

## CHAPTER 20

### Towards a New ATSIC

The Government's decision to appoint a three-member panel to review the role and functions of the Aboriginal and Torres Strait Islander Commission reflected the Government's election commitment 'to explore the potential for more effective arrangements for ATSIC at the national and regional level.'

The terms of reference for the review, announced on 12 November 2002, required it to reassess and recommend how Aboriginal and Torres Strait Islander people could 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 would consider the current roles and functions of ATSIC and in particular the appropriate role of Regional Councils in ensuring the delivery of appropriate government programs and services to Indigenous people.

Subsequently the Minister asked the panel to give particular attention to the structure of the relationship between the government and the Commission, including the adequacy of the Minister's powers and the merits of a possible ministerial veto in relation to specific ATSIC decisions.

After a period of consultation, including the issuing of a discussion paper, the Report of the Review of the Aboriginal and Torres Strait Islander Commission *In the hands of the regions – a new ATSIC* was presented in November 2003.

The report noted that this had been the first comprehensive external review of ATSIC. It concluded that ATSIC was in urgent need of structural change.<sup>1</sup> One of its most significant challenges was to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations were met.

The report recommended a package of reforms to give greater control of ATSIC to Aboriginal and Torres Strait Islander people at a regional level. He stated that a regional orientation would strengthen the voice and efficacy of regional Councils and establish the necessary framework for integrated service and program delivery.

The report considered that the 35 Regional Councils were the foundation of ATSIC and that no major changes should be made to that structure at that time. It proposed that the Chairs of the 35 elected Regional Councils constitute a national body, replacing the arrangements then existing whereby ATSIC comprised 18 zone commissioners.

The regional planning process, provided for under the *ATSIC Act*, would be accorded high priority with a more realistic focus to ensure goals were achievable. Regional plans would spell out what was expected of ATSIC and identify the responsibilities of government agencies to provide the services that

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<sup>1</sup> Report of the Review of the Aboriginal and Torres Strait Islander Commission *In the hands of the regions – a new ATSIC*, November 2003.

would address disadvantage within the regions.

The report recommended that ATSIC and ATSI be reunified and proposed that legislation delineate the roles between the elected representatives at all levels in ATSIC and the administrative officers of the new ATSIC.

Regional Councils would be responsible for encouraging more cohesive Indigenous community organisations with higher levels of community governance.

The review panel stressed the urgency of the reform package. ATSIC, it said, needed stability, a new leadership structure and a boost to its morale. There was 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 could not come too soon.

In its two submissions to the review, the Murdi Paaki Regional Council outlined its proposed framework of regional governance involving the establishment of a Regional Authority incorporating a system of community representation more appropriately aligned to the interests of Aboriginal and Torres Strait Islander people in the Murdi Paaki region.<sup>2</sup>

In its initial submission,<sup>3</sup> the Murdi Paaki Regional Council cited the Prime Minister:

Another challenge is the capacity of departments to successfully interact with each other in pursuit of whole of government goals and more broadly, for the entire Service to work in partnership with other bureaucracies, with business and with community groups as resources and responsibility are devolved closer to where problems or opportunities exist.<sup>4</sup>

The focus of its submissions was on regional governance and its impact on service delivery. This was seen to be consistent with the terms of reference for the review and specifically:<sup>5</sup>

- How can Aboriginal and Torres Strait Islander people be best represented in the process of development of Commonwealth policies and programs to assist them; and
- The appropriate role for Regional Councils in ensuring the delivery of appropriate Government programs and services to Indigenous Australians.

The Council saw Regional Councils constituted under the *ATSIC Act*

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<sup>2</sup> *Mid-passage towards self-determination, a new ATSIC*, submission by the Murdi Paaki Regional Council, in response to the ATSIC Review discussion paper, August 2003.

<sup>3</sup> Review of Indigenous participation in the development of Commonwealth policies and programs (the ATSIC Review), Submission by Murdi Paaki Regional Council, February 2003.

<sup>4</sup> The Prime Minister, the Hon. John Howard, MP, 'Centenary of the APS Oration', Address to the Centenary Conference of the Institute of Public Administration. Canberra, June 2001.

<sup>5</sup> Murdi Paaki Submission, August 2003.

1989 as being facilitators and agents of change in tandem with the Aboriginal and Torres Strait Islander Commission. Regional Councils were concerned with representation and operational issues at the regional and community level and the Commission played a national policy-making and advocacy role through participation in the machinery of government.<sup>6</sup>

The regional decision-making and service delivery arrangements aimed to align government program and service objectives with community needs and aspirations to overcome fragmentation, promote inter-sectoral collaboration, provide a mechanism to pool funding to achieve a single stream of delivery, and ensure accountability of all program and service providers to the community. It saw the best way of achieving this was through the creation of a Regional Authority with the representative element of Community Working Parties assuming the status of Indigenous Community Councils.

