Shooting the Banker

Essays on ATSIC and Self-Determination

Edited by Patrick Sullivan
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NORTH AUSTRALIA RESEARCH UNIT
The Australian National University
Darwin
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Inquiries should be directed to the publisher, North Australia Research Unit, The Australian National University, PO Box 41321, Casuarina (Darwin), Northern Territory 0811, Australia. Telephone: +61 (08) 8922 0066 and facsimile: +61 (08) 8922 0055.

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Notes on Contributors

HC 'NUGGET' COOMBS

Following a distinguished career in public administration Dr HC 'Nugget' Coombs became a Visiting Fellow at the Australian National University's North Australia Research Unit, and at the Centre for Resource and Environmental Studies. He was previously Governor of the Reserve Bank, Chancellor of the Australian National University, and Chairman of the Australian Council for Aboriginal Affairs. As well as many essays and reports on Aboriginal and Torres Strait Islander issues he is the author of Kulinma (1978), Land of Promises (1989) and Aboriginal Autonomy (1994).

ALAN DALE

Allan Dale has a base degree in Agricultural Science. Between 1987 and 1992, he conducted doctoral research which analysed the processes involved in planning government-funded agricultural development projects in three Aboriginal communities in eastern Australia. During that time, and up to 1993, he also operated as a consultant in community development, land use planning and social and environmental impact assessment. He was recently appointed as Manager of the Social Impact Assessment Unit within the Division of Community Services Development within the Department of Family Services.
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and Aboriginal and Islander Affairs. The Unit is responsible for promoting and facilitating better social assessment within the land use planning and development process in Queensland.

MICHAEL DILLON

Michael Dillon currently works in the Office of Indigenous Affairs in the Department of the Prime Minister and Cabinet. He has previously worked for Aboriginal organisations in northern Australia, for ATSIC in a number of capacities, and was a member of the Task Force which developed the ATSIC legislation. He has published articles on indigenous legislation, land rights and indigenous policy issues.

JULIE FINLAYSON

Julie Finlayson is a social anthropologist with extensive research experience in Aboriginal Australia. Her work as a consulting anthropologist for Aboriginal organisations and communities has taken her to Central Australia, north Queensland and parts of south-eastern Australia. She has taught anthropology at La Trobe University and briefly at University of Queensland. In 1993 Julie and Allan Dale worked together as social planners with the South East Queensland Regional Council on the development of a regional plan.

Julie is currently employed at the Centre for Aboriginal Economic Policy Research, ANU. Her interests focus predominantly on policy issues in relation to the socio-economic impact of colonialism on the indigenous polity, gender relations in households, land claim issues, relations between indigenous groups and the State, and current anthropological practice.

CATHY ROBINSON

Cathy Robinson is a PhD student in the Department of Geography and Environmental Science, Monash University (Clayton campus). Since February 1995, Cathy has periodically
been research assistant to Dr HC Coombs, working on issues related to ATSIC, the integration of Aboriginal communities and their organisations, and exploring the value of regional agreements as an instrument of negotiation between Aboriginal groups, government agencies and commercial interests. She has applied various aspects of this research to her own PhD project with the assistance of Dr Coombs and other staff members at NARU. Currently working off the coast of the Arafura Sea in the Northern Territory and the Gulf of Carpentaria in Queensland, she is researching how indigenous interests can be recognised and incorporated into the management and control of the coastal and marine environments.

TIM ROWSE

Tim Rowse conducted the research for his paper while working at the Menzies School of Health Research, Alice Springs. He is now a Research Fellow in the Department of Government and Public Administration, University of Sydney. Among his books is *After Mabo* (1993).

DIANE SMITH

Diane Smith is an anthropologist with over twenty years experience in field research and Aboriginal anthropology, and is currently a research fellow at the Centre for Aboriginal Economic Policy Research, ANU. She was a committee member of the ATSIC review into native title representative bodies and co-authored the report *Review of Native Title Representative Bodies*, 1995. Ms Smith has written extensively on ATSIC’s organisational structure, its policy formulation and funding processes, as well as on the cultural contexts and socio-economic outcomes of ATSIC programs including the Community Development Employment Projects scheme. Ms Smith also has carried out long-term research into indigenous land tenure, management and land rights matters, resource development negotiations and royalty
arrangements, and the political arena of indigenous-government relations.

PATRICK SULLIVAN

Patrick Sullivan is a Research Fellow at the North Australia Research Unit, Australian National University, Darwin, and a member of the Cooperative Research Centre for the Sustainable Development of Tropical Savannas. He is researching issues of native title and regional agreements in association with the Kimberley Land Council. He is also carrying out research into the use of the United Nations system by indigenous peoples to pursue collective human rights. He has written several papers on contemporary Aboriginal issues, and a book All Free Man Now (1996).
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACTU</td>
<td>Australian Council of Trade Unions</td>
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<td>ADC</td>
<td>Aboriginal Development Commission</td>
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<td>AEDP</td>
<td>Aboriginal Employment Development Policy</td>
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<td>AGPS</td>
<td>Australian Government Publishing Service</td>
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<tr>
<td>ALFC</td>
<td>Aboriginal Land Fund Commission</td>
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<tr>
<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission</td>
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<tr>
<td>CAEPR</td>
<td>Centre for Aboriginal Economic Policy Research</td>
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<tr>
<td>CDEP</td>
<td>Community Development Employment Program</td>
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<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>DAA</td>
<td>Department of Aboriginal Affairs</td>
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<tr>
<td>DFAT</td>
<td>Department of Foreign Affairs and Trade</td>
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<tr>
<td>FCAATSI</td>
<td>Federal Council for the Advancement of Aboriginal and Torres Strait Islanders</td>
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<tr>
<td>HRSCAA</td>
<td>House of Representatives Standing Committee on Aboriginal Affairs</td>
</tr>
<tr>
<td>IDC</td>
<td>Inter-Departmental Committee</td>
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<tr>
<td>NAC</td>
<td>National Aboriginal Conference</td>
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<td>NACC</td>
<td>National Aboriginal Consultative Committee</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>NTA</td>
<td>Native Title Act</td>
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<tr>
<td>OEA</td>
<td>Office of Evaluation and Audit</td>
</tr>
<tr>
<td>PSC</td>
<td>Public Service Commission</td>
</tr>
<tr>
<td>RCIADIC</td>
<td>Royal Commission into Aboriginal Deaths in Custody</td>
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<tr>
<td>TSRA</td>
<td>Torres Strait Regional Authority</td>
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ATSIC organisational chart
ATSIC Regional Council Areas and Zones since 3 December 1993
Preface

Aboriginal representatives contemplating an open argument with the Aboriginal and Torres Strait Islander Commission (ATSIC) about funding or representation sometimes caution each other: 'don't shoot the banker'. There is little doubt that this volume of essays on ATSIC will be taken in some quarters to be doing just that, but they are intended, and should be viewed, in a more constructive light. They are a collective attempt to analyse this complex organisation after six years of its operation, and to open up debate about reform. The writers adopt a variety of perspectives on the role and impact of ATSIC, and they do not agree with each other on all points.

The volume as a whole concentrates on the representative role of ATSIC, its presentation of itself as the supreme Aboriginal representative and political body. It does not echo the fairly common, and often misplaced, criticisms of waste and inefficiency of ATSIC as a development program funding organisation. The writers understand the difficulties faced by staff, councillors and Commissioners in meeting the massive problem of Aboriginal material advancement. They would all feel, however, that ATSIC can also make its problems greater by ignoring much of the advice, experience and community knowledge of other Aboriginal organisations and individuals.

The essays in this book span the wide area in Aboriginal politics that ATSIC itself covers. HC (Nugget) Coombs opens the volume with a reminder of the history and origin of the present structure, which is a far cry from the recommendations of his report that led
to the abolition of its predecessor, the National Aboriginal Conference (NAC). He is particularly critical of ATSIC's electoral system which neglects to include existing community-based representative organisations. Several of the chapters are concerned with problems of ATSIC Regional Councils. In particular, Rowse's examination of the emerging political consciousness of Regional Councillors complements Finlayson and Dales's analysis of the frustrations of Regional Planning from the participants' perspective, and the tensions this produces between the Regional Councils and ATSIC itself.

Smith's chapter concerns the problem of dealing with Aboriginal cultural complexity and diversity in a single structure. The chapter places the regional concerns examined by Rowse, and Finlayson and Dale, in the context of ATSIC's national funding and policy strategies. Both my chapter and Dillon's are concerned also with these 'big picture' issues. I examine ATSIC's role as the political representative of a distinct and separate people which, due to Australia's international obligations, has a right of political self-determination in association with the nation state. I find it is not constituted to perform this well, and has its effectiveness further reduced by having the incompatible responsibility of Aboriginal development and welfare funding. Dillon looks for the reasons for confusion and ineffectiveness of ATSIC's many roles in the turbulent history of its foundation, and the complexities of Aboriginal political life. He concludes ATSIC would do better if it did less, backed off from its claim to be supremely representative, and made better use of its unique position within government, rather than distinct from it.

The range of these essays shows clearly one immediate problem with assessing ATSIC – it has no single and easily grasped corporate nature. Any statement about ATSIC must suffer from being aimed at only one of the manifestations of this highly complex organisation to the neglect of others. This is as true for an outside observer as for the varied participants. Even a Regional Council Chairperson may from time to time be heard to refer to their Council's 'trouble with ATSIC', as if they were not themselves ATSIC. Thus, there is a danger of allowing critical
points levelled at one aspect of the organisation to overshadow or neglect contradictory elements of the same organisation that are moving in alternative directions. In comparison with previous administrative arrangements ATSIC has been an enormous step forward for indigenous control of important aspects of life. Equally, it has over its first six years of operation provided a proving ground for much indigenous expertise and raised, wittingly or not, high expectations. It is the voices of those pushing at the outer limits of ATSIC's capabilities that, by and large, the authors of the essays in this volume are used to hearing.

From these essays on diverse regions and areas of ATSIC's operation some common themes emerge. All papers reveal that greater regionalisation of the ATSIC structure and greater integration with Aboriginal communities and their organisations is called for. Regionalisation is now recognised to be a positive step by many people within ATSIC itself, but this needs to go further than simply increasing local control over development plans. Most of the papers, but in particular Rowse's analysis of the opinions of Regional Councillors, and Finlayson and Dale's description of their planning problems, lead to the conclusion that:

- Funding needs to be aggregated much more than at present. Blocks of funds for broad purposes should be made rather than the multitude of single project schemes that now abound. Many block grants could be allocated on at least a triennial basis rather than following the present annual bidding cycle. Problems of accountability can be overcome, as they are in other publicly-funded organisations.
- Regional Councils should be integrated much more firmly with existing regional and local community organisations.
- If this is done, Regional Councils must be better resourced to act as regional representatives. Regional Plans must be seen as part of the political accommodation between whites and Aborigines in a particular region, not just as money grant wish-lists. This requires greater use of Regional Office resources, and a re-examination of the role of the Regional Office itself.
Changes of this nature are being increasingly driven by the need for better representation of Aboriginal interests in the regions, particularly as a result of the *Native Title Act 1993* and the mediation requirements of the National Native Title Tribunal. More powerful regional bodies, with more security of funding, which gain a wider role for themselves as representatives, rather than simple distributors of funds, would bring into question ATSIC’s national role.

While firmly defending itself from outside criticism, ATSIC nationally often does not seem to have a clear policy about its role.

- Is it the cradle-to-grave care provider it often suggests it ought be?
- Is it the Aboriginal parliament its original conservative critics feared it would be?
- Or should it simply be a coordinating and consultation body to render more effective development programs administered by other bodies?

The confusion of functions, and resultant frustration, revealed in many of the chapters in this book lead to the conclusion that ATSIC should not try to be all of these things – it is neither possible nor required. Its representative structure relies too much on rather simple and formal electoral principles at the national Board level, providing no means of ensuring the necessary synthesis and balancing of community voices. To have a ‘representative structure’ is not the same as to actually be politically representative. Nor does ATSIC’s control of Aboriginal material development programs mean that Aborigines are at last running their own affairs. There is more to self-determination than this. In practical terms as well it cannot fund and administer every aspect of Aboriginal development. It does not have the expertise, and if it were to acquire it this would be a wasteful duplication.

As presently structured, it is equally far from being able to offer Aborigines self-government, either regionally or nationally. Self-government must necessarily develop regionally. Even if the
regional developments suggested here do occur, this will not automatically make the elected board, or the bureaucratic office-holders, more authentically representative of Aboriginal voices. A broader forum is required for this. One in which Regional Councils and community organisations can directly participate, as my chapter suggests.

Mike Dillon also points out, ATSIC would be more effective accepting itself as part of government – a rather privileged and potentially influential part. It should use its power of closeness to government, coupled with its relative independence, to influence more effectively the other Commonwealth program and policy providers. It could then strategically allow the emergence of a more independent forum for the diversity of Aboriginal political views. This may be the role it eventually accepts at the national level – the coordinator of national Aboriginal development policy. With a regional structure more effectively empowered to reflect regional needs it could perform this function well, and contribute its voice as the arm of Aboriginal material development – one powerful voice among many of the legitimate Aboriginal representative organisations throughout the country.

*Patrick Sullivan*
1

Remembering the Roots
Lessons for ATSIC

HC Coombs and CJ Robinson

As we approach the year 2000, the Commonwealth government continues to experiment with ways of creating a body that represents Australian indigenous peoples' concerns. The most recent attempt was in 1989 with the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC). The formation of ATSIC follows other unsuccessful attempts by the government to create a functional, relevant organisation to address Aboriginal and Torres Strait Islander affairs.

