

CHAPTER 26

Advocacy Before the Senate Committee

By the time the Murdi Paaki Regional Council appeared before the Senate Select Committee at its hearings in Moree, the government had begun implementing its new arrangements. Legislation was before the parliament to abolish ATSIC and, in the second phase, Regional Councils by 30 June 2005.

Confronted with the reality of the situation, the Council's strategy was to seek to preserve a legislative framework for Regional Councils.

In his summary statement before the committee¹, the Chairman of the Council, Mr. Sam Jeffries, highlighted for the committee what the Council saw as its major concern: once Regional Councils had been abolished the new arrangements would remove an inherently beneficial and enabling legislative framework for Aboriginal and Torres Strait Islander people.

Mr. Jeffries said:

The reality we face is that the government has already proceeded to implement the new arrangements by restructuring the machinery of government, appropriating all program funding to mainstream agencies, and transferring the administrative capacity of Regional Councils to Indigenous Coordination Centres as outposts of government Departments.

Confronted with that reality, and based on our experience in the Murdi Paaki region, our aim is to ensure that the new regime of mainstreaming and connecting government delivers sustainable long-term benefits. We would therefore seek retention of Part Three of an amended *Aboriginal and Torres Strait Islander Act* 2004.

The dilemma we face in seeking to retain a legislative framework is that the new arrangements are built on a false perception that representation of Aboriginal and Torres Strait Islander people has failed.²

Mr. Jeffries argued that it seemed to the Council an odd situation where the new *Aboriginal and Torres Strait Islander Act (ATSI Act)* 2004 would continue to incorporate the preamble and objects of the substantive legislation without incorporating the structures to achieve them.

Regional Councils under the *ATSIC Act* were legislative instruments of Indigenous governance. They connected all stakeholders – the Commonwealth, State, local government and the Indigenous sector. The Act itself enabled Aboriginal and Torres Strait Islander people to participate constructively in government decision-making and service delivery at the regional level. Such representation was a cornerstone of public investment in Aboriginal and Torres Strait Islander communities. On any reading of the government's own thinking on governance arrangements, these elements were lacking in the new arrangements. Instead, while connecting government, they disconnected Aboriginal and Torres Strait Islander people from government

¹ Select Committee on the Administration of Indigenous Affairs, Moree, Tuesday, 1 February 2005, *Committee Hansard*.

² Transcript of evidence.

and revert to an administrative approach.

Mr. Jeffries acknowledged the reality of the situation.

By seeking to retain Part 3 of the *ATSIC Act* in its amended form, ours is probably a lost cause. For the government it is a lost opportunity to substantially improve the relationship between Aboriginal and Torres Strait Islander people and the government and capitalise on past achievements under the Act.

As the government itself admits, operational issues do matter. We are informed that good policy will be undermined by poor implementation. We say that implementation is undermined by bad governance.

Mr. Jeffries argued that retaining Part 3 of the *ATSI Act 2004*, as amended, would continue to provide a legislative framework for the government's new arrangements. To do so would bring coherence to an otherwise piecemeal approach and emphasise the importance of regional arrangements alongside those provisions of the Act relating to the Torres Strait Regional Authority, Indigenous Business Australia and the Indigenous Land Corporation, all of which had a regional focus. It would also be the mechanism to give expression to the objects of the Act. In their present form, the government's new arrangements represent one step forward for government and three steps backwards for Aboriginal and Torres Strait Islander people at a time when we should be going forward together.

Regional and community governance are the leadership tools that return responsibility to us, lift us out of the poverty trap, and break the generational cycle that has handed down a legacy of social dysfunction.

Mr. Jeffries acknowledged that the arrangements were a forward step for the government to improve the way Departments operated. 'That is what the bold experiment is all about.' While many elements of the new arrangements did no more than build on the developing COAG trials, the new approach was an administrative mandate for government agencies to improve the way they deliver services to Indigenous people and be rewarded for their performance.