While the submission sought to establish the connection between the Aboriginal and Torres Strait Islander Commission as a statutory authority and Regional Councils in service delivery, it left open for wider consideration the fundamental question of the Commission's role and its constitution. The Council argued that this aspect of the review did not have the same clarity for it as the role of Regional Councils. Its position was that any future determination of ATSIC's role should flow upwards from Regional Councils.<sup>7</sup>

The Murdi Paaki Regional Council envisaged a more direct role for ATSIC in the machinery of government at the national level operating as a statutory authority with a Board and an administration and providing the interface between regional Councils and government.

According to principles established by the Australian National Audit Office, the performance of functions by statutory Councils involved delivering services associated with those functions.<sup>8</sup> In the case of Regional Councils constituted under the *Aboriginal and Torres Strait Islander Commission Act* 1989, those services were directed at representing, supporting and advocating the interests of the Aboriginal and Torres Strait Islander residents of the region.

These could be seen as facilitative services as distinct from the direct delivery of community services and infrastructure by Aboriginal and Torres Strait Islander organisations and Commonwealth and State agencies.

In these circumstances, successful outcomes by Regional Councils in delivering their support services were dependent on the performance of specific service providers. Linking the two constituted a future direction for Regional Councils and the creation of Regional Authorities.

One of the most significant aspects of the operations of Regional Councils was the number of participants involved in service delivery. Being a Commonwealth body, there was also a requirement to report in terms of inputs, outputs and outcomes.

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<sup>6</sup> Murdi Paaki Submission, February 2003.

<sup>7</sup> Murdi Paaki Submission, August 2003.

<sup>8</sup> The Auditor General, Audit Report No. 28, 2002-2003, Performance Audit, *Northern Territory Land Councils and the Aboriginals Benefit Account*.

If Regional Councils were to be effective in achieving better outcomes in service delivery for Indigenous people, there also needed to be a performance assessment process integrating all service providers. A specific role of Regional Councils in this context would be to achieve a better alignment between government and Indigenous outcomes.

Any assessment of Regional Council performance needed to be measured against the responsiveness, efficiency and effectiveness of service providers within the Regional Council's strategic planning process. In this way, government service providers would be subject to two accountability requirements – to the Government and to Aboriginal and Torres Strait Islander communities.<sup>9</sup>

It was the Council's view that the *ATSIC Act* already gave basic functions and powers to Regional Councils, but that these functions and powers could be strengthened to ensure the achievement of the full potential of Indigenous regional governance bodies with the capacity to ensure the proper coordination and delivery of services in the region.

The central theme of the Council's submission was that any arrangements for the delivery of programs and services for Indigenous people must take communities as their central reference point, recognising the way they connect with individuals and families. In turn, communities must have the capacity to participate effectively in the decision-making process.

Under the *ATSIC Act* 1989, Regional Councils were in a position to provide this capacity through effective governance arrangements which linked government at all levels and the community.

Enhancing the linkage between Regional Councils and service delivery, with a specific emphasis on communities and their development, was fundamental to the achievement of government outcomes and the promotion of Aboriginal and Torres Strait Islander well-being.

The submission observed:

We seek to ensure that agencies delivering services operate within a representative and accountable regional framework, rather than creating independent and separate points of negotiation based on competing agendas and competition between agencies and where initiative resides with the agencies concerned.

The starting point is what the people themselves determine is necessary to improve their livelihoods and well-being. An important next step is to ensure proper coordination and integration of services to meet community needs. The terms of these arrangements should be decided by and accountable to the people, whether those services are provided by government or non-government agencies.

Dispossession and dispersal, which was a characteristic of the Murdi Paaki region, had strengthened the resolve of communities to maintain their Indigenous identities and build on their survival capacities. As a consequence, the Aboriginal and Torres Strait Islander people of the region had a strong sense of community identity, whether they lived in towns with a majority of Indigenous people or as communities within larger rural centres. Taking

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<sup>9</sup> Murdi Paaki Submission, February 2003.

control of their lives was of paramount importance.<sup>10</sup>

Legislation could:

- Embed the roles of the Commission and Regional Councils in service delivery arrangements; and
- Integrate service delivery by all Commonwealth agencies.

The arrangements would:

- Ensure direct involvement of ATSIC and Regional Councils in all service delivery;
- Ensure the responsiveness and accountability of all Government agencies to Indigenous needs and, in turn, to the government for performance;
- Give effect to a ‘joined up’ government process of service delivery within which Indigenous people play a central role;
- Provide for each agency to have the equivalent of a ‘board’ involving Indigenous people to ensure Indigenous participation in decision-making;
- Ensure that all Commonwealth funded agencies are required to conform with the policies, plans and priorities of Regional Councils;
- Provide for flexible constitutional arrangements for Regional Councils to be incorporated under the Act;
- Require all agencies to enter into service delivery agreements with Regional Councils as a pre-requisite for assessing their performance; and
- Provide for Regional Council Chairs to meet as a policy forum once a year.