Now in 1995, the government's attempts to create an indigenous representative body are under scrutiny. The power and representation ATSIC provides for indigenous peoples is being questioned. Previous reviews of government efforts to address and institutionalise Aboriginal affairs in bodies such as the National Aboriginal Consultative Committee (NACC) and the National Aboriginal Conference (NAC) revealed similar problems to those facing ATSIC today (see Dillon, this volume). Based on this experience it is apparent that the government is not addressing recurring problems in such organisations. The common themes and recommendations arising out of these reviews provide a fruitful basis on which to assess ATSIC. Until these issues are addressed, ATSIC, or any other equivalent
organisation, is unlikely to be successful as a political instrument seen as relevant by Aboriginal and Torres Strait Islander groups.

THE COUNCIL AND OFFICE FOR ABORIGINAL AFFAIRS

Harold Holt, who succeeded Menzies as Prime Minister in 1966, saw the overwhelming ‘Yes’ vote for Commonwealth power to legislate for Aboriginal issues as a signal to work for major changes in the status of Aborigines. He recalled the variety of Commissions and other agencies which had been part of the war and post-war reconstruction programs. He sought advice from HC Coombs and John Bunting, the head of his department, both of whom had been involved in many of these programs, including the independent Finance and Economic Committee of economists, which had prepared economic strategy papers for the Prime Minister.

On 2 November 1967 Holt announced the establishment, in his own portfolio, of a Council for Aboriginal Affairs to be headed by Coombs, and to include Professor WE Stanner of the Australian National University and Barrie Dexter, a Foreign Affairs diplomat with experience in countries with indigenous and ethnic minorities. The Council’s function was to consult with Aborigines, carry out research and advise the Prime Minister on suitable organisations to give effect to the Commonwealth’s responsibilities.

During the first few months the Council explored the response of Aborigines to policies of State and Territory governments and considered possible roles for the Commonwealth. It found many of these issues to be highly emotionally charged. Even the most reform-oriented State programs were aimed at the assimilation of Aborigines and Torres Strait Islanders into one single Australian community, yet Aborigines from the most diverse contexts placed the preservation of their separateness and distinctiveness high in their priorities and looked to a future in which their Aboriginal identity would be acknowledged (Coombs 1978, 7).

State and the Northern Territory governments and their bureaucracies had clearly interpreted the referendum vote simply as an authority for the Commonwealth to allocate greater
financial resources to them for the support of existing programs: an interpretation generally shared by the Liberal/Country Party members in Parliament. The Council judged that the Labor Party view was more diverse with an increasing proportion favouring greater support for action by indigenous organisations in the management of their own affairs (Coombs 1978, 1–11).

However, before the Council and the Office could properly function, the political context was transformed by the death of Harold Holt in December 1967 and the election of Gorton as his successor. Wentworth was put in charge of assisting the Prime Minister with Aboriginal Affairs. Thus, instead of working for a Prime Minister resolved to bring about radical change in the status of Aborigines, the Council found itself involved with a succession of Prime Ministers from Holt, Gorton, MacMahon, Whitlam and Fraser with varying degrees of commitment to Aboriginal concerns. Only within the brief Whitlam period between 1972–1975 was the Council able to function in accordance with the understanding that had been reached with Holt. Similarly, the Ministers in charge of Aboriginal affairs ranged from Wentworth to Howson and after the change of government in 1972 to Bryant and Cavanagh, none of whom, with the exception of Cavanagh, were prepared to give the Council a clear charter.

Over this period, events, treaties and recognition of indigenous rights in both the national and international arena were demonstrating that Aboriginal affairs were to be a powerful source of Commonwealth concern, despite the anxiety of State governments and bureaucracies to preserve their primacy in decision-making responsibilities.

THE POST-WAR SOCIAL CONTEXT

The demobilisation of the armed forces and defence-related factories had freed many indigenous Australians to return to their own country. During the war they had, generally for the first time, been fed, clothed, accommodated and paid on a basis of absolute equality with their white counterparts. It soon became clear that neither in the cities, nor in the rural and more isolated
regions would they acquiesce in a return to their pre-war dependence. Demands for wages, walk-offs from cattle properties, such as the Gurindji people employed at Wave Hill Station, and strikes became increasingly common and the Arbitration Commission was faced with a demand for equal pay.

The problems of Aborigines in the pastoral industry were intensified by the technological revolution brought about by the entry to Australia of United States capital and enterprises like the Texas King Ranch. This introduced the Santa Gertrudis cattle breed which had been developed for extensive rangeland conditions with large paddocks, deep bore water pumps and windmills and employed a technology based on oil powered motor vehicles, aircraft and road trains rather than the horse-based technology in which Aborigines were expert.

The dependence of pastoralists on the Aboriginal skills, knowledge of the land and willingness to be stood down for months of the year was diminishing. Industrial disputes over wages were transformed by Aboriginal activists into demands for rights to land and other resources and many pastoralists were transporting Aborigines living on their land to the nearest mission or government ration centre to become wholly institutionalised dependants.

In the cities, the demobilised men and women and defence workers were presenting more politically oriented demands. They were disillusioned that the ‘better world after the war’ appeared a mere promise. A few had been able to acquire professional qualifications through the Commonwealth Reconstruction Training Scheme and during their war-time employment some had gained access to education and professional training especially for entry into teaching, law and religious orders. Many more, both men and women, had gained mechanical and technological skills and experience from their war-time activities and were emerging articulate, eloquent and competent into mainstream Australian society. These were the founders of the Tent Embassy and the variety of organisations political activists were establishing in the 1970s to fight for land rights and access to resources.
The need for such indigenous organisations and for their federation to form regional, functional and political groups was demonstrated by the failure, especially in Western Australia and Queensland in the late 1960s and early 1970s, of the State governments to provide even basic services for Aboriginal communities on a scale remotely comparable with those available to 'mainstream' Australian society.

During this time, international organisations set up by the United Nations to establish standards for human and civil rights and to work for an end to colonisation gradually extended their concern to the 'internally' colonised indigenes of powerful nation states. This provided opportunities for non-governmental organisations (NGOs), many of them indigenous, to exert international pressure on governments and communities in Australia (see Sullivan, this volume).

Aborigines and Torres Strait Islanders have, in some places and instances, established core organisations of the kind required for self-government ahead of the political achievement of the right to self-government itself. Such developments, witnessed for instance in the 1970s in Western Australia and Queensland, provide examples of Aboriginal organisations which were acquiring some experience in the processes of self-government while also acting as a pressure group and designer of political reform.

For the Council of Aboriginal Affairs, the years between 1967 and 1976 proved to be uncertain and conflict-ridden. But throughout this period it had been able to continue as the kind of independent, research-based 'think tank' envisaged by Holt, working largely on issues identified by itself or in response to those raised by the Prime Minister or Minister. The Council's independence enabled it to develop working relationships with emerging Aboriginal organisations, including land councils established by the Commonwealth government at the request of Justice Woodward and resource management agencies like Waringarri and others set up in the Kimberley.

While urging greater funding for State programs on Aboriginal issues, the Council argued that there was community and Aboriginal support for greater emphasis on Aboriginal right of
choice in relation to assimilation. The Council also proposed that independent Commonwealth funding should be directed at Aboriginal organisations to improve access to training and employment, support Aboriginal enterprises and arts, and programs to educate white Australians about Aboriginal society. More fundamentally, the Council argued that community support existed for such Commonwealth initiatives and that they should be seen as part of a policy enabling Aborigines and Torres Strait Islanders to build on their own culture and to maintain a separate and distinctive social and racial identity within the Australian community.

The Council's attitude on these issues was part of its struggle between 1967 and 1972 to persuade successive Commonwealth governments that assimilation was not an acceptable basis for policy and that Australians must accept the right of Aborigines to choose the nature and extent of their involvement in Australian society and must have the power and resources to make that choice a reality. That struggle was far from successful. The Council's attitude also formed part of its efforts to complete the task Holt had set for it to provide a politically acceptable 'blue print' for a Commonwealth agency to build a respected place for Aborigines in a multi-cultural society within the Australian Federation. The outcome was not wholly one of failure.

The Council had been able to conduct its own research program, to participate in inquiries initiated by other Ministers, and to increase greatly existing knowledge of the diversity and character of organisations being developed within indigenous society and their increasing role in multi-cultural Australia. The Council's work had also influenced the pattern of change in government policies and contributed to the consensus between the Whitlam and Fraser governments' approach to policy. This made it possible for the Council's report to describe the period between 1967 to 1976 reasonably accurately as a 'Decade of Progress' (Coombs 1978, 215-243).

Prior to the election which brought Whitlam to power, the Australian Labor Party's election platform was that the status of the Office of Aboriginal Affairs should be raised to that of a full department. This meant that the role of the Council as an
independent research-based agency for the review and development of government policies and to report to the Prime Minister, the Parliament and the public, could not continue. The Council recommended, and both major parties agreed, that the Council should be wound up, although Professor Stanner continued as a consultant to the House of Representatives Committee on Aboriginal Affairs and Coombs continued to accept consultancies for the Minister and head of the new department from his position at the Australian National University.

The shift in the conduct of research to academic agencies like universities and the Australian Institute for Aboriginal and Torres Strait Islander Studies was, in the Council’s view, wise. The Council’s activities, recorded in Kulinma (Coombs 1978, 215–243), demonstrated some progress in the understanding of Aboriginal society and their relevance to policy issues from the studies it had conducted. Such issues lend support for the Council’s general conclusion at the end of its life that the way forward was to recognise and support the right of Aborigines and Torres Strait Islanders to increasingly control their own affairs and to share freely in negotiations to determine the pattern of their relationship with ‘mainstream’ society.

The Council for Aboriginal Affairs left control of indigenous political expression in the hands of the emerging community and representative organisations. It exerted little control over Aboriginal organisations themselves; instead it offered a minimalist approach to Aboriginal administration with its research and policy advice services to government. If there had been greater commitment on the part of the successive Ministers it served, and greater encouragement of community-based self-determination, the Council could have laid the foundation for an effective rapprochment of indigenous and white Australian societies. Instead, it was replaced by more or less government controlled national representative organisations, each of which have suffered from a crisis of power and legitimacy. The latest of these, ATSIC, replaced the National Aboriginal Conference (NAC), which itself was a substitute for the National Aboriginal Consultative Committee (NACC).
THE NATIONAL ABORIGINAL CONSULTATIVE COMMITTEE (NACC) AND THE NATIONAL ABORIGINAL CONFERENCE (NAC)

In 1973, the first Commonwealth Minister for Aboriginal Affairs, Gordon Bryant of the Labor Party, founded the NACC. The initiative sought to institutionalise existing indigenous lobby groups, such as the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders (FCAATSI), and to provide a means by which Aboriginal and Torres Strait concerns could be implemented. The Liberal/National Party government, which succeeded Labor in 1975, decided to have the NACC reviewed by Dr LR Hiatt. In his report, he concluded that the NACC failed to act as a body the government could usefully consult about indigenous opinion or to provide advice on future policies and programs on Aboriginal Affairs (Hiatt 1976, viii). In 1977, Viner as Minister for Aboriginal Affairs, set up the NAC apparently as a political compromise based on Hiatt’s recommendations.

In 1983, the government’s attempts at creating an Aboriginal organisation were again under question. Clyde Holding (the Minister for Aboriginal Affairs under the Labor government) commissioned Coombs to undertake a review of the NAC. The NAC’s operation and role was reviewed, taking the commitment by the government to self-determination as a basic guiding principle (Coombs 1984, 3). It was noted in the conclusions made from the NAC inquiry that problems identified were similar to those identified by Hiatt in relation to the NACC a decade earlier:

the NAC has failed to develop as a significant instrument of Aboriginal political influence and power. To an extent, this assessment endorses the 1976 Committee of Inquiry’s ‘main conclusion’ about the then NACC and it appears that many of the difficulties and problems confronting the NACC as described by that Inquiry have not been resolved in the interim (Coombs 1984, 13–14).

These same conclusions can be repeated today in relation to ATSIC. The underlying problems are related to the structure of such organisations not providing adequate representation or accountability to indigenous communities, as well as having limited power to implement their concerns into policy. Reviewing
the problems expressed in these reviews suggests that until governments act on these recurring recommendations, organisations such as ATSIC will continue to be subject to criticism.

THE FUNCTION AND POWER OF A NATIONAL ABORIGINAL ORGANISATION

Since the formation of the NACC the history of government Aboriginal organisations has been marked by a series of inquiries and reviews. All these reports have been aimed primarily at clarifying the uncertain status and role of such bodies with respect to their power and effectiveness at functioning as a representative body for Aboriginal affairs.

The creation of the NAC as an attempt to provide a significant avenue for Aboriginal political influence and power failed. One of the major criticisms arising from the NAC review was that although Aboriginal representatives had a defined function, they had little power to influence policy decisions. Community representatives only had the power to advise the NAC national executive on regional concerns. The executive, in turn, could advise the Minister for Aboriginal Affairs only if the issue had been referred to it by the Minister, prompting Coombs to conclude:

the NAC is unlikely in its present form to develop into a political instrument with which Aboriginal groups and communities will identify or which would be acknowledged by them as capable and having a legitimate right to speak for them to the Government. It is therefore unlikely to meet the Minister's needs as an interpreter for Aboriginal views and aspirations, or as a source of advice on how best those aspirations could be met (Coombs 1984, 23).

The Coombs report called for a more independent position for the NAC. The agency would not be expected to join formal governmental policy bodies whose views differed from those adopted by the Conference itself. It could then be seen by indigenous people as capable of taking an independent position when negotiating policy positions with the government.
In a report to the Minister for Aboriginal Affairs on the creation of ATSIC, Lois O’Donoghue advised limiting Coombs’s (1984) proposed regional and national assembly powers from an independent decision-making body to an advisory role. O’Donoghue’s suggestions were adopted under Section 94 of the Aboriginal and Torres Strait Islander Act 1989. Thus Regional Council members have no effective decision-making power to determine developments in their regions. Instead, the power to distribute funds and policies is exercised by the Commission and its administrative staff. This prompted similar sentiments expressed in the NAC review to be repeated in relation to ATSIC:

the Commission is not, as yet, an Aboriginal organisation working for and accountable to Aboriginal society and importantly, that it is not thought of as such by many Aborigines. Rather, it continues to be seen by many as the instrument of the Commonwealth Government and of the central ATSIC bureaucracy in Canberra. It does not, therefore, adequately serve the purposes of either government or Aborigines (Coombs 1994, 183–4).