Against that, the arrangements represented three steps backwards for Aboriginal and Torres Strait Islander people for the Parliament to remove a statutory framework built on three fundamental pillars.³

- Coordination of policies and services delivered by all spheres of government;
- A specific power to advise the Minister on the coordination of the activities of other Commonwealth Departments;

³ Coordination was fundamental to the objects (s. 3(d)) of the *ATSIC Act* and the operation of the Commission and Regional Councils. It was a specific function of the Commission (s. 7(1)(e)(ii)) to advise the Minister on the coordination of the activities of other Commonwealth bodies. A central plank of the objects of the Act (s. 3(a)) was to ensure maximum participation of Indigenous people in the formulation and implementation of government policies that affect them.

- A coherent legislative framework for participation of Aboriginal and Torres Strait Islander people in the formulation and implementation of government policies that affect us.

The bold experiment merely sought to remedy the obvious failure of government coordination of Indigenous programs and the failure identified by the Commonwealth Grants Commission of mainstream services to meet the needs of Aboriginal and Torres Strait Islander people in the same way as they met the needs of other Australians.

The last decade had seen gradual advancement for Aboriginal and Torres Strait Islander people under the stimulus of an elected Indigenous leadership, responsive to the more positive elements of government policy. 'We should not ignore what has been happening under an elected Aboriginal leadership in communities throughout Australia to improve Indigenous well-being,' he said. He then quoted from the Prime Minister who had stated:

The solutions are to be found in local communities. We have to trust local Indigenous communities to take decisions that are in their own long-term best interests. There is within many Aboriginal communities a responsible leadership that has a desire to do something. You need to solve the problem from the bottom up, not try and impose something from the top down.⁴

In the way they were being implemented, the Council did not see the new arrangements reflecting this policy commitment.

Mr. Jeffries hoped that the same sense of bi-partisanship over the abolition of ATSIC would keep the door open on retaining a regional structure under any amended legislation.

Mr. Jeffries said:

We do not question the need for more acceptable representative arrangements. Removal of a legislative framework represents a fundamental and historic downward slide in Australia's national commitment to Aboriginal and Torres Strait Islander people.

In summary the position of the Murdi Paaki Regional Council as presented to the Senate Select committee was:

- That the *ATSIC Act* provided a coherent framework for achieving progress at the regional level can readily be demonstrated not only in the Murdi Paaki region but elsewhere in other regions where elected representatives have made the ATSIC system work;
- It was important to retain Commonwealth legislation within the COAG service delivery framework that provided the fundamental linkages between Indigenous representation at the regional level, community engagement, government service delivery and accountability for performance;

⁴ *ABC Insiders Program*, 5 December 2004.

- Without statutory authority, any new mechanisms, however they were developed, would be merely advisory and consultative to meet the Commonwealth Government's service delivery requirements;
- The removal of a legislative framework for the government's new regional arrangements represented a missing link in the service delivery chain and therefore decisively broke it. Governance arrangements were fundamental to an effective service delivery framework and was one of the basic premises of the Government document *Connecting Government*;
- Representative networks should be more than mechanisms to communicate Indigenous views and concerns to government for the purposes of determining how Departments deliver their services to ensure they meet their own performance standards;
- The piecemeal implementation of the new arrangements was further disadvantaging Aboriginal and Torres Strait Islander people; and
- More than six months after the government's decision Indigenous people still did not know how regional and community structures would be established.

The Council submitted that it was open to the committee to recommend the retention in its amended form of Part 3 of the *ATSIC Act*. It would be possible to incorporate, within an amended *ATSI Act*, flexible constitutional arrangements for regional bodies which would emerge in response to the government's reform process. Provision could be made for the Minister to approve under the Act regional structures as they are developed on the initiative of Aboriginal and Torres Strait Islander people and in accordance with government policy, similar to the way *Local Government Acts* provide the vehicle for incorporation of local government Councils.

