

CHAPTER I

Putting the Pieces Together

The political climate of Indigenous affairs in Australia towards the end of 2007 presented an opportunity to elevate the management of Indigenous affairs to a new level of commitment by the Australian Government. The Government's new arrangements in Indigenous affairs, which were introduced following the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2004, were followed by a comprehensive Intervention by the Commonwealth in the Northern Territory.² The then Minister for Families, Community Services and Indigenous Affairs, the Hon. Mal Brough, described the Intervention as the most important policy initiative in Indigenous affairs in decades.³ Such was the all-encompassing dimension of the intervention that it opened a door to the Government accepting greater policy and funding responsibility for Indigenous Australians.

No matter how the Intervention is viewed, it provided the strongest foundation yet for going forward to overcome the extreme disadvantage and relative poverty of Aboriginal and Torres Strait Islander people. There was growing evidence, with the entry of new authoritative participants in the policy debate that the Government may have finally passed the threshold of hesitant, piecemeal action to enter a new era of renewed and sustained national commitment.

With the Government's new arrangements described as a 'bold experiment'⁴ in place, and regional service delivery trials sponsored by the Council of Australian Governments (COAG) to test the 'bold experiment', the Intervention in the Northern Territory heralded another phase in policy towards Aboriginal and Torres Strait Islander people, such that Brough declared that: 'We are at a cross-roads in Indigenous affairs – there has never been such an opportunity for change.'⁵

Since 1967, a national framework for change existed in the concurrent powers

² This policy was referred to in official discourse as the Northern Territory Emergence Response or the NTER, but will be referred to here as 'the Intervention'.

³ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, 'Howard Government getting on with the job of protecting children in the Northern Territory', (Media Release, 6 August, 2007).

⁴ Dr Peter Shergold, Secretary, Department of the Prime Minister and Cabinet, 'Connecting Government', A speech to launch Connecting Government: Whole-of-Government Response to Australia's Priority Challenges, *Management Advisory Committee, Report No 4*, 20 April 2004, p. 7.

⁵ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, *Foreword*, Office of Indigenous Policy Coordination, Indigenous Affairs Arrangements, August 2006.

of the Commonwealth and state and territory governments to make laws for Aboriginal and Torres Strait Islander people with shared responsibility between Commonwealth and State jurisdictions on the one level, and with Aboriginal and Torres Strait Islander people on the other. Shared responsibility was first formally recognised by Heads of Government in 1992⁶ in what became known as ‘The National Commitment’ and subsequently advanced by COAG through declarations on reconciliation and principles of service delivery for Indigenous communities.

Both the ‘bold experiment’ and the Intervention pointed to the need for effective structural arrangements to ensure the full participation of Aboriginal and Torres Strait Islander people in decision-making at national and local levels. In the eyes of one informed observer, international literature suggested that Indigenous engagement in policy development was a key to achieving better results, and that Indigenous engagement had to become the norm.⁷ This was not an academic argument, but one related to the effective implementation of programs and services as a democratic, citizen and human right. With the abolition of ATSIC, there was a legitimate question as to whether sufficient priority was given in the Howard Government’s reform process to an Indigenous order of governance as a facilitating and enabling mechanism in overcoming Indigenous disadvantage.⁸

Participation was already perceived to be part of what had now come to be generally understood as ‘good governance’. While definitions of good governance vary depending on context, this paper’s definition of good governance is concerned with political and institutional processes and outcomes that are deemed necessary to achieve the goals of Indigenous development from both a government and Indigenous perspective.⁹ It is thus seen not only in terms of outcomes, but also in terms of processes. The *Human*

⁶ National Commitment to Improved Outcomes in the delivery of programs and services for Aboriginal Peoples and Torres Strait Islanders, endorsed by the Council of Australian Governments, 7 December 1992.

⁷ Dr Ken Henry, Secretary to the Treasury, Creating the right incentives for Indigenous Development, ‘Strong Foundations - Rebuilding Social Norms in Indigenous Communities’, Address to the Cape York Institute Conference, Cairns, 26 June 2007 p. 8.

