

## **CHAPTER IX**

### **Shared Responsibility**

The Constitutional responsibility for the management of Indigenous affairs is shared between the Federal, State and Territory Governments. Each accepts the responsibility to improve performance and outcomes through better coordination and funding arrangements between them while working in partnership with Aboriginal and Torres Strait Islander people, whether in communities or directly with individuals and families. Essentially, the Federal Government is responsible for national policies and programs in Indigenous affairs, whereas State governments are responsible for the provision of services within their own jurisdictions (such as education, housing, police and emergency services, law and justice, community services and infrastructure). They use a mix of methods to deliver the services, including the provision of services directly or through the managing and funding of external providers. State government services are vital to community wellbeing. They are assessed for their equity, efficiency and effectiveness in achieving desired outcomes. Commonwealth programs also incorporate the provision of services and support for the provision of State services to meet federal objectives under financial arrangements between the Federal and State governments.<sup>188</sup>

### **The Council of Australian Governments (COAG) Framework**

In 1992, the Heads of Government formally recognised shared responsibility in Indigenous affairs when they endorsed the National Commitment to improved outcomes in the delivery of programs and services for Aboriginal Peoples and Torres Strait Islanders (the Commitment).<sup>189</sup>

The Commitment confirmed that the planning and provision of government programs and services was both a shared responsibility and a legitimate policy interest of all spheres of government. The Federal Government acknowledged that its special responsibility for Indigenous people derived from the amendment of the Australian Constitution following the referendum of 1967. The states recognised their role in the delivery of services and a responsibility to provide both mainstream and Indigenous-specific programs and services responsive to the special needs of Aboriginal and Torres Strait Islander people and to adapt and extend those services in consultation with them. The Commitment constituted a governance framework that directly involved Aboriginal and Torres Strait Islander people through ATSIC which was a party to the negotiations. The stated purpose of the Commitment was to:

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<sup>188</sup> See Productivity Commission, Review of Government Service provision.

<sup>189</sup> 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.

- Recognise the expressed wish of Aboriginal peoples and Torres Strait Islanders for a commitment to change, and an acknowledgment of their rightful place in and right to contribute to Australian society and to share in Australia's land, wealth and resources;
- Recognise that a National Commitment to improve outcomes in the delivery of programs and services for Aboriginal peoples and Torres Strait Islanders is required to:
  - Redress the underlying and fundamental causes of Aboriginal peoples and Torres Strait Islanders inequality and disadvantage including those identified by the Royal Commission into Aboriginal Deaths in Custody;
  - Confirm that the planning and provision of government programs and services to Aboriginal peoples and Torres Strait Islanders is a shared responsibility and a legitimate policy interest of all spheres of government;
  - Agree upon key principles and national objectives; and
  - Provide a framework for bilateral agreements to be entered into between governments for the delivery of specific programs and services.

In relation to services, the Commitment stated its aims were to:

- Ensure that Aboriginal peoples and Torres Strait Islanders receive no less a provision of services than other Australian citizens and in so doing aim provide:
  - Improved access of Aboriginal peoples and Torres Strait Islanders to mainstream programs;
  - Services which are adequate and culturally appropriate;
  - Appropriate information about their rights to and availability of services;
  - Effective resourcing of services; and
  - Aboriginal peoples and Torres Strait Islanders and communities with the opportunities to negotiate, manage or provide their own services.

The Commitment considered that services and programs would lead to improved outcomes if there was greater clarity concerning the roles and responsibilities of the various levels of government through clearer demarcation between policy, as well as operational and financial responsibilities associated with service and program provision.

The Commitment provided the framework within which bilateral agreements could be reached on individual services and programs. It espoused the principles and objectives of such agreements and confirmed the need to ensure that programs were targeted and allowed maximum flexibility and appropriateness in their delivery through the broad banding of funding.<sup>190</sup>

It was not until 2000 that COAG began taking further steps towards improving the situation of Aboriginal and Torres Strait Islander people by adopting a reconciliation framework that acknowledged the unique status of Indigenous

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<sup>190</sup> Council of Australian Governments, Communiqué, 7 December 1992.

