

CHAPTER XI

An Indigenous Services and Performance Commission

Against the consolidation of the policy background the Murdi Paaki leadership saw opportunities to build on and improve the government's new arrangements. The Assembly remained committed to statutory involvement of Aboriginal and Torres Strait Islander people in government decision-making, drawing on the experience of MPRC. An analysis of the emerging situation encouraged the Assembly to outline a scheme of Indigenous governance to achieve the desired goals of connecting government, improving service delivery, and ensuring agencies remained accountable for their performance and providing for the participation of Aboriginal and Torres Strait Islander people in the machinery of government.

The new scheme would:

- Establish an Indigenous Services and Performance Commission (the Commission);²⁴⁶
- Incorporate criteria to recognise regional and community arrangements in each state jurisdiction;
- Provide for partnership arrangements with Aboriginal and Torres Strait Islander people; and
- Enable Aboriginal and Torres Strait Islander people to decide on a national representative body or assembly as part of the overall arrangements.

Acknowledging that departments were now responsible for providing services to Indigenous people, the Assembly proposed that the Commission itself would not have a program or service delivery function. Rather, the Commission would provide a point of policy interaction for those mainstream departments with responsibilities for delivering services to Aboriginal and Torres Strait Islander people.

While the *ATSIC Amendment Act* was a stripped down version of the *ATSIC Act*, its objects remained valid in providing the framework for the participation of Aboriginal and Torres Strait Islander people in government decision-making.

Rather than being a return to the old ATSIC, the arrangements would build on what ATSIC had already achieved, what was currently working under the new arrangements, and what had the potential to work better. The arrangements would provide direct linkages between government, agencies and Aboriginal and Torres Strait Islander people in the representation, advocacy and service delivery chain.

²⁴⁶ *Service Delivery and Performance Commission Act, 2005 (Qld)*.

As they currently stood, the objects of the *ATSIC Amendment 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.²⁴⁷

And to these objects could be added:

- To enter into partnership agreements with Aboriginal and Torres Strait Islander people; and
- To provide for the establishment of a national representative body of Aboriginal and Torres Strait Islander people.

Structures of participation within the *ATSIC Amendment Act* were limited to the Torres Strait Regional Authority and provided for the incorporation of Indigenous Business Australia and the Indigenous Land Corporation. Building on the existing administrative institutions and absorbing them, the Act could add a statutory representation and participation element consistent with the objects of the *ATSIC Amendment Act*.

The Government had indicated that its approach was to facilitate access to all services, rather than establish alternatives. This sentiment is reflected in this quote by Brough, who stated in 2006 that:

Mainstream providers will no longer be allowed to shirk their responsibilities to the first Australians. This means that they will have to step up to the mark. They will have to adapt their services to suit Indigenous Australians in the same way that they have done for other groups in Australian society.²⁴⁸

In framing a proposal for legislation to ensure the reconnection of Aboriginal and Torres Strait Islander people in machinery of government arrangements, the Murdi Paaki leadership was influenced by two instruments of public governance, firstly the *Service Delivery and Performance Commission Act 2005 (Qld)*²⁴⁹ with the object of helping government to:

²⁴⁷ *Aboriginal and Torres Strait Islander Commission Amendment Act, 2005 (Cth)*.

²⁴⁸ Mr. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, Blueprint for Action in Indigenous Affairs, National Institute of Governance - Indigenous Affairs Governance Series, Canberra 5 December 2006.

²⁴⁹ *Service Delivery and Performance Commission Act, 2005 (Qld)*.

- Meet the expectations of the community about the delivery of government services;
- Reduce inefficiencies, duplication and wastage in the delivery of government services;
- Improve the accountability of agencies for their delivery of services;
- Improve the delivery of government services by ensuring agencies use resources effectively and efficiently and adopt best practices;
- Encourage agencies to be proactive about establishing effective and appropriate performance frameworks, including planning and reporting practices; and
- Promote in agencies a culture of continuous improvement and performance management, including risk management.

And secondly, the Commonwealth Department of Human Services (part of the Finance and Administration portfolio) was established in association with the *Human Services Legislation Amendment Bill 2005* (Cth) on 26 October 2004. The objective of the Department was to improve the development and delivery of Australian Government social and health-related services to the Australian people, being responsible for ...

... ensuring the Government is able to get the best value for money in service delivery while emphasising continuous service improvement and a whole-of-government approach.²⁵⁰

The Department acted as a coordinating agency for a number of bodies with specific service delivery responsibilities. To do this the *Health Insurance Commission Act 1973* (Cth) and the *Commonwealth Services Delivery Agency Act 1997* (Cth) were amended to remove their Boards to bring the agencies within the direct control and responsibility of the Minister.

The Department described itself as a small and strategic core department with approximately 100 ‘committed people who are able to respond quickly to an issue and push ahead with reform’²⁵¹. It took a leadership role to direct, coordinate and broker improvements to service delivery through the six Human Services agencies responsible to the Minister - the Child Support Agency, CRS Australia, Centrelink, Medicare Australia, Australian Hearing and Health Services Australia, and to provide a ‘solid framework’ in which to operate and ensure the government received the best value for service delivery.