ATSIC’s bureaucracy is a major problem. ATSIC staff are formally accountable to the Commonwealth government rather than to the indigenous communities they represent and are legally required to serve the government’s purposes (Coombs 1993, 44). The Commission itself offers no certainty of access to resources which Aborigines can control or even the right to negotiate for such resources within the budgetary process. It is the ATSIC representatives, rather than the government, who are then faced with the difficult task of distributing, and in some cases cutting, funds to Aboriginal organisations.

REPRESENTATION OF REGIONAL INTERESTS AT THE NATIONAL LEVEL

One of the major criticisms arising out of the Coombs review of the NAC was that it failed to bridge the enormous communication gap between the government and indigenous communities, groups and organisations. This problem was seen as a combination of a number of factors: the inability to express diverse regional concerns on the national level; the lack of
accountability NAC representatives had to community and government; and the insufficient incorporation of existing organisations in the decision-making process.

In an attempt to represent the cultural heterogeneity evident between Aboriginal and Torres Strait Islander communities, the NAC review proposed that Australia be divided into several regions which would serve as constituencies for the NAC members. The areas and boundaries of these regions would take into account indigenous population, cultural and language affiliations, difficulties of transport and communication, and the existence of centres providing actual or potential administrative and similar services (Coombs 1984, 38–51). With the creation of ATSIC, Australia was divided into regions with Regional Councils elected by the indigenous people within the area. In 1993 the number of regions was reduced from 60 to 36. These regions were then grouped into 17 zones. Councillors in each zone select one member to represent them on ATSIC’s national board of commissioners. The Minister for Aboriginal and Torres Strait Islander Affairs appoints two additional commissioners who, in addition to elected commissioners, form the national advisory panel. Councils contain no representation of other indigenous service organisations within their regional or national structure.

Another area of concern raised in the Coombs report was that representatives of the NAC were not seen as being accountable to, or representative of, their community. Even if they assessed the community’s attitudes and wishes correctly, they could only express them in forum meetings at long intervals and were not required to report back to the community and in fact rarely did so (Coombs 1994, 134). Instead, communities identified most strongly with organisations which were active within their own regional context. Organisations such as land councils, health and welfare organisations and similar functional bodies were seen as being more relevant as an avenue for funding or political action than the NAC.

Drawing an analogy between the new Aboriginal and Torres Strait Islander organisation and the Australian Council of Trade Unions (ACTU), the NAC report proposed that the future national Aboriginal and Torres Strait Islander organisation not be
composed of elected members. Rather, its members would be chosen by, and accountable to, other existing or emerging indigenous organisations (Coombs 1984, 19). This national body would need to be firmly based on other identified instruments of power evident in existing locally-based indigenous organisations. It was envisaged that regional councils and the Commission would respect the autonomy of local and regional indigenous organisations, acting as their agents in dealings with the government and providing them with support and access to resources and expertise (Coombs 1993, 46). Such a structure would provide the necessary channels of communication and instruments for negotiation between indigenous Australians and the government.

The current structure of the Commission is not capable of expressing Aboriginal and Torres Strait Islander interests effectively as a coordinating body for the various programs and services. The formation of ATSIC has also not offered any significant transfer of authority or improvement in indigenous political and economic power or bargaining capacity. ATSIC has no access to information, knowledge, research capacity or objective advice except through the existing bureaucracy which is responsible to, and controlled by, the government. This progressive reduction of local representation at the national level as well as the absence of indigenous organisations in the formulation of ATSIC's policies has echoed the same criticisms as those highlighted in the NAC report.

A FUTURE REPRESENTATIVE ABORIGINAL AND TORRES STRAIT ISLANDER ORGANISATION

As the Australian nation state takes form, the situation of the Aborigines in relation to it has become a problem, in the sense of being something that requires the state to find a solution. In fact Australia has been trying to solve this problem over a long period, and in the last thirty years has devoted considerable resources and concern to the task, only to find it looming yet larger and assuming new forms (Beckett 1988, 3).
The representation of indigenous concerns at a national level has created numerous problems for both Aboriginal communities and government agencies. These problems, identified repeatedly in various reviews and reports, have continued up to the present time. The issues raised in such commentaries are difficult to address as they relate to increased power and representation of local Aboriginal groups at the national level.

Throughout the history of colonised Australia, governments have continued to make decisions that control the future of indigenous society. Increasingly these decisions have been based on selective representations of indigenous concerns. Sally Weaver highlighted the problems with such representation for both Canadian and Australian government and indigenous groups by using the term ‘public ethnicity’. Ethnicity defines the recognition of cultural differences between collectives or groups in a nation state (Weaver 1984, 184). The problem with this recognition is that it is not easily controlled or expressed by indigenous groups due to the diversity of interests within Aboriginal communities and lack of resources to enable them to articulate and communicate their aspirations to relevant government agencies. This often results in a situation whereby ‘particularly at the national level of native organisations, level of representativeness can be government-assigned status rather than a native-achieved status’ (Weaver 1985, 116). The resulting policies reflect the ongoing dynamic between Aboriginal minorities and nation states as the Commonwealth government continues to deal with (or ignore) views being expressed at the grassroots.

Drawing from experience of tribal councils in the United States, Barsh argues that ‘to be effective – to make things happen – any government must, at a minimum, have adequate power, resources and legitimacy’ (Barsh 1993, 7). Indigenous governments have less power, and the power they do have is insecure and dependent on current political policy. The degree and allocation of governmental assistance is ‘highly conditional, discretionary and unpredictable, fluctuating greatly among tribes over time’ (Barsh 1993, 9). The dependence on this unreliable framework fails to represent indigenous values and priorities and
therefore holds no legitimacy for the communities indigenous governments are initially designed to represent.

Thus in order for ATSIC or any other equivalent indigenous representative body to be a meaningful organisation, its structure and function must be founded on local social and cultural arrangements. Insight into how this might be achieved was revealed in August 1993 when delegates of Aboriginal organisations across Australia met at Eva Valley to discuss the relevance of the Mabo decision. The significance of the Eva Valley meeting can be assessed in the light of the tendency of Aboriginal society to reflect local level interests and priorities over regional and national ones (Coombs 1994, 215). The prepared statement reflects the need for local representations of indigenous identity to be expressed directly to the national level:

We want the Commonwealth Government to take full control of native title issues to the exclusion of the States and Territories. We want a national standard for our people, not numerous different standards (reproduced in Coombs 1994, 231).

The representative body to put forward the indigenous communities' position on matters of concern must provide a framework by which Aboriginal and Torres Strait Islander people can consult and negotiate independently with government agencies. This involves the inclusion of organisational structures which already exist and function at the local level. Such bodies reflect Aboriginal decision-making processes and methods of representation characteristic of Aboriginal culture. They are also seen as accountable to the communities they represent and have often been chosen in the past as agents in dealings with governments.

The increased recognition of the importance of localism in Aboriginal political culture may reflect its changing nature: 'ATSIC may be seen not only as a change in public policy formation but also as a new stage in the formation of Aboriginal cultural identity' (Rowse 1991, 12). Recent developments in the Kimberley region and other areas of Australia appear to be reflecting this change. Aboriginal communities are grouping together to negotiate comprehensive regional agreements relating
to native title, land and resource management and use. These developments have revealed that significant cultural divisions exist within Aboriginal society even on a local or regional level making it difficult for communities to agree and articulate their interests to governments. Such factionalism should not necessarily be seen as a negative quality; in fact it appears that it is in character with the long-term nature of Aboriginal social and territorial organisation in general (Coombs 1994, 136). If such diversity and processes inherent in these meetings represent a valid political process whereby decisions are made, then it is important that political organisations provide a framework by which such conflict can be debated and usefully resolved.

Through such developments, local concerns can be expressed to and negotiated directly with the Commonwealth government, the resulting agreements reflecting the agenda unique to the region in question. ATSIC must learn from initiatives already occurring in Aboriginal and Torres Strait Islander communities to remain relevant as a representative organisation for Aboriginal affairs.

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From Cultural Diversity to Regionalism
The Political Culture of Difference in ATSIC

Diane Smith

INTRODUCTION

On 2 November 1989 the Commonwealth Parliament enacted the Aboriginal and Torres Strait Islander Act 1989 (the Act) which established, in March 1990, the Aboriginal and Torres Strait Islander Commission (ATSIC) to replace the Department of Aboriginal Affairs (DAA) and the Aboriginal Development Commission (ADC). Hailed as a milestone in Australian government administration, ATSIC is a unique structure, combining administrative and representative indigenous arms in one statutory body.

ATSIC operates within a complex political and policy environment; one which is characterised by numerous interest groups, multiple and overlapping jurisdictions, a high degree of politicisation and difficulties in cross-cultural communication (Dillon 1992, 91). This paper argues that the indigenous representative arm is the outcome of Commonwealth government attempts to comprehend and incorporate indigenous cultural diversity into a national organisational framework. The
particular administrative and political processes by which this has occurred are described; and the limitations and implications of the incorporation of cultural diversity are raised. In particular, it is argued that the politics of diversity continue to generate key tensions within ATSIC that are critical to its ongoing policy and funding decisions, and to its capacity to operate strategically in the wider public policy environment.

ABORIGINAL CULTURAL DIVERSITY

Cultural diversity within the Aboriginal population is taken to mean many things in the public policy arena. It is understood to be marked by a variety of cultural styles across the country, with local groups emphasising the importance of differences in spoken languages, social organisation, the organisation of land-owning groups, ceremonial and ritual affiliations, art styles, material culture and so on. Although this cultural diversity exists within an inclusive commonality of Aboriginal identity, key differences continue to be asserted by groups wanting to emphasise distinctive local identities.

The localisation of Aboriginal identity has been further underscored by the historical experience of colonisation, and the socio-economic impacts of residence at a variety of localities. Aboriginal people today live at remote settlements formed through the imposed phases of mission and government supervision; on small outstations and pastoral excisions; on the outskirts of rural towns; and in inner city and suburban metropolitan areas. In such settings, there are not only cultural differences evident, but marked variation in the socio-economic circumstances of individuals and families according to their residence in remote, rural or urban areas (see Taylor 1993). In turn, socio-economic differences are apparent at even more fine-grained population levels within types of geographical location. For example, the category of ‘urban’ can be dissected to reveal important variations in economic well-being between particular urban communities in metropolitan areas (Smith 1995). This national and regional diversity is also mirrored within single communities where one finds significant micro-economic and
cultural differences between residential groups.

At a broader population level, a key area of cultural diversity is evident between Aboriginal and Torres Strait Islander peoples. The growing political significance of, and emphasis on, this difference has led to the transformation of the Torres Strait Islander Regional Council into a separate Torres Strait Regional Authority (TSRA) within ATSIC, having its own budget line and substantial policy and program independence (Sanders 1994). More recently, influential Islanders have urged the Prime Minister to extend this institutional expression of the cultural differences between the two indigenous populations, by transforming the TSRA into a Commission separate from ATSIC.¹ Though the emphasis in this paper is on Aboriginal cultural diversity, this occurs against the backdrop of this political and institutional negotiation of cultural difference being carried out between Islander and Aboriginal interests within ATSIC. Cultural diversity has become an influential paradigm within ATSIC, and one that is hotly contested, especially in the area of policy formulation, program funding and corporate direction.

CULTURAL DIVERSITY AND THE BUREAUCRATIC KNOWLEDGE BASE

It is worth considering the context within which Aboriginal cultural diversity has become the subject of bureaucratic assessment and management by government. We need, so to speak, a view of the state room and its bureaucratic inhabitants. A neglected feature of the modern state is its pervasive reliance on a changing store of social and economic knowledge (Lacey & Furner 1993). For modern governments, selecting, justifying and

¹ In a speech to Torres Strait Islanders at Thursday Island, the Prime Minister Paul Keating responded to George Mye’s ‘fear ... that the Islander culture may be subsumed in the greater culture of Aboriginal Australia’, and the suggestion by Islander leaders that there be a separate Torres Strait Island Commission, by stating that the proposal would be considered by the Commonwealth. Keating assured the Islander audience that their interests and culture would not be ‘subsumed in any other culture – Aboriginal or non-Aboriginal’ (Transcript of speech, 12 September 1995).
implementing policies and new institutional structures means finding defensible and workable grounds for them. Those grounds are often prepared on the basis of information sifted from the vortex of reports, inquiries, briefing papers and reviews which inform the knowledge base of the state's bureaucracies.

The changing content of bureaucratic knowledge feeds directly into government thinking – though there are circuitous paths and complex chronologies involved. The production of this knowledge base within government is a political as well as an intellectual activity, shaped as it is by the historical relationship between Aboriginal people and the state. Neither should it be thought of as a cohesive and tested set of understandings. Rather, it is characterised by incompleteness and relies on vast amounts of stylised information shaped by historical insights, adversarial interests, key individuals and changing government objectives. It is, in other words, a construct of both smoke and substance. Government reliance on, and bureaucracy's contribution to, this changing knowledge base is evident in Aboriginal affairs.

If the 1970s and early 1980s saw the policy construction by the state of an Aboriginal collectivity that was physically and conceptually sited in the 'remote community' (see Beckett 1988a; Morris 1988), then the period since has witnessed the insertion of cultural diversity into that perceived collectivity. Information about the cultural heterogeneity of the Aboriginal population has been added to the processes of bureaucratic and government decision-making. This is not to say that diversity has been systematically considered by government, or formalised as policy. Nevertheless, the idea of its importance was incorporated into the bureaucratic knowledge base and and became influential.