In broad terms the Council’s regional governance framework had two dimensions to it:

- Effective representation and participation of Indigenous communities; and
- Partnerships with government agencies at the regional level in meeting their service delivery obligations.

Its focus was on building social capital and regional capacity to enable communities, families and individuals to engage equitably with government and service providers in promoting community well-being.

The framework was based on:

- Promoting greater participation in regional decision-making;
- Empowering Community Working Parties to connect community governance and service delivery and engage with agencies responsible

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<sup>10</sup> Murdi Paaki Submission, February 2003.

for the delivery of services;

- Targeting investment in communities and individual and family welfare through rigorous regional and community planning processes;
- Joining all government agencies in coordinated delivery arrangements under a single statutory umbrella;
- The pooling of funds and the development of regional and community budgets that identify all agency outputs within a single program outcome;
- Working with government agencies to improve the efficiency and effectiveness of their service delivery; and
- Building on existing assets, including the strength of Indigenous cultures and identity.

Against the background of the principles and issues outlined in the ATSIIC Review discussion paper, the Murdi Paaki Regional Council saw these goals being achieved within the framework of the *ATSIIC Act 1989* or alternatively an 'Indigenous Services Act'.

In support of future arrangements, the Murdi Paaki Regional Council's governance framework involved:

- Strengthening the role of ATSIIC in government decision making at the national level;
- Reinforcing the legislative role of Regional Councils and/or Regional Authorities in planning, coordination and service delivery; and
- Providing a framework for the efficient and effective delivery of services by government agencies.

The regional decision-making and service delivery arrangements aimed to align Government program and service objectives with community needs and aspirations to overcome fragmentation, promote inter-sectoral collaboration, provide a mechanism to pool funding to achieve a single stream of delivery and ensure accountability of all program and service providers to the community.<sup>11</sup>

The Council saw accountability extending to all service providers within a legislative framework that required them to participate with ATSIIC and Regional Councils in planning and service delivery arrangements for Aboriginal and Torres Strait Islander people.

Developing and implementing a regional needs plan and empowering communities to engage with service providers was a reciprocal responsibility between Regional Councils, who had the statutory planning function, and agencies, who had the responsibility for service delivery, being required by legislation to work within the planning framework.

As instruments of both the government and Aboriginal and Torres Strait Islander people, ATSIIC and Regional Councils were in a strategic position to

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<sup>11</sup> Murdi Paaki Submission, August 2003.

provide leadership in a developmental process where needs were identified at the community level and regional and community plans provided the architecture for investment in community and individual welfare. Achieving these goals required mainstream agencies to align their outputs with community needs and priorities identified in regional plans.

To be effective, specific legislation was required to impose obligations on mainstream service providers and ensure their accountability to Indigenous people and the government and connect regional governance and service delivery. Inherent in this approach was the responsibility of representative institutions of regional governance engaging with local communities, agencies and non-government organisations to find sustainable ways to meet the needs of communities, individuals and families.

While services in the areas of health, education, employment, training and infrastructure would continue to be delivered by mainstream agencies, Regional Authorities should have the power to fund and coordinate specific development outcomes and to marshal and maximise economic opportunity to achieve them.

Land Councils, native title representative bodies, legal and health services, the Indigenous Land Corporation and Indigenous Business Australia were part of what had been described as ‘dispersed governance’ where each participant body has a role to play.

The role of ATSIC and Regional Council was founded on their special relationship with government and service providers incorporating a statutory planning function. A fundamental requirement for them in discharging their functions was to continue to have funding and negotiation leverage with Commonwealth and State agencies.

Pursuant to the Government’s ‘separation of powers’ direction, the framework would clearly define within ATSIC and Regional Authorities the roles and responsibilities of elected representatives and the administration and between the setting of strategic directions and priorities and their implementation by all agencies.

The framework would:

- Be based on local Indigenous communities;
- Assist with establishing effective local community structures and effective community governance;
- Assist with the identification of community needs, their priorities and the measures to address those needs;
- Identify community needs that have regional significance;
- Prepare regional plans to address the regional and local needs;
- Assist local, state and national agencies to implement the regional needs plan; and
- Provide for state and national plans to be informed by the regional plans and undertake activities consistent with those plans.

The Council saw the framework being strengthened in a number of

ways:

- The more direct involvement of ATSIC in the machinery of government and recognition by all spheres of government of its role;
- The direct participation of the Chairs of Regional Authorities in national policy making through a Regional Chairs' Forum, thus seeking to overcome the disconnection identified by the ATSIC Review Team between national and regional policies;
- Increased resources to support regional and community planning where regional plans set the broad development framework and community plans translate regional outcomes into programs, projects and funding;
- Complementary coordination arrangements within government involving a Cabinet Indigenous Affairs Committee and an implementation and monitoring group of Secretaries, with ATSIC participating in both; and
- The preparation by ATSIC of a 'State of the Nation' report on the situation of Aboriginal and Torres Strait Islander people to coincide with the consideration of appropriations by Senate Estimates Committees.