CHAPTER X

Connecting Government Policy and Indigenous Participation

From the Indigenous perspective, supported by other policy considerations, the implementation of the Commonwealth Government's new arrangements in Aboriginal administration, reinforced by the processes followed for the Northern Territory Intervention, pointed to the need for Aboriginal and Torres Strait Islander people to have a strong voice in the development process and in the delivery of programs and services by mainstream agencies, issues fundamental to their wellbeing.

To do this, in the view of the Murdi Paaki leadership, Aboriginal and Torres Strait Islander people needed to have the structures to represent and advocate their interests at various levels of interaction with government. Recent developments had suggested that the government would prefer to limit participation on the ground; that 'more consultation' delayed the exercise of government responsibility and was not in the interests of administrative effectiveness and efficiency.

While increased resources were required, there was a need to improve and strengthen the governance arrangements that were delivering much needed services to Indigenous communities, and to give Aboriginal and Torres Strait Islander people real opportunities to break the poverty cycle.

With government departments now responsible for the delivery of all services to Aboriginal people, representation and participation by Aboriginal people in the decision-making processes had become a critical element in future policy-making. Such participation went beyond the administrative and advisory structures which replaced the Aboriginal and Torres Strait Islander Commission (ATSIC). These replacement structures were primarily 'top down' arrangements to enable the exercise of unfettered ministerial responsibility in relations with Aboriginal and Torres Strait Islander people.

A natural focus for empowerment was the establishment of appropriate national and regional structures supported by a national agency with the legislative power to ensure accountable service delivery in accordance with community priorities. These arrangements should be seen separately from getting consensus on a national representative body which would perform a different policy and advocacy role but yet have a voice in a new agency.

In the experience of MPRC, the Indigenous voice must have recognition and credibility at the national level and derive its authority from regions and communities. The MPRC identified two elements in the process – governance arrangements integrated with the machinery of government, on the one hand, and a regional and community interface with government service delivery. The MPCR's position is summarised here:

> Regardless of structure, which may vary between regions, the issue is really about shifting decision-making powers from centralised control out to 'where the people live.' The starting point is what the people themselves determine is necessary to improve their livelihoods and wellbeing. It is about re-designing the rules of the game. It impacts on how policies are made, programs designed, and services delivered.
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> We may never be able to satisfactorily influence the way governments carve up the national cake and distribute resources, but we can have a more direct say in the way those resources are used to our benefit. Good governance is a tool for achieving a better result through strategic and coordinated management of all the inputs. It is even better governance when those directions are determined by the people involved.
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> … The proper coordination and integration of services to meet our needs on terms decided by and accountable to us does not involve throwing out the old and creating something new. It is about recognising what we already have and building on it.[225]

In taking steps to achieve a more effective delivery of services and better outcomes in social, economic and community development, MPRC felt that it could do better with the same allocation of funds and could expand services by targeting development and priorities that had been determined by communities.

Achieving this required, among other things, greater responsiveness by government agencies to the community's vision, needs and aspirations and for the MPRC to lead discussion within communities to challenge and redesign the way government agencies did business with Aboriginal and Torres Strait Islander communities. It also required a more appropriate governance system, a capacity to control the way services were delivered, and an authority to engage in partnerships and funding arrangements with Commonwealth, state and local governments in a more participatory way. It argued that overseas experience had seen the desirability of coordinated service delivery (or joined up government) by ensuring that duties were placed on government agencies to facilitate not only service delivery but to participate in the planning processes which determined priorities and defined outcomes and to be accountable for them.[226]

The MPRC advocated a national approach to the management of Indigenous affairs in Australia with the full participation of Aboriginal and Torres Strait Islander people in the decisions that affected their lives. Such arrangements might build on and link with complementary state arrangements to avoid overlap and duplication. Its consideration was premised on the view that the present arrangements in their various forms could be improved and that any arrangements must have real legislative power to make a difference, be practical in their application, reflect government policy, and have legitimacy