As the policy and program implications of cultural differences within the Aboriginal population became more apparent, diversity itself became problematic for government and its bureaucracy. For example, the standardisation and mainstreaming of service delivery gradually gave way to pressure for 'special' DAA programs based on the culturally specific needs and circumstances of communities. Considerable time and money was spent on ascertaining what those different needs and circumstances might be, and how DAA should respond to them.
One result was that DAA developed an administrative database which divided Aboriginal communities into distinct categories according to variations in their location, settlement histories, population size and cultural characteristics. DAA attempted to develop particular programs for these community types; to orient service delivery to them; and major policy initiatives were differently applied in relation to them.

A series of government-initiated inquiries during the 1980s served to focus attention on the policy and planning impact of cultural diversity. The issue was influential in the Miller Committee's review of Aboriginal employment and training programs, conducted between 1984–5. The Committee's final report (Miller 1985, 5–6) argued strongly that the different cultural backgrounds and aspirations of Aboriginal people influenced the extent of their involvement in mainstream education, training and employment. Accordingly, when the Commonwealth established the Aboriginal Employment Development Policy in 1986, program strategies were devised in accordance with the 'wide variety of economic and social circumstances of Aboriginal communities' and the 'different aspirations and employment needs of Aboriginal people arising from markedly different social circumstances and cultural values' (Commonwealth of Australia 1987, 3, 5). Reports by the House of Representatives Standing Committee on Aboriginal Affairs (HRSCAA) further highlighted the implications for government of the cultural and socio-economic diversity evident within the Aboriginal population. One such inquiry into administrative and support services in Aboriginal communities in 1987–8 argued it was crucial that government policies and programs 'be adapted to the differing needs and concerns of communities' whose populations experience 'differing historical experiences ... differing socio-economic backgrounds, cultural beliefs and values and geographic situation' (HRSCAA 1989, 3–4). Similarly, the Blanchard Report (HRSCAA 1987) was influential in drawing attention to the implications of such diversity for service delivery to outstation populations in remote locations.

The perceived need to cater for cultural diversity and localism presented dilemmas for the Federal government in its desire to
consult with, and gain the support of, a single representative ‘Aboriginal voice’. In particular, it faced the issue of how Aboriginal diversity could be welded to an organisational form of representative democracy. Government acknowledgment of the political implications of cultural diversity had been evident in its attempt, via the National Aboriginal Conference (NAC) structure, to establish a national body representative of those differences. The NAC was disbanded in July 1985 ostensibly because of its lack of such representativeness and because of its considerable internal factionalism. Coombs’s review of the NAC for the then Minister of Aboriginal Affairs, Clyde Holding, indicated that there was a clear rejection of the NAC by many Aboriginal organisations and communities in favour of their own particularised interests (Coombs 1984; see also Rowse 1991; Weaver 1984). From the government’s perspective, there appeared to be ample evidence not only of the importance, but of the ‘problem’ of cultural diversity and, therefore, the need to manage it.

The crux of Coombs’s review had been his proposition for an alternative national indigenous body that would not only include representatives elected at a regional level, but would also fully assume the existing policy and financial powers of the DAA. Coombs argued that such a national voice should be formed from its constituent Aboriginal parts; that the sheer cultural diversity of the Aboriginal population be the basis for a national body; and that national and regional representatives should be firmly linked to local Aboriginal organisations. However, the Labor Commonwealth government and senior bureaucrats were unwilling to entertain such a wholesale indigenous supplanting of DAA. Later, it was ATSIC which replaced the NAC, but with crucial differences: the new indigenous structure was integrated into the existing Aboriginal Affairs bureaucracy, rather than standing outside of the policy formulation process as the NAC had done. The existing bureaucracy (DAA and the ADC) was spliced onto a newly created indigenous arm.
CREATING THE ATSIC STRUCTURE: 
INCORPORATING DIVERSITY

When the ATSIC proposal was developing (during 1986–87), the nature and implications of indigenous diversity were part of government deliberations. The earliest beginnings of ATSIC are contained in the exchanges of confidential Cabinet submissions, and so not available for public examination. Initial proposals were developed by an informal working party of consultants and staff from the office of the Minister for Aboriginal Affairs, in liaison with senior staff from portfolio agencies such as DAA. The working party drew upon existing bureaucratic knowledge, and a variety of reports and inquiries including the Coombs review (1984) and O’Donoghue’s (1986) revamping of his recommendations (see McMullan 1989, 71–2). The proposal for a new body was announced by Gerry Hand, Minister for Aboriginal Affairs, in the lead-up to the Australian Bicentenary, and formally launched with the publication Foundations for the Future, on 10 December 1987.

In Hand’s original proposal for ATSIC, 28 councils at a regional level were grouped into 6 zones covering the whole of Australia. Between January and March 1988, the Minister toured the country consulting with indigenous people. Media releases made much of the fact that he participated in some 50 public meetings attended by over 6000 people. Although criticisms have been made of the shortcomings in that consultative process (see McMullan 1989), it was nevertheless the most extensive ever conducted by government.

As a result of considerable criticism presented by Aboriginal groups during this consultative phase, and the need to gain broad indigenous support, the Minister revised the proposal (in April 1988), substantially expanding the 28 regions to 56 and then 60, and the zones from 6 to 17.² Importantly, the original administrative criteria for regional boundaries was dropped in favour of criteria based on cultural commonalities and

². The ATSIC Bill introduced in August 1988 ultimately listed 60 regions because some urban regions were detached from surrounding rural areas.
differences, and related factors. Hand stated that the amended boundaries and expanded number of councils 'reflect Aboriginal and Torres Strait Islander requests and recognise historical, cultural, linguistic and other important factors' (Hand, HoR Debates No.7, 27 April 1988, 2177). Although there is little information on public record indicating exactly how these regions were demarcated, Hand's claim undoubtedly acknowledges Commonwealth government attempts to recognise and strategically incorporate Aboriginal cultural diversity as the basis for ATSIC's organisational framework, and so structurally manage its political impact. Inevitably, it was a limited translation of diversity, subject as it was to prevailing government concerns about the need for financial and administrative efficiency, and the sheer difficulties involved in translating complex indigenous cultural differences into a nationally representative organisational framework.

ATSIC was established as a statutory authority with legislative powers and functions extending across a bipartite hierarchy of nationally elected indigenous representatives on the one hand, and an equally hierarchical administrative arm on the other (ATSIC 1992, 1993b). ATSIC's organisational structure was the subject of intense debate. Significant alterations were required to enable passage through the Senate (Dillon, this volume; Sanders 1993). Also, the internal protocols and administrative mechanisms by which the organisation would actually operate were still to be defined. For this very reason, the domain of indigenous diversity continued to be influential in ATSIC's early development. Once cultural diversity had been given an institutional expression, it became the subject of strategic interpretation and intense negotiation.

THE ORGANISATIONAL STRUCTURE AND ROLES OF THE INDIGENOUS ARM

ATSIC's indigenous representative arm is divided into three components at the regional, zone and national levels. Initially, the base consisted of 60 regional councils as bounded geographic entities covering all of Australia (see map, page x). Each regional
council has a set of indigenous councillors and chairpersons elected for three years to represent their particular regional population. In pushing through the ATSIC legislation, Hand (1987, 2) described the 60 councils as the 'linchpin of the Commission's future'. Legislative changes in 1993 reduced the number of regional councils from 60 to 36 (see map, page xi; and to 35 after the creation of the TSRA) and councillor numbers from 800 to around 600.

Regional council areas are grouped into 17 zones. Councillors for each zone elect a Commissioner to represent them on ATSIC's Board of Commissioners. Along with these 17 Commissioners, the Board also has two other Commissioners appointed by the Federal Minister for Aboriginal and Torres Strait Islander Affairs, and a chairperson appointed by the Minister from among those 19 Commissioners.

Regional councils are established as separate legal entities with a range of statutory functions, including: the formulation and revision of regional plans for improving the economic, social and cultural status of the indigenous population within its boundaries; assisting and advising ATSIC and other Commonwealth and State government bodies in the implementation of that plan; and via the budgetary process, making proposals for expenditure within their own area.

Regional councillors have executive responsibility for developing and monitoring all ATSIC policy and programs at the regional level (ATSIC 1990, 1992), though it is not at all clear to what extent this occurs in practice. Councils do not directly receive or spend funds – rather they decide upon program funding allocations within their regions, and are legislatively required to do so on the basis of priorities laid out in their regional plans (ATSIC 1994, 26; see s.97(2)(a) of the Act). Prior to legislative amendments in 1993, regional councillors had a more advisory role in funding decisions. Subsequently, the delegation of Commission powers to regional councils substantially increased their involvement in funding decisions.

In the 1993 legislative amendments to ATSIC's structure, it was proposed by the Commission that the Board of Commissioners should be responsible for electing its own chairperson. This move
for greater autonomy was rejected. The accepted amendment resulted in ATSIC regional chairpersons and Commissioners being employed full-time, though not under the Australian Public Service Act. In order to assume full-time paid employment, Commissioners and regional chairpersons are required to forego other paid employment.

Under the Act, the Board of 19 Commissioners has executive powers to set national policy, determine national financial priorities and develop draft budgets; formulate and monitor programs; and provide advice to the Commonwealth government and the Minister. ATSIC Commissioners thus have a representative role as individuals, as well as collective advocates for their respective constituencies within Aboriginal Australia. The Board has significant decision-making responsibilities and is regarded by ATSIC as 'the main policy-making body in indigenous affairs' (ATSIC 1994, 8). Council chairpersons and State Advisory Committees negotiate the inter-regional division of funds within each State, and the latter Committees play a substantial role in decisions at the State level about inter-regional funding distribution. This ATSIC funding process is administratively complex and fraught with conflicts about the decision-making role of the councils relative to each other and to the Board, and relative to various echelons of the administrative arm (Smith 1993a).

THE ORGANISATIONAL STRUCTURE AND ROLES OF THE ADMINISTRATIVE ARM

ATSIC’s administrative arm is divided into three tiers at the central, State and regional office level (ATSIC 1993c). At the apex, the Chief Executive Officer (CEO) is a statutory officer appointed by the Minister. The CEO has authority for the daily administration of the organisation, and has to balance direct

3. The latter advocacy role was especially evident in the public involvement of the ATSIC Board Chairperson, along with other Aboriginal leaders, in the negotiations with the Commonwealth government in the lead up to the passage of the Native Title Act 1993.
responsibility to the Minister in performing these duties with a legislative requirement to exercise powers in accordance with policies and directions given by the indigenous Board of Commissioners. At the base of the administrative arm are 30 regional offices responsible for the administration and delivery of ATSIC programs. The reduction of regional councils to 36 effectively aligned them more closely to the regional office structure and the latter's administrative oversight. Regional offices administer the funds allocated by regional councils to Aboriginal organisations and communities, as well as national program funds allocated by the Board of Commissioners. The regional offices are supported by State offices which co-ordinate grant administration and budget preparation, monitor programs and liaise with the Commissioners in their State, and with State governments in relation to the provision of services (ATSIC 1993a, 11).

The Office of Evaluation and Audit (OEA) was established by s.75 of the ATSIC Act and is headed by a statutory Director appointed by the Minister after consultation with the Board of Commissioners. OEA staff are ATSIC staff. The OEA is expected to provide financial accountability to Parliament (Dillon 1992), and is in an ambiguous position between its accountability to the Minister and to the indigenous and administrative arms of ATSIC. The Director is responsible to the Minister, not the CEO or Board, but can be requested to conduct audits by the Minister and the Board of Commissioners, and is required to report in writing to both. At the same time that 1993 legislative attempts by the Commission failed to have the OEA placed more directly under Board control, its functions were expanded to include audit oversight of the regional councils. Indeed, every stage in the devolution of powers to ATSIC's indigenous arm has been met by increased requirements for public accountability measures (Sanders 1993).

While ATSIC's administrative arm was initially largely formed from existing staff of DAA and the ADC, the need to quickly establish financial and administrative linkages with the representative arm has required a major cultural change within the bureaucracy. The administration is described as having a
'dual responsibility to both the representative arm and the government' (ATSIC 1995, 6), requiring a fine balancing of interests between accountability to government and advocacy of its indigenous priorities. The role of regional, State and central offices in respect to regional councils and Commissioners, and vice versa, is still evolving and remains subject to negotiation.

THE INSTITUTIONAL POLITICS OF DIVERSITY

Cultural diversity is the unifying logic behind ATSIC's representative indigenous structure. The Aboriginal collective has been constituted 'as a plurality of local interests' and translated by government into the organisational guise of the Commission. This plurality has been sited in a representative structure that 'recognises the culturally and politically heterogeneous nature of the Aboriginal and Torres Strait Islander population' (Dillon 1992, 91, 94). ATSIC's decentralised character is deemed to be vital 'because Aboriginal Australia remains as it has been: dispersed, a network of localities' ... 'where communities have different values and aspirations, different problems, according to their different cultures and histories' (O'Donoghue 1991, 13; 1993, 8). ATSIC's regional council structure is thus presented as a statutory expression of indigenous diversity. A number of important consequences have followed upon this structural incorporation and containment of cultural difference.

ATSIC's most recent corporate plan affirms 'the primary role of the representative members of ATSIC in setting the broad direction of the organisation at the national and regional level' (ATSIC 1995, 8). Nevertheless, there is an underlying tension between the regional and central levels of the indigenous arm in these areas of responsibility. The Board is expected to make decisions on the basis of 'national priorities and budgets'. Regional councils, as representatives of regional expressions of cultural diversity, are expected to make decisions reflecting the local priorities and needs stipulated in their regional plans. In actual fact, the structural divisions of responsibilities within the indigenous arm are more ambiguous than that. First,
Commissioners are also regional councillors, and regional councillors are often also members of other local Aboriginal organisations. Second, regional councils are being given increased control in response to their calls for greater devolution of funding powers. Third, it remains unclear by what processes the regional and national levels of policy formulation and funding distribution are linked and made consistent. As a result, policy and program funding decisions are subject to diverse and competing indigenous interests.