⁸ The concept of an Indigenous order of governance was explored in a scoping paper *Resourcing Indigenous Development and Self-Determination*, prepared for ATSIC by The Australia Institute, September 2000. See also W. Sanders, *Towards an Indigenous Order of Australian Government: Re-thinking Self-Determination as Indigenous Affairs policy*, CAEPR Discussion Paper 230/2002. An Indigenous Order of Governance has its origins in Canada. The Institute on Governance describes Canada’s approach as being unique: “no other country in the world is in the process of creating a separate order of government for its Indigenous peoples.” Canada’s constitutional circumstances are unique in relation to self-government for Indigenous people as a result of Indian treaty settlements.

⁹ Background Note, Seminar on good governance practices for the promotion of human rights, Seoul 15-16 September 2004, jointly organised by the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Program.

Development Report released in 2001 considered good governance as essential for human development.¹⁰ In this context, governance is having effective institutions to promote wider participation in the decisions that affect people's lives and achieve more equitable economic and social outcomes.¹¹ It is widely accepted that participation, transparency and accountability are key elements of good governance.¹²

In considering the Government's overall approach to Indigenous affairs during the time of which the Intervention was being rolled out, the Murdi Paaki Regional Assembly¹³ had been at the forefront in developing effective governance arrangements for interaction between Indigenous people and government.

For over a decade, Aboriginal and Torres Strait Islander people developed a system of regional governance deriving in the first instance from their own situation and then responding to, and influencing, new government policies. The Murdi Paaki arrangements were expressed in a Charter of Governance and established bodies of the major communities in the area with each community participating in its own decision-making. In the experience of the Murdi Paaki, rights and responsibilities have gone hand in hand, based on a body of knowledge drawn from their own situation and informed by the best information available about direct participation in government decision-making.

As a case study, the Murdi Paaki experience has value for two reasons. Firstly, it anticipated and gave form to many of the continuing elements of the Government's new approach to Indigenous affairs prior to the Intervention. Secondly, it demonstrates connections with, and responsiveness to, broader government policies in Indigenous affairs as one of the first formally recognised regional governance structures.

While little research has been done to examine the extent to which participation in government processes, as distinct from organisational governance, actually promotes desired outcomes, an analysis of the experience of the Assembly in navigating and responding to the post-ATSIC environment provides some answers and a body of knowledge that may guide future arrangements.

¹⁰ The United Nations Development Program (UNDP), *Human Development Report 2002*, pp. 51-52.

¹¹ *Ibid.*

¹² The Commission on Human Rights, in its resolution 2000/64 recognised that 'transparent, responsible, accountable and participatory government, responsive to the needs and aspirations of the people, is the foundation on which good governance rests, and that such a foundation is a sine qua non for the promotion of human rights, including the right to development'.

¹³ The Murdi Paaki Regional Assembly, along with its predecessor, the Murdi Paaki Regional Council (MPRC) which gave birth to the Assembly before the Council was abolished).

An important national issue in charting the Murdi Paaki experience was the policy contest between Indigenous rights and individual responsibility, and the emphasis on welfare reform and the extent to which priority was given to this over creating 'regional engagement'.

Determining the potential of what have become known as government 'interventions' to overcome the disadvantage of Aboriginal and Torres Strait Islander people is obviously a challenge for successive governments and those who advise them. It also poses a challenge for those affected to have legitimate structures of representation and participation to enable them to engage meaningfully with government in the development of those 'interventions' and their implementation.

An understanding of the public policy processes involved in the development of the new Indigenous affairs arrangements provided an informative backdrop to the implementation of the Government's reforms and the challenges inherent in overcoming Indigenous disadvantage. This understanding was facilitated by an examination of both the Indigenous and Government perspectives and drawn from the lessons derived from that experience demonstrating how Aboriginal and Torres Strait Islander people and Government can navigate a complex public policy environment together.

In presenting the Government perspective, this paper charts the new arrangements introduced in Indigenous affairs following the abolition of ATSIC which had been in place for more than a decade. These arrangements flowed in part from a broadly based policy of improving performance by 'connecting government' and involving 'whole of government responses to Australian priority challenges.'¹⁴ The aim was to strengthen the way government agencies worked together across jurisdictions. An important element of 'connecting government' in its broader application was to work productively with external stakeholders.