Australians and the need for recognition, respect and understanding in the wider community.<sup>191</sup>

COAG agreed that many actions were necessary to advance reconciliation – from governments, the private sector, community organisations, Indigenous communities, and the wider community. Governments could make a real difference to the lives of Indigenous people by addressing social and economic disadvantage, including life expectancy, and improving governance and service delivery arrangements with Indigenous people.

Drawing on the lessons of ‘the mixed success of substantial past efforts to address Indigenous disadvantage’, COAG committed itself to an approach based on partnerships and shared responsibilities with Indigenous communities, program flexibility and coordination between government agencies, with a focus on local communities and outcomes. It agreed priority actions in three areas:

- Investing in community leadership initiatives;
- Reviewing and re-engineering programs and services to ensure they deliver practical measures that support families, children and young people. In particular, governments agreed to look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction; and
- Forging greater links between the business sector and indigenous communities to help promote economic independence.

COAG agreed to take a leading role in driving the necessary changes and would periodically review progress under these arrangements.<sup>192</sup> In April 2002, COAG considered a report on progress made in implementing the reconciliation framework, and stated in a communiqué that:

... (it)shows that all governments have made progress in addressing the COAG priorities of leadership, reviewing and re-engineering programs to assist indigenous families and promoting indigenous economic independence. Ministerial councils have also made progress in developing action plans and performance reporting strategies, although this has been slower than expected.<sup>193</sup>

To underpin the commitment to reconciliation and to drive future work, COAG agreed to a trial a whole-of-governments cooperative approach in up to ten communities or regions. The aim of these trials was to improve the way governments interacted with each other and with communities to deliver more effective responses to the needs of Indigenous Australians. The lessons learned from these cooperative approaches would be able to be applied more broadly. The approach would be flexible in order to reflect the needs of specific communities, build on existing work, and improve the compatibility of

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<sup>191</sup> Council of Australian Governments, Communiqué, 3 November 2000.

<sup>192</sup> Ibid.

<sup>193</sup> Council of Australian Governments, Communiqué, 5 April 2002.

different state, territory and federal approaches to achieve better outcomes.

COAG also agreed to commission the Steering Committee for the Review of Commonwealth/State Service Provision to produce a regular report against key indicators of Indigenous disadvantage. The report would help to measure the impact of changes to policy settings and service delivery and provide a concrete way to measure the effect of COAG's commitment to reconciliation through a jointly agreed set of indicators.<sup>194</sup>

On 25 June 2004 a significant development in the deliberations which was to form the foundation of future inter-governmental relations in dealings with Aboriginal and Torres Strait Islander people was COAG's endorsement of the 'National Framework of Principles For Service Delivery To Indigenous Australian' (the Framework). The Framework committed governments to Indigenous participation at all levels. The Framework also articulated a willingness to engage with representatives, adopting flexible approaches and providing adequate resources to support capacity at the local and regional levels.<sup>195</sup>

This meeting was also significant in that it reaffirmed COAG's continuing commitment to advance reconciliation and address the social and economic disadvantages experienced by many Indigenous Australians.

The principles of the Framework incorporated many aspects including: shared responsibility, harnessing the mainstream, streamlining service delivery, establishing transparency and accountability, developing a learning framework and focusing on priority areas. These principles were to provide a common framework between governments that promoted maximum flexibility to ensure tailored responses and help build stronger partnerships with Indigenous communities. They also guided bilateral discussions between federal and each state and territory governments on new arrangements for Indigenous affairs and on the best means of engaging with Indigenous people at local and regional levels.

The principles also built on the 'promising early progress' of the whole-of-government trials of new ways of working with Indigenous communities commencing with local Indigenous communities in eight sites across Australia following its April meeting.

COAG reaffirmed its strong commitment to supporting the trials and to supporting participating communities. It would continue to work through the processes agreed at each site and to improve cooperation. It would support adequately and resource community participation in the trials and pursue

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<sup>194</sup> Council of Australian Governments, Communiqué, 5 April 2002.