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[225] Mid-passage towards self-determination, a new ATSIC, submission by the Murdi Paaki Regional Council, in response to the ATSIC Review discussion paper, August 2003.
[226] Ibid.

with Aboriginal and Torres Strait Islander Communities (what has been described as 'cultural match').[227]

The consideration acknowledged the principles and arrangements established over a long period of attempting to achieve an effective governance arrangement for Indigenous people. It sought to separate a political entity from the administration of programs and services, but to structurally connect the two entities in the decision-making process. There was compelling research and data to consider a scheme of arrangements for the participation of Aboriginal and Torres Strait Islander people in government decision-making that moved from advice to authority.

An overarching policy framework existed in the declarations of the Council of Australian Governments (COAG) which had been examining Indigenous issues since 1990. Supporting the COAG framework was the language and intent of government policy which had underpinned the current arrangements. Experience had also shown that within the framework of the *ATSIC Act*, federal, state and local governments could work together through a process of service agreements, pooled funding, integration of programs and services, and direct Aboriginal and Torres Strait Islander participation in decision-making.

The importance of public policy interventions and their impact on the lives of Aboriginal and Torres Strait Islander people could not be underestimated. As a research team in the United States had observed:

> ….the economic and social wellbeing of (Indigenous people) should be a central concern in the making of policy, whether by tribes, the State, or the federal government. Just as a debate that ignores the issue of native rights is missing the boat, so too is one that ignores the impact policy is likely to have on the wellbeing of those most directly affected by it. [228]

There was a need for new professional expertise to be brought to the framework and new approaches to formulating and implementing policy by bringing together the expertise of relevant agencies and external thinking to frame a government policy response, as had been done in the Report of the Prime Ministerial Task Force on Emissions Trading.[229]

This Task Force had been informed by the views of a wide range of stakeholders with a broad range of expertise from government, industry and environmental organisations. This diversity significantly benefited benefit on

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[227] Stephen Cornell and Joseph P. Kalt, *Alaska Native Self-government and Service Delivery: What Works?* Native Nations Institute for Leadership, Management and Policy, Udall Centre for Studies in Public Policy, the University of Arizona, June 2003.
[228] Ibid.
[229] Australian Government, Prime Ministerial Task Force on Emissions Trading, Report of the Task Group on Emissions Trading, 2007.

the deliberations that took place.

The complexity of issues in Indigenous development represented a compelling case for a similar approach. This suggested a combination of Aboriginal and Torres Strait Islander people and professional experts working together to produce strategic responses to their situation. Taking into consideration all the available options and involving all agencies with responsibilities for service delivery and program management.

Because of the diversity of Aboriginal society, legislative flexibility was required to ensure that structures were appropriate to the special circumstances of individual communities and regions, building on their own functional, community and regional organisations. A legislative regime could permit a range of community responses and constitutions of regional entities that reflected the traditions of the communities they serve.

On the basis that all services would continue to be provided by mainstream agencies, it was appropriate to examine how existing government structures might be integrated with a more representative and accountable body. Drawing on attempts of the past to construct a framework of Indigenous governance, and building on what was working, there would be value in rationalising, consolidating and giving strategic coherence to existing administrative arrangements and to connect Aboriginal and Torres Strait Islander people with the responsibilities and accountability of government and their agencies.

On the basis of the arrangements already in place, services would continue to be delivered by mainstream agencies, but with a more authoritative participatory framework. These arrangements should be seen separately from obtaining consensus on a national representative body which would perform a different policy and advocacy role but yet have a voice in any new agency.

There was emerging acceptance that such an agency could include both Aboriginal and non-Aboriginal people. This would bring the required additional expertise to the operations of the agency, to open the doors on new thinking and ways of achieving the goals set by the government, as had been the case with the reform mechanisms funded in Cape York.

