

CHAPTER V

From Legislative Participation to Ministerial Control

Since the 1967 referendum which gave the Commonwealth and the states concurrent powers to make laws for Aboriginal and Torres Strait Islander people, there has been a history of successive governments wanting to establish consultative, advisory and governance structures to achieve better outcomes for Indigenous Australians. As Commonwealth influence was extended, and Federalism defined the roles and responsibilities of each sphere of government, coordination of government and agency efforts became a necessary consideration.

In this search, successive governments had progressively established and abolished a long list of advisory, representative and administrative bodies. These have included the National Aboriginal Consultative Committee (NACC), the National Aboriginal Conference (NAC), the Department of Aboriginal Affairs, the Aboriginal Development Commission, The Aboriginal and Torres Strait Islander Commission (ATSIC), and Aboriginal and Torres Strait Islander Services.

The first elected representative body was the NACC, established by a Labor Government. After reviewing its performance, a new Coalition Government established the NAC and the Council for Aboriginal Development, two linked entities. A subsequent Labor Government abolished the NAC and established ATSIC and its integrated 35 regional councils.

ATSIC was then abolished in 2004 and replaced by a hierarchy of administrative and advisory structures. There was no longer a national representative body of Aboriginal and Torres Strait Islander people and no legislative framework for participation; though informal arrangements for ‘engagement’ recognised the need for Indigenous people to inform the way governments provide services.

The Government’s new arrangements in Indigenous affairs post ATSIC involved the following:

- Transferring all program responsibilities to mainstream government departments;
- Negotiating bi-lateral agreements with state and territory governments;
- Shared Responsibility Agreements with families and individuals; and
- Regional Partnership Agreements with Aboriginal and Torres Strait Islander people.

The *ATSIC Act* was a governance model of legislative participation in government decision-making, recognising the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society. The objectives of the *ATSIC Act*

were to:

- Ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;
- Promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;
- Further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and
- Ensure co-ordination in the formulation and implementation of policies affecting Aboriginal persons and Torres Strait Islanders by the Commonwealth, State, Territory and local governments, without detracting from the responsibilities of State, Territory and local governments to provide services to their Aboriginal and Torres Strait Islander residents.¹¹⁰

These objectives remained in the amended legislation, the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* (Cth) (hereafter named the *ATSIC Amendment Act*), effective from 1 July 2005, and were a valid reference point for considering Indigenous participation, but removed the structural support (ATSIC) for them. The Government claimed that they continued to validate the way legislation can provide Aboriginal and Torres Strait Islander people with an effective participatory voice. The then Minister for Immigration, Multicultural and Indigenous Affairs, Phillip Ruddock, stated:

They are instructive benchmarks we can use to examine how the Commission has performed. They are also, in my view, a sound basis on which to engage and empower Indigenous people in a partnership aimed at making their lives better.¹¹¹

The preamble to the amended legislation reflected this policy intent by stating:

... WHEREAS it is also appropriate to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government.¹¹²

Regional Councils had also been key elements of the ATSIC system with their key functions outlined as being:

- To formulate, and revise from time to time, a regional plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of the region;
- To assist, advise and co-operate with the Commission, the TSRA, other Commonwealth bodies and State, Territory and local government bodies in the implementation of the regional plan;
- To make proposals, in accordance with section 97, in relation to the region;

¹¹⁰ *Aboriginal and Torres Strait Islander Commission Amendment Act, 2005* (Cth).

¹¹¹ The Hon. Phillip Ruddock, MP, Minister for Immigration, Multicultural and Indigenous Affairs, 'ATSIC and its Future', Address to the Bennelong Society, 2003.

¹¹² *Aboriginal and Torres Strait Islander Commission Amendment Act, 2005* (Cth).

- To receive, and to pass on to the Commission and the TSRA, the views of Aboriginal persons and Torres Strait Islanders about the activities, in the region, of the Commission, the TSRA, other Commonwealth bodies and State, Territory and local government bodies;
- To represent Aboriginal and Torres Strait Islander residents of the region and to act as an advocate of their interests.¹¹³

In a speech he made soon after the new arrangements had been announced, the Chairman of MPRC, Sam Jeffries, said the missing link in the new arrangements was empowerment. Empowerment was a central pillar of the ATSIC system and the Government's contract with it. Empowerment, he argued, was now incidental to the achievement of government funded outcomes through an administratively driven process of coordination and used the following words:

Empowerment has been replaced by disempowerment. We have been disconnected from the machinery of government. Indigenous governance, a centrepiece of the Council of Australian Government's own prescription for change, no longer features in the arrangements. For us the arrangements represent bad governance, where governance is about the whole system of being connected – advocacy, representation, participation and service delivery, and not just about government services. Whereas the ATSIC structure interposed a system of national and regional governance, we will now have to re-build from the bottom up. In examining how we might make Connecting Government work for us, just as we made the ATSIC system work for us, I see our goal as being to re-connect Aboriginal and Torres Strait Islander people with government as a fundamental plank in our own reform agenda of self-determination.¹¹⁴

The new arrangements had been outlined by Mr. Hargrave, the then Minister for Citizenship and Multicultural Affairs, on 27 May 2004 in the following way:

Going beyond the abolition of the ATSIC board, replacement of regional Councils and consequential amendments in this bill, the government will be introducing radical and necessary changes to the way in which services are delivered to Indigenous Australians. The changes will build on what we have learnt from the whole of government approach adopted in the COAG Indigenous trials currently operating in each state and territory.¹¹⁵

The new arrangements would involve:

- Allocating all programs for which ATSIC and ATSIS were responsible to mainstream government agencies;

¹¹³ATSIC Act, 1989 (Cth), s 94.

¹¹⁴ Sam Jeffries, Chairman, Murdi Paaki Regional Council, *Building relationships: keeping an eye on the bigger picture: pathways to regional autonomy seminar, Regional Autonomy: Lost Cause, Broken Promise or new challenge?* The new agenda: connecting government and Aboriginal and Torres Strait Islander people.

¹¹⁵ House of Representatives, *Hansard*, 27 May 2004.

- New measures to enhance coordination and accountability;
- A Ministerial Task Force chaired by the Minister responsible for Indigenous affairs to provide ‘whole of government’ leadership on Indigenous issues;
- A Secretaries Group to support the ministerial task force;
- Establishing a National Indigenous Council to provide policy advice to the government at the national level;
- Regional agreements and shared responsibility agreements at the local level;
- Discussing the best way forward with the States and Territories at the next meeting of the Council of Australian Governments (COAG);
- A new Office of Indigenous Policy Coordination in the Department of Immigration and Multicultural and Indigenous Affairs to provide policy advice to the Minister, coordinate policy development and service delivery across government and oversee relations with state and territory governments; and
- A network of Indigenous Coordination Centres in rural and remote areas to replace ATSIC/ATSIS offices and operate as a multidisciplinary team offering a whole of government service to local communities.

Mr Hargraves said that while some regional councils worked well, arrangements for engaging with Indigenous Australians at the regional and local level needed to be improved. ATSIC's regional councils would have the opportunity for input, recognising that different models were likely to emerge in different regions and jurisdictions.

The Government had given two reasons why it had abolished ATSIC and its regional council structure. Primarily, the government was not comfortable with the idea of Aboriginal and Torres Strait Islander people having their own separate elected body. Indeed, in the view of the Government, it was an experiment that had failed.¹¹⁶

The Government had also come to perceive ATSIC as being preoccupied with ‘a rights agenda’. In an address to an ATSIC National Policy Conference in Canberra on 26 March 2002, Ruddock, argued that the language of the rights debate was a debate of the past and that modern commentators were challenging those paradigms.¹¹⁷ This was primarily because the rights debate involved talk about structures, bureaucracy, and separate entitlements.

Echoes of Ruddock’s presentation were apparent when, in announcing the abolition of ATSIC, the Prime Minister had said it was the Government’s belief that:

... it had become too preoccupied with what might loosely be called symbolic issues and too little concern with delivering real outcomes for Indigenous people.¹¹⁸

¹¹⁶ The Hon. John Howard, Prime Minister, Press conference, 15 April 2004.

¹¹⁷ The Hon. Phillip Ruddock, Minister for Immigration, Multicultural and Indigenous Affairs, Changing Direction, ATSIC National Policy Conference, *Setting the Agenda*, 26 March 2002.