<sup>195</sup> Council of Australian Governments, Communiqué, 25 June 2004.

innovation and flexibility in government policy, and in programs and service delivery to be able to respond to community-identified issues and directions. The trials provided an important opportunity to identify what works, what does not work, and how to learn from these lessons?'.<sup>196</sup>

At its meeting in June 2005, COAG, in receiving reports on the trials and the framework, reaffirmed its commitment to work together with communities in an ongoing partnership, noting 'the continuing good progress made in advancing the principles set out in the framework ' Cross-jurisdictional collaboration, it said, had been advanced through bilateral agreements on service delivery. The Federal Government had signed agreements with the Northern Territory, Queensland and South Australia, and agreements with other jurisdictions were 'progressing well'.<sup>197</sup>

COAG further noted that the continuation of its trials were 'demonstrating that a partnership approach between governments and communities can make a real difference for Indigenous Australians'.<sup>198</sup>

On 10 February 2006, COAG agreed that a long-term, generational commitment was needed to overcome Indigenous disadvantage and agreed to the importance of significantly closing the gap in outcomes between Indigenous people and other Australians.

COAG's future work would focus on those areas identified for joint action which had the greatest capacity to achieve real benefits for Indigenous Australians in the short and long term. COAG agreed to establish a working group to develop a detailed proposal for generational change including specific, practical proposals for reform which reflect the diversity of circumstances in Australia. The working group would consider how to build clearer links between the Overcoming Indigenous Disadvantage framework, the National Framework of Principles for Delivering Services to Indigenous Australians, the COAG Reconciliation Framework and the bilateral agreements between the Commonwealth and State and Territory Governments.<sup>199</sup>

Again, on 13 April 2007, COAG reaffirmed its commitment to closing the gap between Indigenous people and other Australians over a generation and resolved that the initial priority for joint action should be on ensuring that young Indigenous children get a good start in life.

COAG requested that the Indigenous Generational Reform Working Group prepare a detailed set of specific, practical proposals for the first stage of

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<sup>196</sup> Ibid.

<sup>197</sup> Council of Australian Governments, Communiqué, 3 June 2005.

<sup>198</sup> Council of Australian Governments, Communiqué, 10 February 2006.

<sup>199</sup> Council of Australian Governments, Communiqué, 14 July 2006.

cumulative generational reform for consideration by COAG as soon as practicable in December 2007. National initiatives would be supported by additional bilateral and jurisdiction specific initiatives as required to improve the life outcomes of young Indigenous Australians and their families.

COAG also agreed that urgent action was required to address gaps in data to enable reliable evaluation of progress and transparent national and jurisdictional reporting on outcomes. COAG also agreed to establish a jointly-funded clearing house for reliable evidence and information about best practice and success factors. COAG requested that arrangements be made as soon as possible for consultation with jurisdictional Indigenous advisory bodies and relevant Indigenous peak organisations.<sup>200</sup>

### **The COAG Trials**

In April 2002, COAG agreed to a trial of agencies working together with Indigenous communities in selected regions to provide more flexible programs and services based on priorities agreed with communities.<sup>201</sup> The Murdi Paaki region was among the sites chosen. The expectation was based on a need to improve outcomes and the way to do that was twofold:

- Governments must work together better at all levels and across all departments and agencies; and
- Indigenous communities and governments must work in partnership and share responsibility to achieve outcomes and build the capacity of people in communities to manage their own affairs.

Additionally, there were three fundamental elements which were to:

- Improve the community's capacity to set its own direction;
- Change the way governments work internally; and
- Change the way governments work with the Indigenous community.<sup>202</sup>

Among the outcomes to be achieved were:

- Greater community influence over the use of public money; and
- More opportunities for community members to get involved in decision making.

The specific objectives of the trials were to:

- Tailor government action to identified community needs and aspirations;
- Coordinate government programs and services where this will improve service delivery outcomes;
- Encourage innovative approaches traversing new territory;

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<sup>200</sup> Council of Australian Governments, Communiqué, 13 April 2007.

<sup>201</sup> Communiqué by Council of Australian Governments, 5 April 2002.

<sup>202</sup> The Hon. Gavin Jennings, Minister for Aboriginal Affairs (Victoria) 23 September 2003.