Far-Reaching Reforms

The Government's reforms were instituted in association with the reported abuse of Aboriginal children in the Northern Territory. The reforms were far-reaching and included changes to basic welfare entitlements, the introduction of income management for Aboriginal recipients of welfare, the removal of dependency on 'passive' welfare, control of Aboriginal communities, forced acquisition of leases over Aboriginal freehold land, and the creation of

¹⁴ The title of this paper is drawn from the submission of the Murdi Paaki Regional Council to the Senate Select Committee on the Administration of Indigenous Affairs, August 2004. The title, in turn, reflects the government's policy positions outlined in its report *Connecting Government, Whole of Government Responses to Australia's Priority Challenges*, Management Advisory Committee 4, Canberra, 2004.

employment opportunities for Aboriginal and Torres Strait Islander people.

There was general recognition that the Government's declaration of a 'national emergency' in the Northern Territory in response to reported child abuse in Aboriginal communities dramatically transformed relations between the Government and Indigenous people. As a consequence, a turning point may have been reached in cooperative federalism with the Commonwealth taking a more decisive lead in comparison with the states and territories. While the protection of children was the stated reason for the Intervention, it was built on a number of policy and reform platforms.

While earlier policy settings informed elements of the Intervention, it represented a significant break with past policies. The Australian Medical Association (AMA) described it as a new federal focus and nationwide energy.¹⁵ Other commentators suggested that the Intervention was a policy revolution, representing a decisive break with past approaches.¹⁶ One commentator wrote:

Top down paternalist, unashamed, this is a new paradigm for Aboriginal Australia, one that simply ignores a whole generation's worth of nostrums and legal decisions about increasing Indigenous rights.¹⁷

In introducing a package of legislation to take control of the situation in the Northern Territory, Brough said:

When confronted with a failed society where basic standards of law and order and behaviour have broken down and where women and children are unsafe, how should we respond? Do we respond with more of what we have done in the past? Or do we radically change direction with an intervention strategy matched to the magnitude of the problem?¹⁸

In evidence before the Senate Legal and Constitutional Committee, the Director of the Centre for Aboriginal Economic Policy and Research, Professor Jon Altman, described the legislative package as:

... a hastily conceived and enormously complex but intertwined set of laws that will establish a fundamentally new and unprecedented policy framework for addressing undeniable social problems experienced by many of the 40,000 Indigenous people in prescribed communities in the Northern Territory.¹⁹

¹⁵ Dr Rosanna Capolingua, President, Australian Medical Association, Health Policy – Up Where We Belong, Address to the National Press Club, 25 July, 2007.

¹⁶ Editorial, 'Policy Revolution in Black and White', *Sydney Morning Herald*, 22 June, 2007.

¹⁷ Nicholas Rothwell, 'Cause for Hope', *The Weekend Australian*, 23-24 June, 2007.

¹⁸ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, Second Reading Speech, House of Representatives Hansard, 7 August 2007.

¹⁹ Professor Jon Altman, Senate Legal and Constitutional Affairs Committee, Transcript of Evidence, 10 August 2007, p. 78.

A former Minister for Aboriginal Affairs and Director of Reconciliation Australia, Mr Fred Chaney, summarised the inescapable for the Government: ‘We’re at a point where the Australian Government has started something big that it must now see through’.²⁰ Chaney identified two significant elements in the way forward: (1) a long term, properly resourced action across governments, ministers and all the interrelated aspects of disadvantage and; (2) Indigenous engagement as a prerequisite for success.

Taking Responsibility in this Generation

Inherent in the Intervention was a decisive shift in both policy and funding. While budget surpluses were being locked away for future generations, this generation of Aboriginal and Torres Strait Islander people had gained only marginally from the country’s economic wealth.