¹¹⁸ The Hon. John Howard, Prime Minister, Joint Press Conference with the Minister for

Mal Brough added further weight to what Indigenous people perceived as a latent hostility to ATSIC underpinning government policies on a number of occasions when he stated:

The much misunderstood concept of collective self determination and separateness meant to help Indigenous Australians lead independent lives has in fact for many achieved the opposite. Local people have been disempowered. ATSIC was not the answer despite the good intentions of those that worked within it. Now it has gone, we can move on.¹¹⁹

And when asked during an interview why there was still such a significant problem (in the situation of Aboriginal and Torres Strait Islander people) after being in office for 11 years – ‘is it just too hard?’ – he responded with:

The majority of time that we've been in office, ATSIC had the responsibility as an elected Indigenous body to actually look after the welfare of the majority of Indigenous people. And it failed miserably, that's why I'm totally opposed, as are most Indigenous people, to the Labor Party saying they want to bring back another body to take over the responsibility that is mine, as minister, or whoever else might be in that place of the government of the day.¹²⁰

When commenting on a review commissioned by the Government into the Community Housing and Infrastructure Program which had been administered by ATSIC, Brough stated that:

The review suggests ways of converting an ATSIC basket case into new opportunities for decent housing, home ownership and employment for locals in housing construction and maintenance.¹²¹

Therefore, the Government's initial focus in implementing its new arrangements was on achieving structural arrangements within the public service to replace the ATSIC system. This would involve the creation of a National Indigenous Council as an advisory body, a Ministerial Task Force, a Secretaries' group, an Office of Indigenous Policy Coordination and Indigenous Coordination Centres drawing initially on staff who had previously serviced regional councils.

Secondly, the Government's new arrangements required Indigenous people to establish regional representative mechanisms different from the statutory

Immigration, Multicultural and Indigenous Affairs, Senator Amanda Vanstone, Parliament House, Canberra, 15 April 2005, announcing the abolition of ATSIC.

¹¹⁹ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, 'Blueprint for Action in Indigenous Affairs', National Institute of Indigenous Affairs Governance Series, Canberra, 5 December 2006.

¹²⁰ ABC Insiders Program, 27 May 2007.

¹²¹ The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, Review Recommends Major Reform of Indigenous Housing, Press Statement, 8 March 2007.

framework provided by the *ATSIC Act*. As to how these mechanisms might be implemented, the Prime Minister, in announcing the new arrangements, said that the abolition of regional councils ...

... does not in any way preclude processes whereby Indigenous people themselves will in different areas, according to their own priorities, elect bodies and people to represent them, and the Government will in the course of consulting different sections of the community, be very keen to consult any bodies that may emerge from that process.¹²²

Describing the functions of the new representative arrangements, the then Minister for Immigration, Multicultural and Indigenous Affairs, Senator Vanstone stated that:

In keeping with the Government's desire to engage at the community level, the new bodies are to act as the interface between communities and governments. They will help articulate community views and provide a framework for contributing to Regional Partnership Agreements.¹²³

As mentioned earlier, in place of legislative authority for Regional Councils, the Government's new arrangements provided for 'regional engagement arrangements' that Indigenous people themselves would establish to provide leadership and be accountable to the people and communities they represent.¹²⁴

Immediately after the new arrangements had been introduced, the Government reported that regional engagement arrangements were evolving in a number of regions 'to help Indigenous people talk to government and participate in program and service delivery'.¹²⁵ These engagement arrangements were seen as mechanisms to make and implement agreements between government and Indigenous people based on the principles of partnership, shared responsibility and self-reliance.

The Government declared that it did not want to impose structures, but would support and work with arrangements that were designed locally or regionally and accepted by Indigenous people.¹²⁶ The emerging Murdi Paaki Regional Assembly met the Government's new requirements, as not a 'western

¹²² The Hon. John Howard, Prime Minister, Press conference, 15 April 2004.

¹²³ Senator Amanda Vanstone, Minister announces new representation arrangements, 29 June 2005.

¹²⁴ Department of Families, Community Services and Indigenous Affairs, *Indigenous Affairs Arrangements, New and Expanded*, New and Expanded Edition, August 2006, p. 9. In 2004 the Government issued an initial document 'New Arrangements in Indigenous Affairs'. This was up-dated in 2006 and issued under the title 'Indigenous Affairs Arrangements'. The section on 'Indigenous representation' was replaced with a more comprehensive section on 'Regional Engagement and Intensive Interventions'.

¹²⁵ Department of Families, Community Services and Indigenous Affairs, *Indigenous Affairs Arrangements, New and Expanded*, New and Expanded Edition, August 2006, p. 40.

¹²⁶ *Ibid.*

construct¹²⁷ of government, but as an initiative that grew out of Aboriginal communities in far western NSW and in the process acquired a particular legitimacy.

¹²⁷ Senator Amanda Vanstone, Minister for Immigration, Multicultural and Indigenous Affairs, Helping Aborigines to Help Themselves, Speech 1 July 2006.