- Cut through blockages and red tape to resolve issues quickly;
- Work with Indigenous communities to build the capacity of people in those communities to negotiate as genuine partners with government;
- Negotiate with the relevant people in Indigenous communities agreed outcomes, benchmarks for measuring progress and management of responsibilities to achieve those outcomes; and
- Build the capacity of government employees to be able to meet the challenges of working in this new way with Indigenous communities.<sup>203</sup>

In 2006, a synopsis review of the Trial Evaluations concluded that a major lesson learned was that:

A key mode for achieving ownership by Indigenous communities is the negotiation of effective partnership with communities. Effective partnerships require viable governance processes or structures and leadership in the communities. The implication for the Trials is the need to recognise that government personnel need to understand Indigenous culture as it affects the development and maintenance of partnership; *and* Indigenous leaders and communities need to understand government culture and constraints.<sup>204</sup>

Achieving ‘representative’ governance processes, however, was not easy, irrespective of the circumstances of the community.<sup>205</sup>

The evaluation of one site, in which capacity building and governance were the agreed priorities, concluded that the community was very clear that in order to work differently they needed to develop their capability to engage with the trial and with governments generally.<sup>206</sup>

Some of the other lessons learned across the sites included:<sup>207</sup>

- Local community governance mechanisms and processes must be developed to reflect local communities views/wishes and are likely to differ across communities – there is no ‘same size fits all’;
- Community leaders need to engage in these structures or they are not likely to be effective;
- Community governance structures and processes need some capability building and some resourcing of the participants if communities are to engage effectively;
- Using existing structures where these are working and building on existing strengths will foster trust and respect between governments and communities and is more likely to be an element of a successful community engagement strategy;
- Most of the community partners are quite capable of engaging with joint government processes and could do even more if they are well supported; and

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<sup>203</sup> Indigenous Communities Coordination Taskforce, Trial Objectives, online at: [www.icc.gov.au/communities/objectives/](http://www.icc.gov.au/communities/objectives/) (29 October 2003).

<sup>204</sup> Synopsis Review of the COAG Trial Evaluations, Report to the Office of Indigenous Policy Coordination (OIPC), Morgan Disney & Associates Pty. Ltd as Lead Company with Tracey Whetnall Consulting, Wis-Wei Consulting Pty Ltd, November 2006.

<sup>205</sup> Synopsis Review of the COAG Trial Evaluations, p. 16.

<sup>206</sup> Synopsis Review of the COAG Trial Evaluations, p. 20.

<sup>207</sup> Synopsis Review of the COAG Trial Evaluations, pp. 20-21.

- The importance of leadership by both government and Indigenous leaders was a significant lesson.

From a government perspective the leadership provided by Indigenous communities was an important part of engaging differently.

## **Fiscal Equalisation**

Fiscal equalisation, as it is officially called, has been at the centrepiece of federal/state relations in Australia's system of cooperative federalism. Fiscal equalisation is a process of financial redistribution relative to need. In the federal context it is about giving each state the financial capacity to provide equivalent standards of services.<sup>208</sup>

Horizontal fiscal equalisation examines, among other things, the cost of delivering services and the disabilities a state faces in delivering those services, including specific Aboriginal disability factors. Many Aboriginal people believe that the funding of programs and services for Aboriginal people by state and territory governments is inadequate, inequitable, and largely ineffective in reducing the social problems faced by Aboriginal people. A criticism of fiscal equalisation is that it equalises the capacities between state governments but it does not necessarily enhance equity between individuals.

The *Commonwealth Grants Commission Amendment Bill 1999* (Cth) represented a step towards 'providing a better basis for the distribution of funding for Indigenous affairs' – to improve the situation of Indigenous people by ensuring that an independent assessment of their need for services and programs is undertaken.<sup>209</sup> It was said to be central to the government's intention to ensure that funding for programs aimed at improving the situation of Australia's Aboriginal and Torres Strait Islander communities was distributed on a needs basis. It was noted at the time that Aboriginality was a specific disability factor in 18 of the 40 state functions the Commission analyses as it attempts to equalise the capacity of each state/territory to deliver the average standard services.

The aim of the Bill was to give the Commission the statutory authority to investigate the equities in the funding of works and services for Indigenous people. It was argued that the Commission's role in determining the fair distribution of federal funding between the states and territories was likely to be enhanced by recognising the need to address the endemic disadvantages faced by sections of the Indigenous people in the Australian community.