A beneficial outcome of the Intervention was recognition of the deficit in Aboriginal and Torres Strait Islander services and a commitment to spend ‘whatever it takes’ to close the gap. A policy of economic sustainability based on the principle that ‘it would be unfair if we indulged a standard of living today at the expense of the standards of living for our children and their children’²¹ seemed contrary to the interests of Aboriginal and Torres Strait Islander people if it meant deferring commitments that might otherwise bring Aboriginal and Torres Strait Islander people to the same level of capability as other Australians now and into the future.²²

Aboriginal and Torres Strait Islander people are demonstrably the most disadvantaged group in an otherwise affluent Australia. They have overall poorer physical and mental health, are less likely to complete primary, secondary and tertiary education and do not have the same employment opportunities as non-Indigenous Australians.

The National Report *Overcoming Indigenous Disadvantage* observed that every day Indigenous Australians deal with the compounding impact of multigenerational grief, loss and trauma related to colonisation, dispossession of their land, the consequences of the Stolen Generations, racism, discrimination and cultural dislocation. The communities which have been relocated from their tribal lands struggle to remain functional without the

²⁰ The Hon. Fred Chaney, Director, Reconciliation Australia, Address to the National Press Club, Canberra, 4 July 2007.

²¹ The Hon Peter Costello, Treasurer, Address to the National Press Club, Canberra, 2 April 2007.

²² Australian Government, Prime Ministerial Task Force on Emissions Trading, Report of the Task Force on Emission Trading, 2007; also Intergenerational Report 2007.

appropriate resources to sustain a local economy.²³

Together, these accumulated disadvantages are all barriers to economic participation and moving away from reliance on welfare. It is a situation not of their own making, but for which Aboriginal and Torres Strait Islander people are often blamed, for not taking responsibility of their circumstances.

Until the Intervention, the disadvantaged position of Aboriginal and Torres Strait people all too often remained at worst invisible, and at best, not sufficiently elevated on the political horizon when it comes to commitment and an equitable allocation of resources. The reality is that their welfare and wellbeing seemingly had not been high enough on the policy or budget agenda to compete with other perceived greater national priorities.

The situation has remained unacceptable in Australia 40 years after the 1967 referendum removed discriminatory parts of the *Commonwealth of Australia Constitution Act, 1901* towards Aboriginal and Torres Strait Islander people. This was confirmed by Brough when asked the question: 'how much have we really done as a nation, in the past 40 years to address the root causes of Aboriginal disadvantage?' he answered:

Well it's a good question, and it's really in two parts. In the cities, and the major regional centres, there has been enormous progress....But then there is the other side of the coin. Those in the remote communities, and those in what is commonly known as the 'long grass', in other words, the fringes of town. And there has been, I believe, not just no progress, but in some cases, we've gone backwards.²⁴

He went further to explain:

We have about 450,000 people who identify as Indigenous in this country, and about 150,000 live in the circumstances that I just explained. The majority live in the cities, and they have no reason why they shouldn't have the same life expectancy as the rest of us. They have to have access, I might add, to mainstream services, and in some cases, there is still a long way to go to achieve that. But it's the remote communities that really need the assistance.²⁵

What the Intervention demonstrated was that a strong political will and commitment by the Government of the day is required to overcome Indigenous disadvantage and bridge the gaps in health, education, employment, housing and community services that exist between Indigenous and non-Indigenous Australians.

²³ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage*, 2006.

²⁴ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, Interview, *The Insiders*, ABC Television, 27 May 2007.

²⁵ Ibid.

Informed commentary also suggested that structural arrangements were also an important element in overcoming the disadvantage of Aboriginal and Torres Strait Islander people. What had begun as the mainstreaming of all commonwealth services for Aboriginal and Torres Strait Islander people following the abolition of ATSIC had become one of ministerial direction and control under new institutional, administrative and community management arrangements. Brough however acknowledged that:

Further, long-term measures will still be required by all parties; the Australian Government, the Northern Territory Government and the communities themselves to ensure that all these measures provide sustainable long-term benefits to Indigenous people in remote communities in the NT.²⁶

Under the impetus of COAG, new arrangements were developed to change the way governments did business with Aboriginal and Torres Strait Islander people. The arrangements were designed to better coordinate government programs, improve service delivery and cut red tape. For these changes to make a difference, governments needed an organised way to work with Indigenous communities.