Given the current lack of guidelines for the establishment of regional bodies, a further extension of time for the abolition of Regional Councils would permit new structures to develop in an orderly way. This would avoid the haste implicit in setting them up before Regional Councils were abolished on 1 July 2005, less than six months away, and entering into shared responsibility agreements without proper governance structures and accountability arrangements being in place to underpin the service delivery framework.

In the circumstances of the amending legislation, the definitive action required would be to leave open the date for abolition of regional Councils while government guidelines on the establishment of regional bodies were incorporated in the amended legislation.

Without a legislative framework, regional and community structures would become loose coalitions of community interests and organisations developed by and dependent on government initiative and interventions. The arrangements were potentially divisive.

There was also a perception that the new Commonwealth arrangements would 'go around' regional bodies and deal directly with communities, individuals and organisations without giving them the capacity to engage

effectively with government. Already there was a perception that the focus on implementing the arrangements is getting Departments up to administrative speed and leaving Regional Councils out of the loop.

Mr. Jeffries said that the Murdi Paaki Regional Council held to the view that improving economic, social and environmental well-being could best be achieved where national and state priorities were fully aligned with the aspirations of Aboriginal and Torres Strait Islander people at the regional and community levels. The framework for investment in Aboriginal and Torres Strait Islander services must be regional plans structured to reflect the Commonwealth Government's funding and performance reporting regime and to align government and community priorities.

Regional bodies would determine and negotiate functional priorities and special initiatives consistent with the COAG framework and mutual obligation. Communities would assume responsibility for engaging with Departments on specific projects. Regional Coordination Centres would be responsible for funds management, performance reporting and providing Secretariat services to regional bodies.

Mr. Jeffries said the Regional Council saw a governance and service delivery framework incrementally involving a package of actions consistent with the new arrangements, including:

- A single national budget submission;
- Coordinated regional budgets identifying all Departmental inputs;
- Greater coherence and clarity in the way individual departments operate;
- Transparent responsibility and accountability;
- The setting of performance targets;
- A balance between mainstream funding and local initiatives;
- Flexibility to move funds across boundaries to meet identified community priorities; and
- A single regional Budget outcome determined by the communities themselves within which Departmental outputs are aligned and performance assessed.

Concluding his presentation, Mr. Jeffries said:

We advocate the right of Aboriginal and Torres Strait Islander people to be able to exercise and enjoy our fundamental human rights along with other Australians, to receive services comparable with the Australian standard and to participate equitably in Australian society with the same opportunities as other Australians. This is the basis of the partnership between Aboriginal and Torres Strait Islander people and government. There can be no partnership without participation.

There can be no doubt that the delivery of programs and services to Aboriginal and Torres Strait Islander people represents the greatest challenge for today's public sector management. The present arrangements lack the balance between Indigenous involvement in decision-making and public sector performance. In the end, the two must go together.

Our approach involves establishing jurisdiction for Aboriginal and Torres Strait

Islander communities in our relationships with government and the Australian community. Fundamental to establishing jurisdiction are the terms of engagement with government to control our own development.

We are told that whole of government community engagement is about the cumulative impact of government policies and programs on communities with their involvement. External assistance and interventions should contribute to rather than define the outcome.

In support of its position, the Council drew on the thoughts of Professor Larissa Behrendt⁵:

The key to the way forward is in the concepts and rights that we have implied into the terms ‘self-determination’ and ‘sovereignty’ when we use those words to describe a vision of what we would like our communities to be like and the way we want to live our lives as Indigenous peoples.

The Council argued that:

It is our view that Australia has reached that level of political maturity. Rather than turning back the clock to serve limited ends, we should be looking for structures embedded in legislation which take the nation forward in its relationship with Aboriginal and Torres Strait Islander people.

⁵ Professor Larissa Behrendt, *Globalisation and Self-determination: The challenges for Sovereignty and Governance*, Indigenous Governance Conference, 3-5 April 2002, Canberra.