The Department’s staff was augmented from time to time by cross-agency working groups and collaborated with others across the government and within the Human Services portfolio to ‘lead and broker improvements to service delivery’²⁵². It did this by developing and communicating new service approaches, and overseeing the performance of existing services in a whole of government approach, ensuring that the way in which services were delivered

²⁵⁰ Department of Human Services, Annual Report, 2005-2006.

²⁵¹ Ibid.

²⁵² Ibid.

was considered when new policies were planned.²⁵³ In his second reading speech, the Minister for Human Services, Mr Hockey explained the rationale behind the new arrangements were because of the vital role of Centrelink and the Health Insurance Commission, they needed to move closer to government to ensure that their daily operations delivered the outcomes that government and taxpayers expected.²⁵⁴

There were pertinent and relevant similarities in both the Queensland legislation and the creation of the Department of Human Services to provide precedents for the way government services for Aboriginal and Torres Strait Islander people might be coordinated. For example, through a specific service agency responsible directly to the Minister, with a statutory Board to provide for the direct participation of Aboriginal and Torres Strait Islander people in decision-making. This would also be consistent with the arrangements under which ATSIC and ATSIIS had been joined by Ministerial direction.

For the Murdi Paaki leadership, the intention of any Commonwealth legislation would be to ensure performance of agencies in the delivery of services to Aboriginal and Torres Strait Islander people would be to give legislative force to the partnership between the government and Indigenous Australians. It would recognise Aboriginal and Torres Strait Islander people as the first peoples of Australia and their conjoined rights as Australian citizens and Indigenous people. Its aim would be to prescribe the way in which the government proposed to interact with and recognise Aboriginal and Torres Strait Islander people's rights and interests by providing for the maximum amount of participation possible.

The legislation would represent a significant change in the machinery of the Federal Government as it related to overseeing and improving the performance and accountability of agencies in the provision of programs and services for Aboriginal and Torres Strait Islander communities.²⁵⁵ It would also provide a legislative framework for effective structures of regional and community governance.

Another important element in any new arrangements would be to link any national representative body, once it was established, to the machinery of government. A model for such an arrangement existed in a much earlier report from 1976, the Review of the National Aboriginal Consultative Committee

²⁵³ Ibid.

²⁵⁴ The Hon. Joe Hockey, MP, Minister for Human Services, Human Services Legislation Amendment Bill 2005, House of Representatives, Hansard, 23 June 2005.

²⁵⁵ Recognition of inherent rights through legislative initiatives, materials were prepared by David C. Nahwegahbow of the firm, Nahwegahbow, Nadjiwan, Corbiere, North Bay, Ontario for a Conference held in Toronto, Ontario hosted by Indigenous Bar Association, October 18, 2002.

(NACC), known as the Hiatt Report.

The Hiatt Report recommended the establishment of a national representative body to be known as the National Aboriginal Congress (NAC) ²⁵⁶ would be constituted in equal numbers by members of the NAC and members appointed by the Minister. The aim was to distinguish between an elected (or political) arm, the management of programs by a government department, and advice to government. The NAC believed the time had come for an ‘exemplary step forward at the highest level from consultancy to authority’,²⁵⁷ recommending that the NAC/CAD have a policy role in relation to the then Department of Aboriginal Affairs. It was to be chaired by the Secretary of the Department ²⁵⁸ and be responsible for:

- Setting long term goals and objectives which the Government should pursue in the interests of Aboriginal development;
- Setting priorities for expenditure in the sphere of Aboriginal development; and
- Recommending to the Government programs to aid Aboriginal development.

The NAC/CAD had an agreed Charter requiring it to analyse, interpret and articulate the needs and views of the Aboriginal people in their electorate and represent their constituents at community, state and national level.²⁵⁹The NAC/CAD structure was considered to have merit in the climate of mainstreamed services with its focus on separation of powers between an elected and executive or administrative arm.

Under the government’s proposed arrangements, a Minister solely responsible for Indigenous affairs, preferably in Cabinet, would provide an exclusive focus on Indigenous issues, the coordination of all agency programs, and accountability for performance by agencies responsible for delivering services and programs for Aboriginal and Torres Strait Islander people.

It would be within the power of the Minister, on the advice of the Commission, to issue a statement of expectations to each Departmental Secretary outlining the performance requirements in providing programs and services for Aboriginal and Torres Strait Islander people and providing for departments to respond with a statement of intent. This would be similar to the arrangements outlined for the Department of Human Services, with the documents being made public. In the words of the Minister, the changes in governance arrangements would improve accountability and enhance the performance of

²⁵⁶ Subsequently named the National Aboriginal Conference, a Commission for Aboriginal Development – subsequently named the Council for Aboriginal Development (CAD) established in 1977.