In the way the Government implemented its ‘emergency’ interventions on a strategy of failed past policies and criticism of state and territory governments, the government had now made a down payment on overcoming Indigenous disadvantage and improving the social and economic circumstances of Aboriginal and Torres Strait Islander people.

Already the Intervention had been reported as costing in the order of more than \$500 million in the first year. Other initiatives in Cape York, Alice Springs, Wadeye, and the Tiwi Islands in pursuit of a new approach to Indigenous affairs and welfare reform generally, amounted to a further \$100 million. This commitment recognised the extent of the historical deficit in providing services for Aboriginal and Torres Strait Islander people with a further \$500 million for Indigenous health and a much needed investment of an estimated \$1.5 billion to overcome the backlog in the provision of housing for Indigenous people.

Interventions without Structure

The fact that the Government declared a ‘national emergency’ and introduced a number of significant interventions in the Northern Territory without prior consultation with either the appointed National Indigenous Council, or more significantly the communities concerned, shifted the focus to structured governance arrangements to facilitate consultation, negotiation and decision-making with Aboriginal and Torres Strait Islander people on a permanent

²⁶ Minister for Families, Community Services and Indigenous Affairs, The Hon. Mal Brough, Media Release, ‘Howard Government getting on with the job of protecting children in the Northern Territory’, 6 August, 2007.

ongoing basis. In this instance the Government saw further consultation as an obstacle to doing something quickly of the magnitude proposed, with an informed media observer commenting:

The lack of consultation highlights the absence of a national Indigenous representative body – a genuinely authoritative voice, like the organisations representing other groups and individuals of common interest.....The Aboriginal and Torres Strait Islander Commission failed because it was forced to be too many things ... Now that it is gone its most valuable dimension – as a conduit between Indigenous people, government and the wider community – is lost. The government’s replacement, the National Indigenous Council, does not command the authority of the wider Indigenous community.²⁷

In its submission to the Senate Legal and Constitutional Committee on the Northern Territory National Emergency Response Legislation (the Senate inquiry), the Human Rights and Equal Opportunity Commission (HREOC) welcomed the Government’s recognition of the ‘serious, broad ranging social and economic disadvantage in many Indigenous communities’. It further stated that this recognition presented an historic opportunity to deal with a national tragedy.²⁸ While accepting the need for urgent action, HREOC argued that the success of the action both immediately and in the long term would depend on effective consultation which was fundamental to respecting the human rights of Indigenous people.

The report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse which prompted the Commonwealth Government’s interventions, had recommended that the Australian and Northern Territory governments designate Aboriginal child sexual abuse as an issue of urgent national significance and that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities. It called for ...

... A determined, coordinated effort to break the cycle and provide the necessary strength, power and appropriate support and services to local communities, so they can lead themselves out of the malaise; in a word, empowerment!²⁹

Criticism of the Intervention focused on the lack of consultation with Aboriginal and Torres Strait Islander people and ignoring existing Indigenous institutions. To the extent that there was any consultation at all or an opportunity for Aboriginal and Torres Strait Islander people to have a

²⁷ Karen Middleton, ‘The Devil in the Detail’ *The Canberra Times*, 23 June, 2007, Opinion p. 7.

²⁸ Human Rights and Equal Opportunity Commission, Submission to the Senate Legal and Constitutional Committee on the Northern Territory National Emergency Response Legislation, 10 August 2007.

²⁹ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007, p. 13.

substantive ‘voice’ occurred during the one day hearing of the Senate Inquiry.³⁰

The most substantial immediate Indigenous response to the implementation of the ‘national emergency’ came from the Combined Aboriginal Organisations of the Northern Territory; the main thrust of this response was the need for a more comprehensive plan and costed financial commitment to invest in the services and governance systems required to address the underlying causes, informed and led by local community leadership and initiative.³¹ This view was supported by the AMA, a key stakeholder in providing the necessary medical teams for the emergency. Addressing the National Press Club, the President of the AMA, Dr Rosanna Capolingua said:

We must ensure there is an ongoing commitment to provide the long-term service needs that will be uncovered in the clinical process currently underway in the remote communities. The AMA would like to see policies that extend this initiative to address other concerns such as overall health services, housing, sanitation, education and other social and environmental impacts on the wellbeing and life expectancy of Indigenous Australians.³²

And the historic Gulkula Aboriginal Leaders’ forum in the Northern Territory was led to proclaim that:

If any measure is expected to achieve the desired outcomes, there must be collaboration with community leaders throughout the Northern Territory. However, the Prime Minister’s unilateral action, without consultation or negotiation with us puts in jeopardy our relationship with the Government. It jeopardises the possibility of achieving any sustainable outcomes.³³

Empowerment and Good Governance

Participation means more than consultation. It requires negotiation. It gives form and content to partnership. It involves reciprocal responsibility between government and Indigenous people. Ultimately, it is about empowerment, a notion developed internationally of ‘responsible wellbeing’ as a central concept for a development agenda linking capabilities and livelihoods and pointing to individual agency.³⁴

³⁰ Senate Legal and Constitutional Affairs Committee, *Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills*, 10 August 2007.

³¹ Combined Aboriginal Organisations of the Northern Territory, *A Proposed Emergency Response and Development Plan to protect Aboriginal Children in the Northern Territory*, A Preliminary Response to the Australian Government’s proposals, Alice Springs, 2007.

³² Dr Rosanna Capolingua, President, Australian Medical Association, *Health Policy – Up Where We Belong*, Address to the National Press Club, 25 July 2007.

³³ The Gulkula Meeting, Gulkula Aboriginal Leaders’ Forum, 3-4 August 2007.

³⁴ Consultation and Empowerment: Governance implications of Participatory Public Policy Formulation in six developing countries, *a collaborative policy research program*, Institute of Development Studies, University of Helsinki, Chr. Michelsen Institute, January 2002.

It may be argued that there is nothing profoundly new about the role of community participation in building Indigenous communities. What was important at this time was its implementation.

The landmark report of the Royal Commission into Aboriginal Deaths in Custody (hereafter called the RCDIC)) found that a prerequisite to the empowerment of Aboriginal people and their communities was having in place an established method whereby government assistance was provided to Aboriginal and Torres Strait Islander communities in a way that did not exacerbate feelings of dependency and promoted decision-making by Aboriginal people in relation to their own individual and community lives. In making this observation the Commission did not underestimate the difficulties in empowering Aboriginal people this way³⁵ from both Indigenous and government perspectives.

There were, of course, competing ideas about Indigenous governance and in particular a strongly held view by some that dispersal and localism at the individual organisational level could aid Indigenous autonomy as much as, or even better than, ‘the seductive appeal of the idea of a single, central, culturally appropriate governing structure which will fix everything.’³⁶ The welfare reform proposals developed in Cape York had pointed to the role for a network of individual regional organisations with specific functional responsibilities providing a leadership group across the regional spectrum through the governance of the organisations concerned.³⁷ Arguments between regionalism and localism are not particularly productive and as the Assembly had observed, each region must determine its own way of doing business.

The Murdi Paaki experience provided evidence that sustainable interventions require enabling partnerships that are promoted through effective institutional arrangements with community support,³⁸ and further demonstrated that the various streams of enjoyment of rights, the exercise of responsibility, reciprocal obligation between government and Indigenous people and accountability are not mutually exclusive, but can be connected within a legitimate governance framework. The foundation stone of the Murdi Paaki arrangements was elected community representation coming together in a formalised regional forum accountable to the participating communities.

³⁵ Elliot Johnston, *Report of the Royal Commission into Aboriginal Deaths in Custody*, 1991, National Report, Volume I, paras. 1.7.6 ff.

³⁶ Will Sanders, ‘Thinking About Indigenous Community Governance’, CAEPR discussion paper 262/2004.

³⁷ Cape York Institute for Policy and Leadership, ‘From Hand Out to Hand Up’, Cape York Welfare Reform Project, Design Recommendations, May 2007.

³⁸ Louis Helling, Rodrigo Serrano, David Warren, ‘Linking Community Empowerment, Decentralised Governance, and Public Service Provision through a Local Development Framework’, World Bank, September 2005.

