, projects remain the standard mode of operation because they can be cut into bite size, manageable and fundable chunks. Despite the calls for reform and some limited experimentation, the project system dominates because it best suits the administrative needs of the financiers. This approach requires a substantive rethink, as alone it does not contribute to sustainable long-term development, it represents the intervention approach. Intervention must be balanced by adopting a developmental approach as well. In that it is recognised that both are required but intervention strategies must be viewed as a short term, interim measures and development, the overall as the prime goal.

The Commonwealth Indigenous Portfolio

The Aboriginal and Torres Strait Islander Commission functions and responsibilities and the relationship with other Indigenous specific agencies, require clarity and a shared understanding of the inherent tensions if progress is

to be more effectively identified and accounted for. The current arrangements in the aboriginal affairs portfolio, commenced in 1990, with the implementation of the Aboriginal and Torres Strait Commission Act. This legislation established a number of bodies, including the Aboriginal and Torres Strait Commission, the Commercial Development Corporation (now renamed Indigenous Business Australia, 60 regional councils (now reduced to 35) and later the Indigenous Land Corporation (1994).

ATSIC is an innovative structure, which attempts to combine both a political and representative structure in the one functional body. The agency has a policy and advocacy role and a service delivery role. ATSIC when established took over the responsibilities of the Commonwealth Department of Aboriginal Affairs and the Aboriginal Development Commission and became the government's primary advisor on Indigenous affairs. The structure of the legislation includes ATSIC itself and 35 regional councils (separate entities in their own right, which are resources and supported by ATSIC and the interrelationship determined by administrative, budgeting and the electoral processes).

This arrangement provides the framework for the decentralised structure of the legislation but also provides structural tensions. The ATSIC budget accounted for approximately 50% of the Commonwealth effort in respect of Indigenous affairs, being \$1.13b. The expenditure of those funds is controlled by various mechanisms as with other commonwealth agencies. The allocation from the government (budget estimates output statements), the ministerial estimates process and the ATSIC board quarantine process together restrict the flexibility in terms of the programs and their respective allocations. This enables or facilitates the targeting of particular priorities and programs, and in that respect provides specific controls at the aggregate level. Within these controls regional councils and national programs have flexibility in terms of projects and recipients.

The Rights Approach

The rights accorded as a citizen of a country - of Australia - is what is supposed to unite us all, it is supposed to something we are proud of, yet in our society it is a subject which is not debated. Therefore it is not a subject which too many people have an in depth view about, especially when it comes to how it applies to Indigenous Australians. But then, recognition of rights is not, in itself, enough. If rights are recognised then those rights have to have effect, to be enjoyed, in a practical and meaningful sense.

The necessity of a rights framework to underpin and inform policy is one which must be acknowledged and actively developed. It must be recognised that policy without a legislative or constitutional authority is not legally enforceable. We must articulate and understand the relationship between the rights framework and policy development. The lack of rights protection is evident in our society and such a framework would provide a

minimum standard against which to assess performance. A rights based approach cannot and should not be viewed with suspicion.

The tone and level of debate surrounding native title over the last decade, confirm that we today live in a society where positive acts of denial, of misinformation, of division and of disrespect are commonplace and in fact permeate the ethics of many of our “leaders”. Only with considered and responsible debate, without the emotion and scare mongering of the past, can we move on.

Indigenous people aggrieved by the denial of rights will seek a remedy, to their situation, to their plight, from other sources. The action in the international arena is just one of the responses which should have been expected. Submissions to the Human Rights And Equal Opportunity Commission’s Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families provided an open account of the policies and practices, which sought to remove aboriginality from aboriginal people and to facilitate the assimilation of aboriginal people. What was very evident was that the policy was, one of the best resourced, best coordinated and best implemented government policy objectives ever seen. The point in mentioning this issue is that in a very real sense, what was being denied to aboriginal people by the existence and implementation of that policy objective was the their rights to be a citizen, an Indigenous citizen of this country.

There are calls today, by a few, for everyone to be treated equally. This call suggests either of two premises, that either all people are equal or, that inequality is the objective. To treat unequal people equally is to institutionalise and entrench inequality and in turn to impose division and disunity. This goes to the heart of the debate concerning substantive and formal equality.

Substantive equality is not concerned with simply treating all people the same, rather, it is based on the understanding that all people are not the same and that these differences need to be appropriately acknowledged and responded to. There must be a change in our stance towards society’s less fortunate - those not enjoying the benefits that this country has on offer, and importantly reduce the thresholds for inclusion of communities in the development of initiatives and taking seriously what they say, what they think, what they know and what they need and their capabilities.

Conclusion

Working and being involved in Indigenous affairs is thought by many to be an insurmountable task, frustrating and heart wrenching, where the issues to be resolved and the obstacles to be overcome seem to multiply as we progress. The truth is just that there is still a long, long way to go, but we should stop at times and look behind, to see how far we have come, to take pride and take

heart in the achievements to date. We all have a role to play - be it those who work in government, those who work in the community or society itself.

What must be acknowledged is, what has happened in the past, which will inform and help to understand why we are where we are today, and only then can we proceed to move on to a better, more secure future.

The overwhelming message from all of the contributors to this conference was the need for change, the acknowledgement that what and how we all have been working has not produced the progress required and that this is an indictment on us all. The first act in moving forward, on setting a new agenda is the admission that we have a problem, that what we are doing has not worked. This conference has contributed in creating the environment for that change to occur. An environment, which allows and facilitates effective, honest, objective and meaningful debate focussed on positive outcomes for Indigenous people.

Many contributors have provided insightful commentary on the need for a rights based approach and the linkage with policy. The forum also provided significant information as to the benefits that such an approach would have to the policy debate, development and implementation. I will not repeat those debates here but ask you to carefully consider the basis for the positions and points of view provided. The contributors have provided practical and pragmatic advice and evidence, which we all need to consider and then make our own contributions, informed contributions. The conference was also informed by the ongoing dilemma of priorities and the need for fundamental and mature debate on the rights of Indigenous people as an essential foundation for sustainable progress.

The speakers have provided a range of perspectives and continued a debate, one that we cannot let pass us by. Indigenous affairs is at a crossroads. It is now recognised that we cannot continue with the same policy perspective of the last 30 years.

The conference also articulated the need to be objective and courageous the pursuit of the outcomes not only required but morally undeniable. There is a need to break from the risk averse nature of programs and policy and commence an era of support and trust, of acknowledging the mistakes of the past and moving on the correct the shortcoming, and facilitate a meaningful and sustainable future for Indigenous Australians.