

CHAPTER 23

The Senate Select Committee on the Administration of Indigenous Affairs

In response to the government's proposed new arrangements, on 16 July 2004 the Senate resolved to appoint a Select Committee on the Administration of Indigenous Affairs, to report by 31 October 2004, into:

- The provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004;
- The proposed administration of Indigenous programs and services by mainstream departments and agencies; and
- Related matters.

When Parliament was prorogued in September 2004, the Committee ceased its activities. It was reconstituted on 17 November 2004, with the same terms of reference and a new reporting date of 8 March 2005.¹

Because of the perceived impact of the new arrangements on governance arrangements in the Murdi Paaki Region, the Murdi Paaki Regional Council made a detailed submission to the committee and appeared before it at hearings in Moree.

While the Council saw value in having a dedicated Indigenous service agency, Aboriginal and Torres Strait Islander Services, the central thrust of its submission and presentation before the committee was on the need for legislative authority for arrangements whereby a service agency, together with other government Departments, were accountable to Indigenous people and directly linked to community involvement.

The strategy adopted by the Regional Council was to demonstrate the value of Regional Councils within the ATSIC system, based on the Murdi Paaki experience, and seek to have retained that part of the *ATSIC Act 1989* which related to Regional Councils if ATSIC were to be abolished.

There was also a window of opportunity to consolidate governance arrangements before the Regional Council was finally abolished in 2005 if it failed to preserve what had been developed in the region over the previous decade.

In its submission dated August 2004 to the Senate Select Committee,² the Council emphasised that it was making its submission pursuant to the Council's statutory duties under the *ATSIC Act 1989* (s. 94 (1) (e)).

The Council stated:

As the government begins implementing its new arrangements in the administration of Indigenous Affairs, Regional Councils constituted under the *ATSIC Act* have a

¹ Senate Select Committee Report, *After ATSIC - Life in the mainstream?* p. 1.

² Murdi Paaki Regional Council, *Re-connecting Government and Aboriginal and Torres Strait Islander People*, Submission by the Murdi Paaki Regional Council to the Senate Select Committee on the Administration of Indigenous Affairs, August 2004.

responsibility to influence the form of the new arrangements while negotiating themselves out of business in the next 12 months.

Until it is abolished, the Murdi Paaki Regional Council will continue to discharge its statutory responsibilities under the *ATSIC Act* to advocate the interests of Aboriginal and Torres Strait Islander people in the region.

This is both a reasonable and responsible position for the Murdi Paaki Regional Council to take in the absence of any prior consultation by the government with Aboriginal and Torres Strait Islander people as key stakeholders in the new arrangements.³

The Council asserted that in the way the government had determined the new arrangements there had been a denial of the voice of Aboriginal and Torres Strait Islander people.

In the view of the Council, the abolition of the Aboriginal and Torres Strait Islander Commission, the phasing out of Regional Councils over 12 months, and ‘mainstreaming’ all programs and services for Indigenous people had left a void for Aboriginal and Torres Strait Islander people at the regional level. The government now sought to fill this void by trawling for alternatives when effective structures already existed after more than a decade of Aboriginal and Torres Strait Islander people working with the system.

One consequence of the government’s decision was that the progress made in the last decade in strengthening the participation of Aboriginal and Torres Strait Islander people in decision-making and partnerships with government may be lost to an uncertain future.

It stated:

Under the umbrella of ‘connecting government’ the agencies have been given a mandate to improve the way they deliver services to Indigenous people. The assumption is that past efforts have not worked. If so, there has been a failure by mainstream agencies and the *ATSIC* system is being targeted for the perceived lack of outcomes.

The Council submitted that its position was not an argument for or against ‘mainstreaming’ of services for Aboriginal and Torres Strait Islander people. Indeed, the Council saw opportunities in all agencies now being required to accept their responsibilities; be accountable to government for their performance and re-structuring themselves to overcome a silo mentality. Rather, the submission was about how the decisions were made and who made them in relation to the way services were planned and provided and what their outcomes should be.