Another key element of the Murdi Paaki experience, deriving from the *ATSIC Act 1989* (Cth) and the legislative functions of ATSIC and Regional Councils before they were abolished, was its capacity to provide an interface with government to participate in policy making and service delivery consistent with the objects of the Act.

As the Council explained, its framework aimed to establish a tripartite relationship between communities, a regional body that directly represented their interests, and government to improve the way services were delivered in the region. The framework specifically distinguished between governance and service delivery but linked them structurally through elected community representation and engagement with government at both the strategic regional level and operationally at the community level.

The arrangements were founded on the strength of a community participation network, interacting with non-government organisations and government service providers. The network itself recognised a need for being complementary and enabling institutional arrangements to grow out of the operations of community forums and joining them in a regional framework that had legitimacy with Aboriginal and Torres Strait Islander people and government.³⁹

The abolition of ATSIC and its supporting regional councils left a vacuum in structured Aboriginal participation. There was a policy perception that there was no room for separate elected Indigenous bodies. With this abolition, the government set about establishing new forums, recognising the need for regional mechanisms to provide some element of continuing advice from Aboriginal and Torres Strait Islander people to make the new service delivery arrangements work.

Establishing a legitimate order of Indigenous governance was seen as an important adjunct to maintaining the momentum of the interventions that had begun in the Northern Territory. Participation of Aboriginal people in government decision-making was the missing link in the chain of policy-making, administration and service delivery to ‘normalise arrangements in these communities.’⁴⁰ The full and effective participation of Aboriginal and Torres Strait Islander people required enabling structures to give voice to the enjoyment of their ‘freedoms and rights,’⁴¹ with Brough, stating that:

³⁹ *Working Together*, A proposed framework of regional governance for the Murdi Paaki Region of New South Wales, A report to the Murdi Paaki Regional Council, 4 July 2002.

⁴⁰ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, *Second Reading Speech*, House of Representatives Hansard, 7 August 2007.

⁴¹ Prime Minister, the Hon. John Howard, *To stabilise and protect*, Address to the Sydney Institute, Sydney, 25 June 2007.

Success will be determined by the extent to which the local people are engaged in tackling their own problems. Our approach is fundamentally about empowering local citizens, releasing them from fear, intimidation and abuse...The Australian public want to see real change and are willing to put their shoulder to the wheel when they feel that can finally help to improve the lot of their fellow Australian citizens — the first Australians. This is a great national endeavour. It is the right thing to do, and now is the right time to do it.⁴²

Another important observation of the Northern Territory ‘emergency’ was what Mr Howard called ‘a sweeping assumption of power and a necessary assumption of responsibility.’ More significantly, he said: ‘There comes a time when the obligations of national governments take over.’⁴³

There was ample evidence to suggest that the Intervention would have had greater credibility and acceptance if there had been in place a structured process of negotiation with Aboriginal and Torres Strait Islander people to aid this assumption of responsibility. Participation has a fundamental practical application to facilitate the implementation of government policy with acknowledgement from the Secretary of the Department of Prime Minister and Cabinet that ‘implementation does matter. It provides a sense of public purpose fulfilled’.⁴⁴

The Chairman of the Assembly, Mr Sam Jeffries, observed that:

The national interest requires a new relationship with Aboriginal and Torres Strait Islander people. There can be no relationship without partnership. There can be no partnership without participation.⁴⁵

⁴² The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, *Second Reading Speech*, House of Representatives Hansard, 7 August 2007.

⁴³ Prime Minister, the Hon. John Howard, ‘To stabilise and protect’, Address to the Sydney Institute, Sydney, 25 June 2007.

⁴⁴ Dr Peter Shergold, Secretary of Prime Minister and Cabinet, ‘Implementation Matters’, 16 October 2006.

⁴⁵ Sam Jeffries, Chairman, Murdi Paaki Regional Council, ‘The new Agenda: Re-connecting Government and Aboriginal and Torres Strait Islander Peoples’, paper given at the AIATSIS Native Title Conference, 3-4 June 2004, Adelaide.