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<sup>208</sup> Commonwealth Grants Commission, *Architecture of Horizontal Fiscal Equalisation*, Issues Paper CGC 2006/03.

<sup>209</sup> Commonwealth Grants Commission Amendment Bill, 1999, Second Reading speech, 30 March 1999.



The new approach was designed to ‘increase the confidence that the Aboriginal and Torres Strait Islander communities have in the distribution of funds because it will give them greater assurance that the distribution is based on need.’ The reason for the amendment was that the Commission had been restricted to measuring the relative needs of the states and territories for untied Commonwealth funding and to advising on the needs of the small island territories. Its expertise in assessing the relative needs of different communities had been underutilised, and the Bill enabled the government to ask it to examine the needs of Indigenous people.<sup>210</sup>

The Commission’s terms of reference for a subsequent *Review of Indigenous Funding*, facilitated by the amendment, were narrowly based on relative need between Indigenous communities. The government described the report as a watershed in documenting and analysing the available information on the supply of and the demand for programs and services for Indigenous people. The Government also saw the report as providing a valuable basis for the further development of evidence-based policy in Indigenous affairs.<sup>211</sup>

A major criticism of the report was that it was not charged with assessing the deficit in the provision of services for Aboriginal and Torres Strait Islander people against the non-Indigenous Australian standard for services. The Commission’s response was that the terms of reference implied that achieving equity within the Indigenous community interpreted broadly as the people in each region being treated equally and the more effective targeting of Commonwealth funds should be the guiding principles for the inquiry.<sup>212</sup> For the government, this meant recognising that those living in rural and remote areas suffered greater disadvantage overall.<sup>213</sup>

In broad terms, the government’s response to the Commission’s report anticipated future government policy in Indigenous affairs.<sup>214</sup> The content of this policy included:

- Taking a whole-of-government approach by involving all relevant portfolio Ministers and the states and territories, working within the reconciliation framework set down by COAG;
- Increasing the focus on individuals and their families as the foundations of functional communities;
- Encouraging and supporting self-reliance and independence from welfare, with a focus on achieving education outcomes that lead to real jobs;

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<sup>210</sup> Ibid.

<sup>211</sup> Commonwealth Response to the Commonwealth Grants Commission Report on Indigenous Funding, 2001, June 2002.

<sup>212</sup> Commonwealth Grants Commission, Report on Indigenous Funding, 2001, p. 3.

<sup>213</sup> Commonwealth Response to the Commonwealth Grants Commission Report on Indigenous Funding, 2001, June 2002.

<sup>214</sup> Commonwealth Response to the Commonwealth Grants Commission Report on Indigenous Funding, 2001, June 2002, p. 6

- Strengthening leadership, capacity, and governance;
- Addressing the debilitating effects of substance abuse and domestic violence; and
- Increasing opportunities for local and regional decision making by Indigenous people, and improving program coordination and flexibility to respond to local needs.

Addressing the Bennelong Society after the Commission's report and while ATSIC was being reviewed, Mr Phillip Ruddock, gave a further indication of the future direction of government policy.<sup>215</sup> He acknowledged that Indigenous people in many rural and remote communities had problems accessing some of the basic amenities that others took for granted. This reality, he said, underlined the need to look at the way Indigenous-specific assistance was currently provided, and consider circumstances where it may be appropriate to target assistance more narrowly to those Indigenous individuals and families most in need. He noted that the Commission had found that 'the more remote regions tend to be those with the greatest level of socio-economic disadvantage, and those in physically accessible areas have the least disadvantage' recognising that Indigenous people as a group were disadvantaged when compared to the non-Indigenous Australian population.

Mr Phillip Ruddock further stated that the Commission had also found that, by and large, existing funding patterns did not reflect the actual distribution of Indigenous need. Moreover, unlike their urban counterparts, Indigenous residents in remote Australia often did not have a mainstream provider option and went on to suggest:

We therefore need to place greater reliance on mainstream services in urban and similar areas. Otherwise, by devoting Indigenous-specific resources to such locations, we both delay fixing the problem elsewhere and we effectively relieve the mainstream programs of some of their responsibility.<sup>216</sup>

Important as the review by the Commission was in setting operational benchmarks, there still remains significant underfunding for Aboriginal and Torres Strait Islander community services in the key areas of health, education, housing and infrastructure. Even though the government indicated at the time of announcing its new arrangements that the Commission would have an important role to play in them, there was no evidence that it had been asked to do so.<sup>217</sup>

The Northern Territory Intervention of 2007 opened the argument that since the

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<sup>215</sup> The Hon. Phillip Ruddock, MP, Minister for Immigration, Multicultural and Indigenous Affairs, ATSIC and its Future, Address to the Bennelong Society, 2003.