The Council claimed that Indigenous concerns over the government’s decision were growing as the implications and consequences of the government’s decision to disperse program management throughout seven different agencies with their own jurisdictional interests came to be fully

³ Murdi Paaki Regional Council, *Re-connecting Government and Aboriginal and Torres Strait Islander People*, Submission by the Murdi Paaki Regional Council to the Senate Select Committee on the Administration of Indigenous Affairs, August 2004.

appreciated.

As a result of extensive community consultations the Murdi Paaki Regional Council had already settled the region's representative and authority structures. These structures linked regional and community decision-making and joined community representation with service providers. The arrangements were already embedded in formal agreements between it, the Commonwealth and New South Wales Governments. It had yet to be demonstrated how these arrangements could be improved.

The Council went on to state:

As an elected representative body of Aboriginal and Torres Strait Islander people, the Murdi Paaki Regional Council has fundamental concerns about the government's proposed new arrangements at the regional level. They have the potential to be divisive and disempowering, lack legitimacy, and diminish our rightful place and participation in mainstream service delivery.

The creation of Indigenous Coordination Centres as administrative outreaches of government agencies to replace ATSIC Regional Offices embodies a significant disconnection between government and Indigenous decision-making. Rather than consolidating the achievements of the last 10 years, the proposed arrangements dismember them and reduce the capacity for Aboriginal and Torres Strait Islander people to engage in and negotiate effective and meaningful partnerships consistent with the COAG principles and the findings of the Commonwealth Grants Commission.

Whatever deficiencies the government may have perceived in the operations of the *ATSIC Act*, Regional Councils were effective forums of planning and decision-making, representative of all interests in the region.⁴

The Murdi Paaki experience had demonstrated that the best way to connect government service delivery was through institutions of Indigenous governance which had both a statutory foundation and legislative force.

While it was timely that government agencies should be made accountable for their responsibilities towards Aboriginal and Torres Strait Islander people, the 'bold experiment' was an administrative solution which had the potential to deny a regional representative focus as a benchmark for participation in government decision-making.

The Council's concern was that any new mechanisms, however they were developed, would be merely advisory and consultative and would lack the authority necessary to ensure mainstream agencies discharged their responsibilities towards Aboriginal and Torres Strait Islander people efficiently and effectively within a planning and priority setting framework. The result for Indigenous people was exclusion from participation in decision-making and the loss of a capacity for self-management and self-sufficiency.

Of particular concern was the absence of a coherent legislative framework that would facilitate the creation of governance arrangements. The Council believed the Torres Strait Regional Authority had value in the way it

⁴ Murdi Paaki Regional Council, *Re-connecting Government and Aboriginal and Torres Strait Islander People*, Submission by the Murdi Paaki Regional Council to the Senate Select Committee on the Administration of Indigenous Affairs, August 2004.

had built the bridge between Indigenous governance and service delivery while maintaining a separation of powers between the elected and administrative arms.

The Council exhorted the committee:

We would urge the committee to ensure the door is not closed on regional autonomy as it was originally conceived by government and to recommend a flexible legislative model within which representative Indigenous institutions may be re-constructed and incorporated in schedules to the umbrella legislation. A precedent for such a model is the Torres Strait Regional Authority.

There was a perception that the new Commonwealth arrangements would 'go around' regional entities so that agencies may deal direct with communities, individuals and organisations without necessarily giving them the capacity to engage effectively with government. Regional Councils were a fundamental aspect of that leadership capacity.

A structure of self-management and self-sufficiency within the Australian federal system, giving a voice to Aboriginal and Torres Strait Islander people at the regional level, was now being subsumed into an administrative process enabling government departments to work together to achieve their own outcomes through a system of Indigenous Coordination Centres responsible to the agencies involved.

The submission stated:

As former ATSIC Regional Offices, Indigenous Coordination Centres supported the decision-making of duly elected Regional Councils in the performance of their statutory functions. As purely administrative entities, they now lack a direct connection with Indigenous decision-making and return Aboriginal and Torres Strait Islander people to bureaucratic silos.