Protocols, legislative amendments and reviews have attempted to clarify the relationship between ATSIC’s constituent representative and administrative arms. The budgetary process has been adapted to meet the progressive transfer of financial and other responsibilities to the Commissioners, and decentralisation to regional councils. Despite these efforts, ATSIC remains a contested structure. Its distinctive dual structure has been posed as a partnership between the indigenous and administrative arms, but if this is the case, it is a partnership characterised by role conflict and an uncertain distribution of decision-making powers. These organisational tensions continue to be negotiated by interest groups, or constituencies, both within and outside the Commission which are aligned to competing views of its role. Indigenous cultural diversity is often employed as a policy and political tool by such constituencies to promote different directions. In the process, institutionalised diversity is becoming a feature of public Aboriginal authenticity.  

TRANSFORMING CULTURAL DIVERSITY INTO ATSIC REGIONALISM

At the end of ATSIC’s first year, Rowse (1991, 12) suggested that it could be seen not only as reflective of a change in public policy

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4. See Beckett (1988a, b), Morris (1988), Rowse (1991) and Weaver (1984) for discussions of the public and private constructions of Aboriginality immediately pre-dating the establishment of ATSIC, and in particular, the part played in these by the official recognition of Aborigines as a collectivity within a multicultural Australian nation.
formation,⁵ but also as a new stage in the formation of Aboriginal cultural identity. He linked this possibility to the Commission’s potential impact on the ways Aboriginal people might perceive the boundaries between the State and themselves at the local level. In fact, public representations of an institutional Aboriginal identity are in the process of being generated within ATSIC, but at the national and regional levels. It is precisely not at the ‘local’ or community level that cultural diversity has been structurally accommodated within ATSIC. Rather, a very specific reading of cultural diversity has occurred; one which structurally equates it with a regional expression and value. Regional councils have been created by the Commonwealth government as the institutional face of diversity. This has produced another set of administrative boundaries and structures within Aboriginal affairs, which have become the locus of an institutionally contested public Aboriginality.

Regional councils are encouraged by ATSIC to undertake regional planning to document, amongst other things, the varying circumstances and priorities of the indigenous communities and organisations within their boundaries (see Finlayson & Dale, this volume). As is to be expected, there is little that is uniform or consistent about the planning documentation so far produced. Councils are encouraged to act as the consultative interface with local and State governments for the co-ordination of service and funding needs. Increasingly, they are also seen as the formulators of ATSIC regional policy directions. However, whether they can adequately reflect the wide range of indigenous interests within their regions is yet to be established. Nevertheless, Aboriginal people have been exhorted by the current Minister to use the council structure to ‘exert the political clout needed to gain a fair share of available resources’ (Tickner 1993).

As a consequence of ATSIC’s decentralisation policy, regional councils are locked into the management and control of an

⁵. Sanders (1993) speaks of a ‘renegotiated policy bargain’.
increasing percentage of program funds. Its legislation imposes two major program funding categories: regional programs operating under regional council discretion and administered by regional offices; and national programs allocated by the Board of Commissioners and administered by central office. The Act further specifies that certain national funding areas are excluded from regional council discretion, including State grants, administrative expenses, and funds for portfolio organisations and the Commercial Development Corporation (see Smith 1993a). However, though it is the Board and central office which specifies the relative division of funds between these two broad program types, increasing areas of national program funding are being transferred to regional council discretion. The Commission’s total regional budget, over which regional councils have discretion, has increased from $79 million to $240 million during the three financial years 1991–92 to 1993–94. Regional funds have risen from representing 12.6 per cent of ATSIC’s total program funds of $628.7 million in 1991–92, to accounting for 32.8 per cent of total program funds of $730.3 million in 1993–94. Though some regional councils criticise the slow rate of financial decentralisation occurring, they are in fact steadily gaining substantial authority over ATSIC program funds.

6. ATSIC’s legislation imposed two major program funding categories: regional programs operating under regional council discretion and administered by regional offices; and national programs allocated by the Board of Commissioners and administered by central office. Though it is the Board and central office which specifies the relative division of funds between these two broad program types, the Act further specifies that certain national funding areas are excluded from regional council discretion, including the Community Development Employment Program (CDEP), State grants, administrative expenses, and funds for portfolio organisations and the Commercial Development Corporation (see Smith 1993a). Over the financial period 1992–1993, funding for the CDEP has increased from 37 per cent to 45 per cent of its national program funds totalling $587.9 million in 1993–94. CDEP scheme funds represent notional welfare-equivalent payments made by ATSIC to Aboriginal communities which have volunteered to forego individual welfare entitlements. If CDEP funds for 1993–94 ($264.8 million) are deducted from the ATSIC’s centrally-allocated national program funds ($587.9 million), then the remaining $323.1 million is only some $90 million above the total regional program funds of $231.2 million.
Inevitably, allocative decisions by regional councils are political decisions and a source of conflict. Councillors become the focus of local indigenous competition over scarce regional funds, and local organisations question the objectivity and authority of regional council members. To date, disputation has mainly centred on resource allocation decisions by the councils, but increasingly regional councils will be held accountable by government, the Commission’s central bureaucracy and by local communities, for their decisions and for program outcomes. To an extent, parochial politics at the regional and Board level have served to deflect attention away from the responsibilities of mainstream agencies and State and Territory governments.

Cultural diversity and organisational decentralisation have become firmly grounded in ATSIC regionalism. Regions, in turn, are equated by many in ATSIC (not only regional councillors) as the structural level at which ‘real’ self-determination in ATSIC lies; even over Commissioners who, after all, are firstly regional councillors. The ATSIC bureaucracy and Board attempt to manage the consequences of regionalism and decentralisation by trying to link regional council decisions to national policy frameworks and to financial accountability measures. At the same time, the councils push for greater autonomy and financial self-determination. Cultural diversity, translated in as regionalism and financial decentralisation, has become a key factor in ATSIC policy, program and funding directions.

THE DIVERSE FACES OF ATSIC REGIONALISM

The creation of geographically-bounded ATSIC regions has generated further permutations of diversity between regional Aboriginal populations. At the most obvious level, the 36 regions (including the Torres Straits) differ considerably from one another in their populations, physical area, geographic location in rural, remote and urban areas, and the types of communities within each. But additional more detailed indicators of inter-regional differences are now being documented and referred to in ATSIC planning.
Over the last few years, an important piece of information has been added to ATSIC's bureaucratic knowledge base. Namely, that while there are substantial differences in socio-economic status between indigenous and non-indigenous Australians, there are often greater variations in levels of socio-economic disadvantage between regional council populations. ATSIC regional populations vary greatly in their demographic profiles, health characteristics, labour force participation rates, degree of involvement in the subsistence and mainstream economies, income levels, costs of living, educational attainment, and household and family characteristics. Regional council 'economies' vary considerably according to the nature of the mainstream labour market, the presence or absence of Aboriginal-owned land and related economic development options, and the type and extent of government funding and transfer flows into the region (Khalidi 1992; Tesfagiorghis 1991). Bureaucratic knowledge about these inter-regional variations is expanding as ATSIC obtains five-yearly census data disaggregated to the regional council level. Survey research available to ATSIC also reveals significant variations between ATSIC regions in infrastructure levels, housing and community amenities (Australian Bureau of Statistics 1994; Jones 1994). So that a range of additional socio-economic differences are being mapped onto cultural diversity, creating a political economy of diversity at the regional level.

Regional plans refer to the varying socio-economic and cultural characteristics of each region, and assert different funding priorities. As a result, a more geographically-based program structure is being advocated to cater to differing regional needs. There have been calls by some councils to have the allocation of program funds based on an assessment of these regional differences (see Smith 1993a, b). As a result, ATSIC commissioned a consultancy in 1994 to develop a formula, based on relative needs, for use in distributing funds between the regions. Competition and manoeuvring between the 35 regional councils over their relative share of funds is likely to grow more urgent and vocal as they attempt to establish a legitimacy with local indigenous organisations. One consequence of this is that the
conflict over resources is being firmly shifted into the Aboriginal, rather than the government and bureaucratic, domain. In particular, attention has been focused on the funding decisions of ATSIC Commissioners and the regional councils.

ATSIC: A CONTESTED STRUCTURE

ATSIC is often referred to as if it is a monolithic, unified structure. This is far from the case. There are different constituencies within the indigenous arm, as there are within the administrative arm. Its representative structure has been based on government attempts to incorporate and manage indigenous cultural diversity; albeit via a narrowly constructed regional reading of that diversity. Subsequent to the initial incorporation of cultural diversity as the basis for ATSIC’s representative structure, further elaborations of that diversity, rendered at the regional level, have been generated within the Commission. In this manner, diversity has become the organisational persona given to the Aboriginal collectivity; but one subject to contested interpretations.

Regionalised diversity has subsequently manifested itself as competing parochial interests – often at the expense of national objectives and local program outcomes. The process of organisational and structural decentralisation within ATSIC has also been met by demands for even finer-grained representation of indigenous stakeholders within regions. The result is that diversity has been made a highly politicised domain mediated by constituencies within the Commission, and outside.

The politics of cultural diversity are evident at a number of levels in ATSIC. On the one hand (and with a very broad stroke) a ‘centralist’ bureaucratic constituency emphasises incorporation of difference; mainstreaming; a functionally-based program structure; high levels of centrally supervised financial accountability; tied funding; and concern over the need to maintain national policy and program objectives. It also regards, perhaps somewhat uneasily, the Board of Commissioners as the senior decision-making group within the representative structure (though not, perhaps, over the total organisation) and hence, as being the key organisational arbiters of self-determination.
On the other hand, a 'regionalist' constituency within ATSIC holds out the regional council structure as the key to the Commission's future development. That constituency pushes for greater decentralisation of decision-making; financial autonomy and control at the regional level; one-line funding arrangements; 'culturally appropriate' program outcomes; and geographically-based program structures. The influence of this constituency in ATSIC is evident in the continuing pressure to devolve substantial control over policy and program funding to regional councils. It is also apparent in support for the argument to have the 'authority' model of the TSRA emulated for the remaining 35 councils; that is, to transform the councils into more independent regional authorities (see Dillon, this volume).

Not surprisingly, this division between regionalism and centralism is often equivalent to that between ATSIC's representative and administrative arms. However, there are fluid boundaries between these two broad constituencies; interest groups overlap the two arms and competing interests operate within each. Nevertheless, the tension between the two is evident as a push and pull in all initiatives and strategies developed within ATSIC.

The regional councils are a potentially significant political development in Aboriginal affairs and are central to the institutional versions of Aboriginal identity emanating from ATSIC. In these circumstances, one must question whose interests were served by the reduction in 1993 of council numbers from 60 to 36; a process achieved by the amalgamation of some councils and changes to boundaries. Ministerial and bureaucratic impetus for the change largely arose from the legitimate need for greater administrative ease in serving the large number of regions and councillors. The reduction has also been posed as creating 'significantly increased levels of funding and powers and responsibilities for a smaller number of Councils' (ATSIC 1993c, 25). The effective result is that complex diversity has been further rationalised and reduced in its organisational translation.

There is no doubt that the administrative and financial complexities involved in servicing 60 councils was severely underestimated by government. The Commonwealth's initial
expansion from 28 to 60 was posed primarily as a responsiveness to indigenous calls for greater recognition of cultural diversity; it also effectively marshalled the support of the indigenous constituency behind the Minister and the Labor Government in the face of a hostile Senate. Concern for diversity was no longer so politically relevant to government in 1993, though it remained so for a number of Aboriginal interests. In regard to the latter, in 1989 the Senate Select Committee on the Administration of Aboriginal Affairs, had reported the ‘strength of opposition’ by Aboriginal people to ‘large [ATSIC] regions having little traditional homogeneity’ (McMullan 1989, 40). Further, the 1993 ATSIC Review Committee which recommended the reduction, did so regardless of reporting that ‘Regional Councils ... supported the current number [60] ... ‘and no change’ (ATSIC 1993c, 25). Arguably, the reduction was as much about containing the political consequences of cultural diversity, and in particular, managing the impact of 60 regional councils erratically acting as independent advocates of their own local interests.

CONCLUSIONS

Government acknowledgement, albeit under indigenous pressure, of the cultural heterogeneity of the Aboriginal population was a fundamental factor in developing the ATSIC structure. The nature of that diversity has continued to be constructed and renegotiated within and outside the Commission. As a consequence, ATSIC remains a contested structure. Indeed, the internal tensions generated by the structural incorporation of cultural diversity, and the politics surrounding its subsequent management, appear to be one of the Commission’s more critical defining features, creating a powerful dynamic for change. It is already apparent that the direction of that change is towards the greater authority of the indigenous Commissioners and council chairpersons, and to greater decentralisation of powers to regional councils.