<sup>216</sup> Ibid.

<sup>217</sup> Senator Amanda Vanstone, Minister for Immigration, Multicultural and Indigenous Affairs, New Service Delivery Arrangements for Indigenous Affairs, Press Statement, 15 April 2004.

Federal Government had the concentration of revenue-raising powers and therefore, claims, as a result, to 'own' all monies distributed to the state – either as untied GST revenue grants or tied special purpose payments (both of which are raised by taxing residents) – the onus was on it to assume greater financial responsibility for resourcing Indigenous development and to overcome the accumulated deficit in the facilities and services available to them.

### **Striking the Balance**

Striking the balance was not an easy process. Prime Minister John Howard in 2007 pointed to the complexity of these elements when he said that the vision of the 1967 referendum:

... can only be realised in a culture of shared responsibility. Sometimes this will demand more from government; more listening, more responsiveness on the ground and, where it can make a difference, more resources.

But for Indigenous success to shine through sometimes, frankly, it demands less from government and more from Indigenous civil society; from the little platoons between the individual and the state. Like the family, the school community, the elders, the voluntary sector and Indigenous leadership. ....the movement for change in 1967 didn't start just because a government wanted it to. It started because enough of the Australian people wanted it.<sup>218</sup>

Two issues stand out from that statement:

- The nature of shared responsibility; and
- The government's perceived need for public support in making the necessary commitment of resources.

With the development of Indigenous policy under the stewardship of Brough at the time, it was clear that partnership could have many meanings. For Brough, the notion of ministerial responsibility, underpinned perhaps, by the Government's decision to abolish ATSIC as a result of a broader approach to dissatisfaction with statutory authorities,<sup>219</sup> meant control in exercising that responsibility.<sup>220</sup> In a television interview on ABC Brough made it clear that the responsibility was his, as Minister, 'or whoever else might be in that place of the government of the day'.<sup>221</sup>

The nature of Ministerial control was demonstrated by a focus on five selected

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<sup>218</sup> The Prime Minister, John Howard, Address to 'Their Spirit Still Shines' Commemorating the 40th Anniversary of the 1967 Referendum Old Parliament House, Canberra, 27 May 2007.

<sup>219</sup> The Federal Government, *The Uhrig Report*, 12 August 2004.

<sup>220</sup> The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, Interview, "The Insiders", ABC, 27 May 2007.

<sup>221</sup> Ibid.

Aboriginal communities – Wadeye, the Tiwi Islands, Hopevale, the town camps of Alice Springs, and Galiwinku.<sup>222</sup>

Of the Government's approach, Brough said that things could be achieved more quickly by taking a community-by-community approach as distinct from control by 'another body' stating:

The one thing I have learned very quickly is that if you just try to roll out a program, what happens in the Tiwi Islands and its unique circumstances will be entirely different to the central desert or Arnhem Land for that matter or Cape York. So you have to go to each community, sit down with the leadership, you have to work on a holistic approach, not targeting one or two issues, but the whole issue. It needs leadership, and it needs direction, and it needs support from the wider community.<sup>223</sup>

Dealing directly with these communities without any intervening representative framework was the preferred course of the Government's new arrangements. Similarly, a concern about 'rights' and bureaucratic structures may also have accounted for the Coalition Government's perceived reluctance to pursue Regional Partnership Agreements and the development of Regional Representative Bodies, notwithstanding their policy commitment to do so. It was also reflected in the extent of financial and other resource support to fund welfare reform trials in Cape York communities where social experimentation was occurring.<sup>224</sup>

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<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Cape York Institute, *From Hand Out to Hand Up, Cape York Welfare Reform Project, Design Recommendations*, 2007.