MPRC argued that the interim arrangements that involved the creation of Aboriginal and Torres Strait Islander Services (ATSIS), which had been working in parallel with ATSIC until its funding powers had been removed on the grounds of perceived conflicts of interest, suggested a way forward.

In announcing the decision on 17 April 2003 to separate the funding and policy roles within ATSIC, Mr Ruddock stated that he looked forward to supporting the ATSIC Board and Regional Councils in taking a more strategic approach so that their influence was extended; not only with regard to the programmes

for which they were directly responsible, but also by enabling them to engage with mainstream agencies with greater credibility and authority.[230]

The MPRC argued that the arrangements associated with joining ATSIS and ATSIC offered a way forward to strengthen the strategic role of the Commission and Regional Councils and build their influence over all programs and services. MPRC believed that the desired engagement with mainstream agencies foreshadowed by the Minister would be strengthened, with greater credibility and authority for ATSIC and Regional Councils, if legislation made the connection incorporating principles embodied in the Ministerial direction.[231]

To ensure that ATSIS operated within policies and strategies determined within the ATSIC system, it had been necessary to link the so-called elected and administrative arms by way of a Ministerial direction and a formal agreement between ATSIS and ATSIC.[232]

Legislation would prescribe the responsibility of agencies in meeting their service delivery obligations and in providing accountability to Indigenous people. All agencies would be required to participate with and support any structural arrangements in the development of regional plans and the construction of regional budgets based on the annual programs of government agencies.

Policy Precedents

In considering its response to the new arrangements, MPRC noted that the Government itself had identified effective governance arrangements as an integral part of any service delivery framework. The first Secretaries' Group Report under the Government's new arrangements observed that:

> Good governance is vital to enable Indigenous people to take part in economic development. It influences the way in which Indigenous organisations make decisions that can lead to sustainable economic results. Indigenous organisations need to adopt governance structures that are both culturally legitimate and effective.[233]

Similarly, Good corporate governance underpins the success of the 2,500 Indigenous corporations operating under the *Aboriginal Councils and*

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[230] The Hon Philip Ruddock, MP, Good Governance and Conflicts of Interest in ATSIC, Press Statement, IPS028/2003.
[231] Mid-passage towards self-determination, a new ATSIC, submission by the Murdi Paaki Regional Council, in response to the ATSIC Review discussion paper, August 2003.
[232] Commencement of Aboriginal and Torres Strait Islander Services, Press Statement by the Minister for Indigenous Affairs, Mr. Philip Ruddock. 1 July 2003 IPS 045/2003.
[233] Secretaries' Group Annual Report, 2005-2006 p. 33.

Associations Act 1976 (Cth).[234]

The *Overcoming Disadvantage Report* had this to say about governance:

> Governance has been closely linked with economic development and disadvantage, because it is a key determinant of the ability of Indigenous organisations and communities to make and implement decisions that achieve outcomes in a sustainable way. Indigenous community organisations operate within a web of Australian, State, Territory and local government policies, institutions, boundaries and frameworks. They deal with a multiplicity of departments and funding arrangements and government officials. These institutional arrangements can facilitate or impede good governance arrangements.[235]

These comments from a broad perspective all confirmed that greater representation and participation of Indigenous people at all levels of government would enhance responsiveness and legitimacy at the national level. Benefits might be seen in a number of ways, including the manner in which governments develop legislation, design and deliver programs for Indigenous people.

Another government paper, titled *Connecting Government*, stated that a high level of community engagement was likely to be appropriate where the solutions needed to be created by the external stakeholders themselves. Such an arrangement fell into the 'bottom-up' approach, sometimes referred to as 'capacity-building' or 'community development'.