There remain, then, a number of challenges for ATSIC arising from the nature of the articulation between its administrative and representative arms, and from the implications of its
decentralisation policy. Firstly, the incorporation of cultural diversity as the basis of its representative structure raises the issue of where indigenous organisational authority is located. If ATSIC represents, as claimed, the institutional apex of the government's self-determination policy to date, does the structural locale of self-determination lie within the regional councils as representatives of culturally diverse regional constituencies? Does it lay with the Board of Commissioners as the elected national voice of indigenous Australia? Or does it lie entirely outside ATSIC, at the so-called ‘grass roots’ level of local communities, organisations and groups. In the short term, the focus on politicking about this issue has its costs. Parochial interests within ATSIC can predominate, and the Commission’s ability to influence the national decision making of government is not being maximised. These tensions are also not easily understood by government, and the public perception of ATSIC being an ineffective organisation dominates media coverage despite the inordinate requirements for its accountability.7

Secondly, if regional councils are to be effective structures for implementing ATSIC policy and programs, then councillors must be able to gain and deliver the support of their indigenous constituencies. However, while ATSIC regionalism is being constituted as a new public form of Aboriginal authenticity, criticisms have been made as to whether councils fairly represent the range of Aboriginal priorities and interests at the local level. ATSIC’s desire to respond positively to such criticism has seen it encourage greater devolution of powers to the regional level in

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7. The requirement for financial accountability that has, at times, engendered a ‘siege mentality’ within ATSIC (ATSIC 1993d, 4). No other government department or authority has within it an independent Office of Evaluation and Audit (OEA) with a charter to regularly evaluate its efficiency, programs and operations, reporting directly to the Minister for Aboriginal and Torres Strait Islander Affairs. It is asserted that more than 40 OEA and 20 Australian National Audit Office audits are conducted into the Commission’s operations each year (ATSIC 1993b, 4). Similarly, no other Commonwealth government department has a counterpart policy office – the Office of Indigenous Affairs – separately located within the Department of Prime Minister and Cabinet, offering parallel advice to government, independently to that of ATSIC.
order to reflect diverse local interests. But clearly there must be some bounds placed upon the structural recognition of indigenous diversity. There are limits to the extent that localised and highly competitive indigenous interests can be accommodated by the elected representatives, and in reality, neither ATSIC nor government can fund or service the complexity of indigenous cultural diversity that exists. If national policy objectives and program coherence can be maintained, and regional councils held accountable to their constituencies, ATSIC regionalism may very well represent the most effective organisational structures by which ‘special’ government program funding can be implemented.

Thirdly, while cultural diversity was used as a unifying device in the creation of ATSIC’s structure, it remains to be seen whether it will continue to act as a unifying factor. As part of the politics of diversity within ATSIC, a regional decision-making culture is arising and becoming influential in the competition between and within regions over access to limited resources. There are also clear tensions between national policy and funding priorities set by the Board, and those asserted at the regional level by councils. The politics of diversity may yet be promoted by various constituencies in Aboriginal affairs to the detriment of ATSIC’s political and policy unity, and to its standing as a nationally representative body.

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The Political Identity of Regional Councillors

Tim Rowse

THREE MODES OF INDIGENOUS EMPOWERMENT

To understand better what ATSIC's Regional Councillors do, and how some of them talked to me about their work, it is useful to consider three related strategies of indigenous 'empowerment', or should we say, of managed indigenous political mobilisation, currently provided by the Australian government. One is to encourage the formation of many local Aboriginal organisations which are then publicly funded to service and represent indigenous people. A second is to recruit indigenous people into parts of the public service which deliver programs to indigenous people. The third is ATSIC.

The Aboriginal and Torres Strait Islander Commission was legislated in 1989 to replace the two major Commonwealth agencies in the 'Aboriginal Affairs' portfolio – the Department of Aboriginal Affairs and the Aboriginal Development Commission. Theoretically, ATSIC, while ultimately accountable to Parliament through the Minister for Aboriginal Affairs, is governed at two levels by elected indigenous people. There are 35 elected Regional Councils (reduced from 60 in 1993). Regional Councils are grouped into 17 zones for electoral purposes, each zone
sending one delegate to a 20 person national Commission. (Three additional Commissioners, including the Chairperson, are appointed by the Minister.) The Commission is responsible for decisions in those ATSIC programs considered to be of ‘national’ scope, while the Regional Councils decide local distributions of an increasing proportion of ATSIC’s funds.

ATSIC is not the only significant agency in indigenous affairs. In the period of my research (1992–93) ATSIC spent only 51.2 per cent of Commonwealth money specifically identified as programs for indigenous Australians. However, no other agency at any level of government in Australia puts elected indigenous Australians in charge of programs for indigenous citizens. It is also significant that ATSIC’s chairperson, Lois O’Donoghue, was among the ‘A team’ which negotiated the Native Title Act 1993 with the Australian government and with other parliamentary and industry groups in 1993.

ATSIC’s claims to be the national voice of Australia’s indigenous people are controversial. Wiradjuri solicitor Paul Coe argues that ATSIC is an instrument of the government, its elected personnel subject to restrictions and obligations similar to those which apply to public servants. ATSIC’s supposed masters, the elected Regional Councillors and the national Commissioners, have no say in the hiring and firing of ATSIC staff, who, in their conditions of employment, are part of the wider Australian Public Service. Coe argues that since the early 1970s indigenous Australians have been demonstrating in others ways their capacity for self-determination: they have formed local councils and associations to deliver publicly subsidised services to their people. There are now about 2000 such incorporated bodies. ATSIC, in Coe’s view, is an instrument for continuing the government’s invigilation of the affairs of locally-based indigenous organisations (Coe 1994, 39).

Coe is not alone in seeing ATSIC as an instrument of government, rather than of indigenous self-determination. Dr HC Coombs describes as ‘debilitating ... the misleading presentation of ATSIC as an Aboriginal organisation’ (Coombs 1994, 183). According to Rob Riley ‘the tyranny and the travesty of ATSIC is that ... many of the [Aboriginal] decision-makers have emerged
with the old native welfare mentality intact: the basic culture of ATSIC has not changed' (Riley 1994, 172). Peter Yu writes that ATSIC is 'still largely controlled by the bureaucrats of old and the dead-weight of inherited policies and procedures' (Yu 1994, 122). Marcia Langton also sees the persistence of 'a “native welfare” regime in [ATSIC’s] bureaucracy’, but allows that its ‘hegemony ... is constantly being contested’ (Langton 1994, 135–6). 'ATSIC is government’, Charles Perkins asserted in August 1993 (Perkins 1994, 42). Perkins called for indigenous Australians to finance by popular subscription a complementary, independent national representative body.

Not one of these authors is recommending that indigenous Australians turn their backs on ATSIC. For example, Charles Perkins, for much of his career a public servant, served as the Deputy Chair of ATSIC after making the remarks from which I have just quoted. ATSIC’s Chair, Lois O’Donoghue, hails ATSIC as ‘the leading example of the Commonwealth’s endorsement of the principles of self-determination and self-management’ and as ‘a radical advance in the application of self-determination principles within Commonwealth government arrangements’. However, acknowledging criticism, she adds that ‘the full potential of ATSIC as an instrument of self-determination is still to emerge’ (O’Donoghue 1994, 5,10).

Is it possible for ATSIC to be both a statutory body of government and an instrument of indigenous self-determination? There are precedents for such a hybrid. Among Aboriginal people the Northern Territory Land Councils (whose statutory basis is the Commonwealth’s Aboriginal Land Rights (Northern Territory) Act 1976) seem to enjoy considerable (though locally disputed) legitimacy. However, ATSIC differs from the statutory land councils in at least one crucial respect: the degree of control exercised by indigenous people over their staff. Whereas the land councils vest authority to hire and fire staff in their elected Councils (which then act through an Executive and a Director who are accountable to Council), ATSIC staff are public servants, answering to ATSIC’s Chief Executive Officer who must act within the personnel policies of the Public Service Commission. This difference points to an important feature of recent Australian
government policy. The government appears to believe that one way to empower indigenous Australians is to give them the jobs of administering many of the programs servicing indigenous people.

The only recommendation made by the Royal Commission into Aboriginal Deaths in Custody (out of 333) which was unequivocally rejected by the national government in 1991–92 was that which would have made ATSIC an employing authority in its own right. The Public Service Commission (PSC) argued that ATSIC staff, many of whom are Aborigines or Torres Strait Islanders, would have been disadvantaged by this recommendation: they would find it harder to transfer to other jobs within the public service and would not receive PSC classification and accreditation. Whether this is an insoluble or significant problem is debatable. What I find significant is the manner of the government’s reasoning. The Commonwealth sweetened its rejection of this recommendation with assurances that it was actively recruiting indigenous Australians to public service positions. In other words, addressing an issue of the scope of the powers of elected indigenous decision-makers, the PSC responded in terms of the interests of their indigenous staff.

Indeed, the Australian government has been promoting a public service career path for indigenous Australians (and encouraging other public and private corporations to follow its example). In 1988 about 30 per cent of staff of the Department of Aboriginal Affairs and 45 per cent of staff of the Aboriginal Development Commission were indigenous. At June 30 1992, 45 per cent of ATSIC staff were indigenous, but this proportion dropped to 37 per cent by June 30 1993, after a further twelve months of staff recruitment in which the ATSIC staff establishment grew by an astonishing 47 per cent. About 44 per cent of the staff of the three agencies within the Aboriginal Affairs portfolio (ATSIC, Aboriginal Hostels Limited and the Australian Institute of Aboriginal and Torres Strait Islander Studies) were indigenous at June 30 1993, well above the Commonwealth Public Service average of 2.45 per cent (ATSIC 1994, Appendix 11, Attachment C).
How many indigenous public servants would agree that their presence within the apparatuses of state empowers the indigenous constituency? Undoubtedly some would, more likely those in senior positions. It is therefore likely that public service recruitment is influencing indigenous notions of what 'self-determination' means in practice. Coombs commented on this possibility ten years ago, in a 1984 study of ATSIC's predecessor, the National Aboriginal Congress (NAC). Noting that indigenous public servants had the potential to be effective 'brokers between Aboriginal and white authorities', he cautioned that this benefit would depend on their 'continu[ing] to identify strongly as Aborigines and preserve their links with their society' (1994, 139–40). That identification and those links are threatened by the culture of the public service itself.

That culture has recently been studied by Jackie Wolfe. Reviewing ATSIC's experiments, in the early 1990s, in community and regional planning, Wolfe has argued that the culture of ATSIC's bureaucracy emerged as an obstacle to 'bottom up' policy formulation. The techniques and skills to facilitate community development planning were not necessarily familiar to ATSIC staff who were more likely to be experienced 'with deciding on solutions and planning projects for communities, with delivering pre-determined programs, and tracking and accounting for expenditures' (Wolfe 1993a, 36). Some agency staff looked in vain for indigenous skills and orientations which mirrored their own professional culture. 'Plans' lacking detailed timelines and cost estimates were often dismissed as 'wish lists'. Some staff were discomfited if unable to act in accordance with 'their known roles as project officers and accountants of funds' (1993b, 39). A divided bureaucratic culture became evident to Wolfe.

For bureaucrats trained to administer defined programs, and required to carefully account to political scrutineers for the expenditure of funds strictly within program terms, [community and regional planning] means accepting a level of uncertainty which has considerable political and personal risk. At all levels within ATSIC, some staff are not only willing to accept the risk, they see it as essential to ATSIC's support of a new and more constructive relationship between Aboriginal people and the rest of Australian society: others
are philosophically and practically reluctant to endorse this redefinition of ATSIC’s role (Wolfe 1993b, 40).

If Wolfe is right, then the professional socialisation of the many new indigenous recruits to ATSIC must be an arena of competing notions of what it now means to be a ‘good’ public servant within ATSIC.

Let me draw together the threads of this introductory discussion. It has become Australian government policy to foster indigenous political representation and self-determination in three related ways: subsidising incorporated local indigenous organisations; recruiting indigenous people to sections of the bureaucracy; and devolving powers of financial allocation over some programs to elected indigenous assemblies – both national and regional. Whether this ensemble of strategies meets indigenous expectations of ‘self-determination’ is another matter altogether – to which I now turn.

A CRITIQUE OF CURRENT EMPOWERMENT STRATEGIES

There is an emerging critique of this ensemble of strategies which argues a clear preference among these modes of indigenous empowerment. This critique says that local indigenous organisations are best placed to articulate indigenous needs and wishes. The critique is sceptical that indigenous public servants can remain loyal to these Aboriginal organisations because the public service culture powerfully contests such loyalties as unprofessional; the public service culture of ATSIC is, at best, divided, as officers are obliged by contemporary public sector management practices to account in certain ways for the expenditure of public money, in order to satisfy the financial and political protocols of the central agencies of the state. Standing between the locally organised indigenous constituency and this centrally coordinated bureaucracy are the elected representatives of indigenous people: ATSIC’s national Commissioners and Regional Councillors. The extent of their powers and nature and direction of their accountability are now among the key issues of ‘self-determination’.

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This critique notes that the indigenous political constituency is characterised by a high degree of localism, arguably a continuation of the people/country links which have been the traditional basis of indigenous authority. That is, indigenous political culture is suspicious of 'national' representations, preferring smaller scale political arenas which allow more immediate relations of accountability between people of the same region. Accordingly, some proponents of this critique see regional devolution as the road to ATSIC's political redemption. Coe concedes that 'at the level of regional councils, there is a greater element of self-management and community accountability'. However, he insists that as long as the regional councils remain peripheral to ATSIC decisions, they will remain no more than a 'veneer of respectability' (Coe 1994, 39). Coombs calls for 'decision making, recruitment and training ... to be regionalised ... to strengthen ATSIC's Aboriginal and regional composition and its identification with an ideology of autonomous Aboriginal self-government' (Coombs 1994, 185–6).

The government is ostensibly sympathetic to a greater devolution to the regions of both decision-making and staff resources. One reason for reducing the number of regions from 60 to 36 in 1993 was that the remaining regional councils would be administratively stronger, acquiring full-time employed chairpersons and larger secretariats. Another amendment gave the Commissioners powers to delegate a greater range of program budgeting decisions to Regional Councils. In the same sequence of 1993 amendments, however, Regional Councils were brought under the scrutiny of ATSIC's Office of Evaluation and Audit (OAE). Making the elected full-time chair a full-time salaried position may also be two-edged – increasing the resources at the Regional Council's disposal, but possibly increasing as well that person's tendency to identify with ATSIC. Before the amendment a Regional Chairperson was likely to have been a salaried employee of an Aboriginal organisation, making him or her a a delegate of that organisation. We should therefore take a cautious view of the 1993 reforms: increasing the powers of Regional Councils vis-a-vis the Commission, making the Regional chair
a full-time position, and sending more public servants out to the regions to service Regional Councils.