If connecting government as a policy approach is to achieve improved outcomes for Aboriginal and Torres Strait Islander people, it needs to be directly linked with institutions of Indigenous governance, underpinned by a coherent and consistent legislative framework. At the moment we see ourselves being disconnected from decision-making.

Murdi Paaki Regional Council had already put in place responsible governance arrangements that both empowered communities and assisted agencies in their service delivery process. These arrangements involved community working parties representative of 16 major and associated communities and a Regional Assembly within which communities were directly represented.

As a leading Australian Government COAG Trial site, the Assembly was committed to working closely with government and non-government agencies to plan and coordinate the delivery of appropriate, culturally diverse, high-quality programs and services to the people of the Murdi Paaki region.

As a collective leadership of the Murdi Paaki region the Assembly's role was to provide the highest standard of governance, accountability, advocacy and direction. It supported the principles of responsibility, strong leadership, and commitment.

The arrangements already had the support of both the Commonwealth and NSW Governments and were embodied in a formal tri-partite agreement. Future development of the Indigenous Coordination Trials was structured around these arrangements which have demonstrated their viability.

The Council indicated that it was committed to ensuring an effective replacement for the Regional Council, with its attendant agreements, to ensure the maintenance of a strong regional voice and provide continuity of Indigenous involvement in decision-making and service delivery within a structure that had legitimacy with Aboriginal and Torres Strait Islander people.

Government acceptance and funding of representative and authority structures which had grown out of extensive community consultations in the last decade will determine the credibility of the new arrangements.

The approach of the Murdi Paaki Regional Council in charting a course towards better decision making and outcomes at the regional level for Aboriginal and Torres Strait Islander people followed the government's election commitment at the time to explore ways of achieving what was called 'greater regional autonomy within the existing ATSIC structure.'

The Council argued before the Senate committee that regional autonomy within the ATSIC system offered two related streams of empowerment:

- Effective representation and advocacy for Aboriginal and Torres Strait Islander people within a Federal system where responsibility for providing services for Aboriginal and Torres Strait Islander people is a shared responsibility – between Commonwealth, State and Local Government and with Indigenous people; and
- The delivery of services in accordance with the needs and priorities identified by Aboriginal and Torres Strait Islander communities.

The Council explained to the committee that its approach to regional governance linked four key elements of reform – self determination, regional autonomy, good governance, and improved service delivery. It saw these principles as being a pathway to overcoming the profound disadvantage of poverty identified by the Commonwealth Grants Commission by returning to Aboriginal and Torres Strait Islander people the controlling influence over their lives and making agencies more responsive to their needs.

The Council went on to outline details of the governance arrangements involving the establishment of a Regional Authority (similar to the TSRA) incorporating a new system of community representation and participation more appropriate to the interests of Aboriginal and Torres Strait Islander people in the Murdi Paaki region. It argued that the creation of the TSRA was a breakthrough in regional autonomy and demonstrated the capacity of the *ATSIC Act* to achieve it.

Community Working Parties, which were the foundation of the new arrangements, pre-dated the Council's approach to regional autonomy as mechanisms to achieve coordination and community input in the delivery of

housing and infrastructure.

Community Working Parties were a broader based participative forum which brought together all community organisations, interest groups and individual community people. They operated on a community governance philosophy as opposed to corporate governance ideology. They were unincorporated bodies, they provided the policy, planning and advocacy functions, and they derived their legitimacy from their communities. They were owned by the communities themselves because they were of their making.

The Council said:

We welcome the Government's commitment at last to ensure that mainstream agencies accept their responsibilities and play their part in delivering equitable services for Aboriginal and Torres Strait Islander people. The securing of our rights brings obligations on their part. Whether agencies can do any better than they have done in the past remains to be seen. Improving accountability to us for the services they are funded to provide has always been part of the Indigenous agenda for reform.⁵

⁵ Murdi Paaki Regional Council, *Re-connecting Government and Aboriginal and Torres Strait Islander People*, Submission by the Murdi Paaki Regional Council to the Senate Select Committee on the Administration of Indigenous Affairs, August 2004.