It also stated that a sound whole of government approach required an understanding of how programs and policies might come together to affect particular communities, social groups, and sectors of the economy and/or regions. For example, it acknowledged that:

> Most whole of government priorities require close cooperation with external groups such as community organisations, businesses and other jurisdictions. Both the Government and the public expect external groups to contribute to the policy decision-making process itself and to the planning for implementation, in addition to being kept informed of decisions and actions and the reasons for them. [236]

This notion of 'partnership' between government and regions, or communities as they develop their own solutions to local problems, was already a fundamental principle of the government's regional policy statement, 'Stronger Regions, Stronger Australia'.[237] This statement noted that some special-purpose

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[234] Secretaries Group Annual Report, 2005-2006, p. 38.

[235] Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage*, 2007.

[236] Connecting Government, Whole of Government Responses to Australia's Priority Challenges, Management Advisory Committee 4 Canberra, 2004, p. 89.

[237] Connecting Government, Whole of Government Responses to Australia's Priority Challenges, Management Advisory Committee 4, Canberra, 2004, p. 98.

agencies had been created outside normal departmental structures to deal with issues that were important, contentious across a range of stakeholders, and 'not yet mature in the way in which they are perceived by the public or managed within government.' Their special status was used to symbolise a whole-of-government approach to a contentious and complex issue. They could be thought of as 'frontier agencies'. [238]

The Australian Greenhouse Office (AGO) was cited as one of these agencies intentionally structured to reassure external stakeholders that it was an expert body, neutral between the contending interests of a range of external stakeholders and dedicated to providing dispassionate advice and excellence in program administration. [239] Like Indigenous affairs, the complex greenhouse issue had engaged the interests of many portfolios, all sectors of the Australian economy, states, regions and non-government organisations.[240]

The AGO provided the opportunity to develop real depth of skill in a very complex subject, and a whole-of-government analytic and factual framework to underpin discussions of policy options at secretarial, ministerial and Cabinet level. By bringing together the major greenhouse programs, it ensured that policy learned from implementation experience and that the total effect of Australia's efforts to constrain emissions could be accounted for. [241]

Similar to the AGO, Indigenous development was seen as a cross-cutting issue. All agencies and jurisdictions had responsibilities towards Aboriginal and Torres Strait Islander people in both the provision of services and the development of policies and programs. Each agency could bring expertise to meeting the needs of Aboriginal and Torres Strait Islander people and overcoming their disadvantage through mainstream and special programs of assistance.

Another fundamental aspect of the government's implementation of programs and policy initiatives was 'stakeholder management.'[242] According to the *Best Practice Guide of the Department of Prime Minister and Cabinet* and the Australian National Audit Office:

> Stakeholder management starts with a clear objective for consultation, followed by an identification of the range of people and agencies with an interest in the initiative. It

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[238] Connecting Government, Whole of Government Responses to Australia's Priority Challenges, Management Advisory Committee 4, Canberra, 2004, p. 39.
[239] Ibid.
[240] Ibid.
[241] Connecting Government, Whole of Government Responses to Australia's Priority Challenges, Management Advisory Committee 4, Canberra, 2004, p. 39.
[242] Department of the Prime Minister and Cabinet and Australian National Audit Office, Implementation of Programme and Polity Initiatives, Making Implementation Matter, Best Practice Guide, October 2005.

> is important that stakeholders understand why they are being consulted and have a realistic expectation about their capacity to influence the implementation. The nature and means of consulting with stakeholders will, in part, reflect their involvement during the policy development phase… As with many aspects of planning for implementation, stakeholder engagement should happen as early as possible. [243]

The guide had this advice to ensure the effectiveness of stakeholder management:

> Governance structures should ensure that the legitimate interests of a range of stakeholders are properly and appropriately considered. The less stakeholders are involved, the higher the risk of failure during implementation. [244]

The guide went on to observe that consideration of stakeholder input was likely to improve practical knowledge of what may work on the ground and help thinking around a way forward, including from the end-user's perspective – 'that is from a customer-focused view.'[245] In implementing programs Departments were asked to weigh up and consider the risk and impact on implementation if particular stakeholders were not engaged, preferably from the start of the policy-making process.

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[243] Ibid.

[244] Ibid.

[245] Ibid.