One reason for caution is that little is known about Regional Councils. This paper is intended to illuminate one of their aspects – the emergent political identities of the Councillors themselves.

In 1993, I received a grant from the Australian Institute of Aboriginal and Torres Strait Islander Studies to interview a small number of the approximately 800 Regional Councillors then serving the third year of the first three year Regional Council term. In the event, I was able to interview 25 Councillors. Twelve were from two capital city-based Regional Councils, six were from a rural region, and seven were from remote regions. I do not claim this to be a ‘sample’ in any respectable statistical sense. However, the variety of people and political circumstances which I encountered makes me confident that my 25 conversations convey some of the issues which characterise the emerging political culture of Regional Councillors. I did not interview in Tasmania and Victoria, but my regional spread included cities, towns, the tropical north and the arid centre. Among my 25 Councillors there were 7 women and 18 men, their ages ranging from about 30 to 60. I undertook never to name these regions nor to identify individuals interviewed.

In the rest of this paper, I report, in my own words, the themes of these 25 interviews. I have divided the material into two sections: ‘the rewards and frustrations of the task’ and ‘themes in Councillors’ political identity’.

Rewards and Frustrations of Working as a Regional Councillor

What was the best thing about being a Regional Councillor?

People’s answers were overwhelmingly practical and material: they reported satisfaction at having helped to get some resources for their constituents. However, another benefit was also frequently mentioned: acquiring a working knowledge of the process of government, its programs, its budget cycles, and who was getting what. I got the impression that even when the
material results of being a councillor were rather meagre, the acquisition of knowledge was constantly rewarding. Politically marginalised people are getting a lot of satisfaction from being put more in the picture.

The worst thing?

The most commonly reported 'worst thing' was the difficulty of dividing limited resources among many claimants (and the tensions thus created among Councillors and between Councillors and constituents). Other negative things reported were: having to deal with the greediness and pushiness of certain families/old people; the inflexibility (sometimes attributed to under-resourcing) of local ATSIC staff; the proposed amalgamations of Regional Councils – perceived as threatening to undo much of the Council's work; unexpected limits to the powers of Regional Councils; too much information to absorb.

Are the powers of the Regional Council well defined?

Opinion was divided. Those who thought the powers were well defined usually commented that the powers were not great. Some complained that they had been given insufficient training, saying that it had taken two to three years to understand the role of Regional Councils. Some Regional Councils (and some Councillors) appear to have made more effort than others to understand the Act. It is worth noting that those conducting the recent Aboriginal Employment Development Policy (AEDP) review, concurrent with my interviews, found some Councillors who 'were unaware that their Council and the Regional Office supporting them had direct control and responsibility for community-based training funds for their Region' (ATSIC 1994, 80).

Some of those whom I interviewed complained that there were still 'grey areas', such as the discretion of the Regional Manager to refuse to implement decisions of Council if he/she thought that such decisions had infringed the limits of Regional Councils' powers. Having still to ask questions about what Regional Councils could and couldn't do was an instance of persisting
paternalism, commented one Councillor. One reason for uncertainty about the powers of Regional Councils, it was argued, was that ATSIC's rules kept changing. Those with this complaint were probably further disturbed by the 1993 reforms which gave the Commission discretion to widen or narrow the basket of programs over which Regional Councils have control.

*Have you had enough time and information to make good decisions?*

Opinions were divided, but most expressed dissatisfaction. Many Councillors said that they would like to get their briefings about submissions a few days in advance of having to discuss them in a meeting. Some said that they should have an allowance to hire secretarial help.

A number commented that the time demanded by Regional Council business had grown significantly beyond initial expectations. The commitment of more time had helped them to cope with the volume of business, but it had also put pressure on other parts of their life.

One person said that she had found it valuable that the Council had broken up into sub-committees. Each person could then limit their attention to a few matters rather than try to cover all business.

Another person said that the difficulties of cutting the cake into so many slices made meetings emotionally demanding; and this made them longer.

Yet another person complained that the Regional Council used up a lot of its time responding to business initiated by Canberra/the Commissioners.

*Adequacy of the secretariat*

Many Councillors said that their secretariat was courteous and tried to do as good a job as its meagre resources (for example, restrictions on overtime) would allow. One Councillor who was angry at the too fast and top-down flow of information and policy in ATSIC complained that the secretariat was often as confused as the Councillors.
However, in some regions, the performance of the secretariat was thought to have been inadequate, even offensive. There were complaints: about the scheduling and re-scheduling of meetings, about showing the Councillors too little respect as leaders of Aboriginal people; about inappropriate language (referring to a land portion as 'a bit of dirt'); about the officious administration of travel allowances. Clearly Councillors are highly sensitive to any hint of a lingering paternalism among non-Aboriginal staff of ATSIC.

Two Councillors gave some insight into their growing confidence in dealing with the secretariat. One said that he sometimes doubted the accuracy of information put before the Council; it was possible (provided one did not do it too often) to direct that an unsatisfactory briefing be returned to the secretariat to be rewritten. Another Councillor (who was also Regional Chair) said that if he thought that an ATSIC staffer was performing poorly, he could confidently suggest to the Regional Manager that that person be transferred to other duties.

*Was it worth doing a Regional Plan?*

Most Councillors thought that it had been worth the effort to develop a Regional Plan. Regional Councils varied in their approach: some employed a consultant to do a lot of the liaison and writing up, others did the work themselves.

In one Region which declined to use a consultant the Councillors said that the Plan had been very hard work ('a headache') but ultimately rewarding, putting the Regional Council on a very sound footing for future decisions (to be made by a potentially different set of Councillors). Councillors from another 'do-it-yourself' Region said that developing the Plan had given them a lot of necessary information, but they also expressed sorrow that there had not been more community participation in the process, due partly to the barrier of literacy.

In a Region due to be amalgamated with others at the end of 1993, I found frustration that the Plan would now be made obsolete by having to be merged with the Plans of two other Regions. In this Region there was also dissatisfaction that the
preparation of the Plan had been handed to a consultant whose consultation skills had not been adequate.

THEMES IN COUNCILLORS’ POLITICAL IDENTITY

Before analysing data on the emerging political identity of Regional Councillors, I want to say what I mean by ‘political identity’. A politically active indigenous person now faces a choice of sites at which to work for the betterment of their people: the departments and statutory authorities of the Australian and State/Territory governments, the community-based councils and associations, and ATSIC’s Regional Councils. These options are not mutually exclusive. Both public servants and the functionaries/office bearers of indigenous organisations may become Regional Councillors. Nor are these choices related in any simple way to their sense of Aboriginal or Torres Strait Islander identity. It is arguably less and less a choice between serving grass-roots ‘Aboriginal interests’ (by working within community-based Councils and associations) and aligning oneself with government policies (by becoming an employee of ‘the state’ or a Regional Councillor). Certain apparatuses of the state are now staffed and, it could be argued, even commanded by people who are proudly indigenous and who see their work as advancing the indigenous interest. My phrases ‘arguably’ and ‘it could be argued’ point to the growing ambiguity of the processes of Australian government (Rowse 1994).

There is a danger that the primary features of this ambiguous welfare colonial statecraft – the Regional Councillor and the indigenous public servant – will be made invisible by the persistence of older critical frameworks. For example, Marcia Langton has written that ‘the primary role of the ATSIC Regional Councillors is to relieve the non-Aboriginal bureaucrats of the worst job of all – sharing out the Aboriginal affairs budget allocation to Aboriginal organisations’ (Langton 1994, 136, my emphasis). If that is so, are not the Aboriginal bureaucrats also being ‘relieved’? Langton’s sentence would have us discuss the relationship between indigenous people and government bureaucracy as if it were a relationship between indigenous and non-indigenous
actors: the Aboriginal and Torres Strait Islander bureaucrats are thus rendered invisible.

The same may be said of ATSIC Regional Councillors: they are at risk of being rendered invisible in critical accounts of ATSIC. For example, Terry Widders and Greg Noble have recently written that 'the land councils, the Council for Aboriginal Reconciliation and [the] Aboriginal and Torres Strait Islander Commission are condemned by some Aboriginal spokespeople as owing their existence purely to government, not to internal indigenous structures of decision making' (Widders & Noble 1993, 111). No doubt this is what some people say, but it is equally true that other 'Aboriginal spokespeople' have made such organisations vehicles of indigenous representations. Their strategy and its sites are invisible in a map of the political landscape consisting only of two entities which are wholly exterior to one another – 'government' and 'internal indigenous structures'. The ground on which the unmentioned indigenous politicians stand is surely the extensive area of overlap between the processes of 'government' and of contemporary 'indigenous structures'. To write as if that ground does not exist is unhelpful.

My research on the 'political identity' of Regional Councillors arose from my dissatisfaction with political critiques which seemed to me to overlook that which is characteristic of the contemporary modes of indigenous empowerment – the rise of a stratum of indigenous persons who are functionaries of the colonial state, either as public servants or as elected Regional Councillors. In the rest of this paper, I focus on the ways in which some Regional Councillors describe what I understand to be their twin tasks of political articulation: (a) how to mediate between the Aboriginal constituency and ATSIC, and (b) how to work within ATSIC itself, relating the Regional Councils to the national Commissioners and to the ATSIC bureaucracy. The terms of an emergent political identity for Regional Councillors, I will argue, are primarily intra-organisational, no longer inter-ethnic.
**Backgrounds of Councillors**

The Regional Councillors whom I interviewed were likely to have done at least one of two kinds of work before being elected: (1) working for and/or holding office in a local Aboriginal organisation (including community Councils and statutory Land Councils); (2) public service (State/Territory or Commonwealth, mostly in the field of ‘Aboriginal welfare’). There were few exceptions to this pattern: one man, now employed by an Aboriginal organisation, referred to his trade union background; another told me that the basis of his political education was his family’s history of opposition to State ‘welfare’ policies. Yet another told me that he had acquired skills on the Executive of an RSL Club. It is reasonable to generalise that these Regional Councillors have had long experience with the work of ‘government’, the organised servicing of an indigenous constituency – being government bureaucrats and being functionaries in a variety of incorporated health, welfare, educational, sporting and land rights bodies.

Although I did not seek their opinions about what kinds of people should be or shouldn’t be Regional Councillors, a number of my interviewees had formed decided views about whether their Regional Councillors were the right kind of people. Most important, some questioned whether public servants should be Councillors: were such Councillors not obliged to represent their government department, they asked, and could such Councillors be accountable to the ‘grass roots’ or to a community-based Aboriginal organisation? One man complained that ATSIC bureaucrats paid more attention to Regional Councillors who were also public servants of departments with which ATSIC had to deal. He said that the public servants on his (urban) Regional Council were a hard group to persuade; they tended to favour spending on infrastructure, planning and consultants. Unlike the Councillors who were officeholders or functionaries in community organisations, Councillors who were public servants had no defined mechanism for reporting back to the grass roots, he argued. One Councillor complained that public servants tended to be city-bound. Regional Councils work best, this man
added, when the Councillors are representatives of Aboriginal organisations and communities.

Another interviewee said that some Councillors were sometimes unable to participate in Council meetings because of the demands placed on their time by their public service bosses.

Others thought that Regional Councils benefited from having some public servants among their Councillors. Such Councillors knew how bureaucracies worked and so brought very important political skills to the Council. (Among people with nothing to say for or against public servants as Councillors, there was ready agreement that skills in the ways of government were much needed among Councillors.) It was also suggested that Councillors who were also public servants varied in how much their views reflected the policies of their department; some were very independent of their employing department, and enjoyed standing among local Aboriginal people on the basis of their individual contribution to community life. One public servant Councillor acknowledged the limitations of being a public servant but went on to equate them with the limitations of being identified with a particular Aboriginal community organisation; she suggested that half of any Region’s Councillors should be neither public servants nor involved in Aboriginal organisations.

Finally, it is important that several interviewees who did not make an issue of whether Councillors could also be public servants were employees of municipal bodies. These bodies are statutorily defined as part of their State’s local government; their governing councils are chosen by an indigenous electorate.

*How well informed is the constituency about your Regional Council?*

Opinion was divided on this matter. Although a few interviewees thought that their communities were well briefed about their Regional Council, most thought that this was not so and that it was a problem. But whose problem?

Some were of the view that each Councillor had a responsibility to report to a particular organisation or council (or to the ‘peak families’ of the area, as one Councillor put it) which was their
political base. Since this was a relatively straightforward matter, if a Councillor didn’t do it then he/she could expect criticism for failing to do his/her job. However, other Councillors referred to the constituency whom they had a duty to inform as the entire Aboriginal public of the Region: it was not quite so clear how to reach them. One person suggested making more use of the Koori Mail; others bemoaned a lack of ATSIC funds for disseminating information to the Aboriginal public; and others still said it was the job of ATSIC’s field officers to inform that public of what ATSIC was doing. Some Councillors said that they were able to contribute to their constituents’ understanding by informal methods such as welcoming questions in the street and allowing people to come to their house to search through the large volume of government information which Councillors receive.

The issue of confidentiality came up in these answers. A number of Councillors said that they understood themselves to have certain confidentiality obligations, like public servants. Some even mentioned having signed a paper committing themselves to the same confidentiality obligations as bind public servants. However, attitudes to confidentiality varied. Some objected to it in principle, protesting that they would breach confidentiality if necessary, to inform their constituents properly. Others said that confidentiality was welcome as a protection against interests who could be hostile and pressing in their demands. One man supporting confidentiality in these terms pointed out that ‘secrecy’ has been a feature of the Aboriginal tradition. Councillors were not like parliamentarians and protected by ‘privilege’, said another Councillor who was a public servant; they were more like public servants whose work was assisted by confidentiality. One man told me that he had often distributed Council minutes to those with whom he felt a political affiliation, but that such openness was risky; he had come to prefer to say as little as possible, while continuing to attend community meetings.