²⁵⁷ National Aboriginal Consultative Committee: Report of the Committee of Inquiry 1976.

²⁵⁸ *Ibid.*

²⁵⁹ National Aboriginal Conference Secretariat, National Aboriginal Conference, Establishment, Role and Functions, March 1983, p. 81.

the departments and agencies, with the outcome being a better level of service.²⁶⁰ Within these arrangements cross-agency working groups would further improve coordination.

The Minister would be charged with re-shaping, in consultation with Aboriginal and Torres Strait Islander people, the fundamental relationship between government and Indigenous people and the way government interacts with them. The aim would be to ensure that ministerial discretion and administrative initiative in improving services be supported by the full participation of Aboriginal and Torres Strait Islander people in decision-making.

An Indigenous Services and Performance Commission would provide a legislative structure for the support, operations and functioning of key components of the administrative arrangements as they then existed.

The overall focus would be to expand and improve the delivery of services to Aboriginal and Torres Strait Islander people by integrating the disparate current functions and activities into one coherent statutory body, reflecting the government's commitment to a whole of government approach to Indigenous affairs. Direct linkage would be established with a national representative body when in a form agreed by Aboriginal and Torres Strait Islander people. The Commission would have seven core functions, being to:

- Provide high quality strategic advice to government and its agencies;
- Monitor Indigenous expenditure nationally and in each state in conjunction with the Commonwealth Grants Commission;
- Oversight program and service delivery to Indigenous Australians by government agencies;
- Provide evidence based research and statistical data in consultation with the Australian Bureau of Statistics;
- Report to Parliament on *Overcoming Indigenous Advantage* in consultation with the Productivity Commission;
- Manage Indigenous Coordination Centres in their interface with Indigenous communities; and
- Provide a Commonwealth interface at the regional and community levels

The Commission could comprise a mixture of professional experts and Aboriginal and Torres Strait Islander representatives appointed by the Minister. It could be chaired by an Aboriginal and Torres Strait Islander person of standing, possibly the elected Chairperson of any new national representative body. Membership could also include at least two Secretaries of Department and the Chairperson of the Productivity Commission.

²⁶⁰ The Hon. Joe Hockey, MP, Minister for Human Services, Human Services Legislation Amendment Bill, 2005, House of Representatives, Hansard, 23 June 2005.

The Commission's operations would ensure that government agencies responsible for delivering programs and services: (1) meet the expectations and are accountable to the Aboriginal and Torres Strait Islander community, (2) reduce inefficiencies and duplication in the delivery of government services, promote whole of government service delivery, and (3) manage partnerships with Aboriginal and Torres Strait Islander people. Legislation that compels program and service delivery agencies to consult with Aboriginal and Torres Strait Islander people in formal arrangements is a fundamental requirement.

The Commission would prepare for Parliament a 'State of Indigenous Australia' report, setting out continuing areas of socio-economic disadvantage and advising on strategic directions to be pursued in the ensuing three years. The Commission would examine program delivery agencies on the appropriateness of Indigenous expenditure, existing and proposed delivery mechanisms and new policy proposals.

In a relationship with a representative national body, the Commission would be the primary source of advice to government about future strategic directions for Aboriginal and Torres Strait Islander development without detracting from the ability of the national body to separately advocate Indigenous policy interests with the government. The legislation would provide for agencies to enter into agreements with the Commission about the way in which Indigenous programs and services were developed and implemented.

Without specific program and service delivery responsibilities the Commission would have a dynamic role being the primary source of strategic advice to government about Indigenous issues and the overall relationship between government and Indigenous people. In this role the Commission would provide high quality policy advice on the government's objectives, interests, and obligations relating to Indigenous peoples to address socio-economic disadvantage and accelerate Indigenous economic development. The Commission would be responsible for promoting higher achievement by Government agencies against a range of socio-economic indicators including education, training and employment, housing, health and economic development.

To assist in ensuring Indigenous access to adequate services, it would be the Commission's responsibility, including through its regional and community arrangements, to monitor all service providers and report to Parliament on achievements and gaps within their individual policy frameworks.

The Commission would establish formal relationships with the Australian Bureau of Statistics, the Commonwealth Grants Commission, the Productivity Commission, the Australian Institute of Aboriginal and Torres Strait Islander Studies and other research institutes, and program and service delivery agencies to establish indexes of Indigenous wellbeing to assist in the setting of targets for service delivery against which performance can be judged in 'closing the

gaps' between Indigenous and Non-Indigenous Australians.

Consistent with government policy and the expectations of Aboriginal and Torres Strait Islander people, the Commission would be tasked with developing and advising the Minister on appropriate 'interventions' based on evidence of Aboriginal disadvantage, propose goals and targets, prepare for government in consultation with agencies the global Commonwealth budget, interact with Departments to ensure effective coordination and accountability, promulgate guidelines for the establishment of regional structures to ensure local control over the delivery of services, and manage Indigenous Coordination Centres as outreaches of the Commission to ensure direct participation of Aboriginal people at the regional level.