Yet another view was that confidentiality rules would never be effective because gossip – among public servants and among Aboriginal people – made the keeping of secrets very difficult. If there were a barrier to briefing the constituency, one man from a remote Council told me, it was not any ‘confidentiality’ rule but
the limited literacy and numeracy of many Councillors. Another made a related complaint about the language of ATSIC, its public service jargon.

**Critical perceptions of the Aboriginal constituency**

It became clear from these interviews that many Councillors thought that they had had a rough time from some of the people whom they were trying to represent. Many commented critically on the soundness of the Aboriginal electorate’s criticisms. One man told me of a constituent’s first question upon his election: ‘How much money is in ATSIC?’ This illustrated the sometimes limited vision of his electorate, he told me.

Several Councillors remarked on the problem of pork-barrel politics. People from your own mob expect you to put their interests above all others and were angry when ‘their’ Councillor conceded the needs of other communities and organisations. Such electors were being unreasonable in not allowing that a Councillor had to take a wider view, several interviewees complained.

A similar problem perceived by some Councillors was that Aborigines had unrealistic expectations of ATSIC and of Regional Councils in particular. It was important, some Councillors argued, to educate the Aboriginal electorate into a more realistic view of what ATSIC could and couldn’t do for them.

Two Councillors suggested that the past bad treatment of Aborigines by non-Aborigines had made Aborigines resent ‘the system’ so that they were cynical and apathetic and did not realise what ATSIC could be if they were to commit some of their hopes and energy to it. One woman regretted that people exaggerated the continuity between DAA and ATSIC; those with this view did not try to make ATSIC work.

Another suggested that Aborigines were in the midst of an historic and (to him) necessary change – from seeing politics in narrow family or mob terms, to a wider view in which many mobs were understood to make up a common community interest.
Whom do you represent?

These critical reflections on their constituents' expectations can be considered alongside two other features of the data which I have reported so far: the lack of consensus about the legitimacy and merit of public servants as community representatives; and the evident value placed on being in touch with 'the grass roots'. Taking these themes together, we can see them as elements of an emerging consideration of the nature of 'representation'.

One possible notion of representation would focus on the way the electoral process gives rise to specific mandates. Accordingly, I asked people if they had made specific commitments to identifiable interests when they had campaigned to be elected in November 1990. Almost without exception Councillors told me that they had made no promises. (The exception was a Councillor who had promised to get an Aboriginal Medical Service going.) Many commented that they had been wary of making promises because they were unsure about what ATSIC could deliver. Some said that as a result of their experience as Regional Councillors they would be able to make clearer commitments if they stood in the next election. I detected in some answers a distaste for electioneering. 'We don't have that election sickness', explained one man who said he had made no specific promises when offering himself to voters. This man was town clerk of his community. He gave me the impression that he was his community's delegate on the Regional Council in much the same way that he had fulfilled the role of delegate when negotiating with other bureaucracies. The other men on this (all male) Regional Council were leading figures in their communities too, some of them holding offices such as town clerk. They had stood as a region-wide ticket. In that region the political identity of each Councillor was well established by the pre-existing careers of these men (and of their families) as go-betweens in the communities' links with government bureaucracies. The electoral process merely confirmed that region's existing cadre of community representatives. I will return to this topic: the uncertain relevance of the electoral process.
Elected in 1990 with non-specific mandates and with no clear idea of how ATSIC worked and how to achieve political objectives within it, most Councillors have had to start developing notions of representation against which they could consider their own performance. Most of the comments I heard dealt with a particular issue which had emerged as troubling: finding a balance between advocating the particular interests of their community and/or organisation and taking a wider view in which the needs of other organisations and communities could be conceded.

One way of resolving this dilemma was to serve as a Regional Councillor in a Region from which one did not come. Three Councillors from one region (a capital city Region) told me that because they were not from the Region in which they were Councillors, they were not under obligations to benefit their family or community and so were better able to take a wider (some said more ‘professional’) view. A Councillor from the same region was highly critical of some Councillors’ promotion of their own families’ wish to get an outstation going.

Not coming from the region had disadvantages, according to one Councillor working outside her State of origin. She saw her representation as uncompromised by local kin loyalties, but she regretted that she was seen as coming from elsewhere; kinship among other Councillors had make it hard for a loner from elsewhere, she said. It is interesting that this woman’s electoral popularity was, in her estimation, based partly on the fact that she had long served as a welfare officer in an Aboriginal tertiary college. The proliferation of such functional roles within the Aboriginal community may challenge the significance of more ‘traditional’ factors (such as family connections) in the making of an electoral base.

Some Councillors raised the question of ‘conflict of interest’ — that is, the obligation to abstain from voting on a proposal which one’s own organisation had put forward. There was too little respect for this principle, two Councillors complained. However, most Councillors did not raise this point. I got the impression that they thought it legitimate to argue the case for organisations or communities with which they were affiliated, though most added
that it was important not to let such affiliations blind one to the virtues of other organisations/communities' submissions.

In making this point, some Councillors used the word 'professional' to refer to a way of representing the Region which was not too 'sectional'. Two Councillors drew a distinction between putting the interests of a particular family first and putting the interests of a particular organisation first. The former was selfish and wrong, the latter was acceptable to the extent that the organisation was delivering a community-wide service. One Councillor speculated that the next ATSIC Regional Council elections (held on December 4 1993) would attract many more senior figures from Aboriginal organisations; they would be seeking to assure their organisation's future.

However, the 1993 amendments to the Act seem to me to have put this notion of representation under a legal cloud. In the original Act (S.116) it was necessary for a Councillor to disclose their 'direct or indirect pecuniary interest in a matter being considered or about to be considered by the Regional Council'. As amended, the Section (S.119) compels not only disclosure but also the Councillor's withdrawal from participating in deliberations on and decisions about such matters. The amendment allows the Minister some discretion to define what is or is not a direct or indirect pecuniary interest and to exempt a Councillor from the restriction on his/her participation; and that power to exempt Councillors from restrictions on their participation can be delegated to the Commission Chairperson. Nonetheless, the trend of the amendment is clear: it seeks to shape emergent indigenous notions of representation in the direction of a 'professional' disaffiliation from particular incorporated indigenous political interests. My data suggest that this amendment would have significant, but not universal, indigenous support.

Zone/Commissioner relations

The last theme of political identity which I wish to cover is the sense, which I found to be common among those whom I interviewed, of being peripheral to a centralised organisation. The
'top-down' complaint was frequently heard in comments on the Regional Councils' relationships with one another and with the national Commission.

Regional Councils have developed a forum of horizontal communication called the Zone meeting, and most of those interviewed had been to at least one. Some Zones had had more meetings than others. Though Zone meetings do not make resource allocation decisions, most interviewees said that they had found it worth going to at least one because they learned what other Regional Councils were doing or trying to do. There were exceptions to these approving comments. One man had found his Zone meeting unpleasant and useless because he had not found it possible to speak in such a large gathering with so many others who were able and willing to put their views. Another man said that zone meetings were 'just a talk fest because the Commissioners will do what the government says'. Another had been put off by too much arguing about each Region's shares.

Part of the point of exchanging information and views at Zone meetings was that it gave Regional Councillors a feeling of power, or potential power, within what they saw as an over-centralised ATSIC. One man said that Zone meetings helped to counter the 'divide and rule' strategy that was built into ATSIC – playing one Regional Council off against another. Consistent with this, some interviewees had formed the opinion that the State Advisory Committees (made up of all Regional Chairs) and the Commissioners were wary of the Zone meetings, had limited the funds available for holding them, and were trying to control their agendas.

In many of my interviews, I found much scepticism and hostility towards Commissioners. In the two urban regions a number of Councillors had completely lost confidence in their Commissioner. One Commissioner had been nicknamed 'the Phantom' because he was so rarely seen by the Councillors from his Zone. One person said he had tried to get minutes of national Commission meetings but had been given only a summary of decisions. The Commissioners were seen by some Councillors to have become instruments of the government, too much identified
with Canberra, out of touch with the Regions and handing down policy from on high.

There is reason to credit this perception. In February 1993, the Commissioners recommended to the Minister that the number of Regional Councils be reduced. They acknowledged that in their consultations with Regional Councils, this proposal had not met with support. However, they went ahead with their recommendation, and the Minister legislated accordingly. Though Regional Councils' powers have been increased through the 1993 amendments, so too have the Commissioners' (and, by implication, the senior bureaucrats') powers of oversight. I would not argue that it is inappropriate for the Commissioners to have these powers, but those exercising them face the political challenge of developing working relationships with the Regions which minimise the Us/Them mentality which I found among Regional Councillors.

Regional Councillors and indigenous political culture

Let me summarise, rather schematically, the outstanding themes of my 25 interviews.

1. To be a Regional Councillor is to obtain unprecedented access to information about the working of government; this is rewarding in itself. Because information is a constant 'reward' for service as a Councillor, and because other rewards (such as the success of a favoured submission) are not so assured, the processes of Councils are likely to reinforce the value which information, in itself, possesses in the eyes of Councillors. Newly conscious of the value of information (and newly rich in the quantity obtainable), Councillors are faced with new tactical and ethical issues about confidentiality, and, by implication, about all aspects of their relationships with constituents. At the same time, having greater access to information makes people aware of their strengths and weaknesses in handling it: literacy, numeracy, sorting out the relevant from the less relevant or irrelevant, dealing in a sovereign way with staff whose job is to facilitate access to information, knowing the pathways and rhythms by which

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information flows through bureaucracies and the terms in which information is coded by bureaucracies.

2. Regional Councillors have little choice but to be preoccupied with what I would call their 'representational competence'. By representational competence I mean not only their possession of skills relevant to dealing with the government but their legitimacy as spokespersons for the indigenous people of their region. The issues of representational competence can be classified into three problems which came up again and again in my interviews:

(a) The role of organisations/communities. In one view these bodies are essential (and far more important than the electoral system) in giving definition to the indigenous constituency. A contrasting view (which had some adherents among my interviewees) argues that Councillors' loyalties to organisations and communities encourage a problematic tendency towards sectionalism among Regional Councillors, a sectionalism which must be countered by their becoming more 'professional'. It remains to be seen what cognitive norms or rules of thumb are filling out that vague term 'professional'. It is possible that technical criteria, such as effective acquittal of grants, diligent performance of the statutory functions of incorporated bodies, or measuring up to certain criteria of 'performance' will emerge as the 'neutral' and 'universal' idioms by which such decision-makers will rate rival claims to funds. Regional Councillors who are public servants would seem to be the ideal proponents of such technical norms, whose appeal would also rest on their potential to render more impersonal the competitive representations on Council.

(b) The desirability of having public servants as Councillors. In one view, Councillors who were public servants were professionally competent and uncompromised by organisational affiliation; in the contrasting view, having Councillors who are public servants risked importing into Councils the unaccountable interdepartmental and
intergovernmental culture of the public service, a culture of persistent welfare paternalism, calling itself professionalism. (c) The third and final problem was the knowledge and expectations gap between the indigenous constituency and its elected representatives. Many of my interviewees were worried that ATSIC could not meet the expectations of government while also meeting those of indigenous people. Squeezed between the two, several of them sought to lower popular expectations of what Regional Councils could achieve.

To call for the reduction of popular expectations of ATSIC might be regarded as an implied ‘critique’ of ATSIC, or it might just as easily be seen as an apology for it, an attempt to induce critics to hold their tongues. This interpretive ambiguity is typical of ATSIC. ATSIC is not a political structure erected on top of indigenous political culture – external to it and (nominally, at least) expressive of it – it is an intervention into that culture.

Reforming ATSIC

On the basis of the data and comment which I have presented, let me conclude by making some observations about some of the critiques of ATSIC.

Marcia Langton evokes years of critique of ‘responsible government’ when she argues that the ATSIC bureaucracy is too autonomous of the elected assemblies which are supposed to govern through it. This gap makes ‘two pyramids’ of ATSIC.

The ATSIC bureaucracy is a separate pyramid from that of the Regional Councillors. The Regional Council policy advice goes ‘up’ to the Commissioners, and the senior executive of ATSIC sends whatever comes out of the Commission meetings back down a different pyramid, that of the public servants in the bureaucracy (Langton 1994, 136).

Langton’s position, as I understand it, is to support the regionalisation of ATSIC. However, the problem she identifies could be remedied without further regionalisation. Quoted by itself, her diagnosis implies the need for: (a) a better connection between the apices of the two pyramids (clearer, stronger
directives from Commissioners to ATSIC staff, and improved mechanisms by which Commissioners can monitor the implementation of their decisions), and/or (b) a regionalisation of policy and implementation (so that Regional Councils do not have to send so many of their wishes ‘up’, in order for them to become policy, and can directly monitor the staff/implementation ‘pyramid’ which is close at hand, within their own region). The difference between (a) and (b) is important, in the light of the data presented above. To put it crudely, the Regional Councillors to whom I spoke would be much less likely to support reform (a) than reform (b); reform (a) could be advocated as empowering the supreme expression of elected indigenous will within ATSIC, but it would also antagonise those who believe that ATSIC is already over-centralised and that Commissioners are too susceptible to the perspectives of senior staff and the central agencies of state: Treasury, Finance and the Department of Prime Minister and Cabinet.

A reform agenda which seeks to promote regional devolution within ATSIC may fall foul of a critique which questions ATSIC’s regional boundaries on cultural grounds. Paul Coe has criticised ATSIC’s electoral machinery because, he asserts, the regional boundaries do not correspond to indigenous conceptions of boundaries. He adds that it is inappropriate that indigenous voters are equally enfranchised as individuals whether they are traditional owners or merely residents of the region in which they vote. Low voter turnout in the Regional elections of December 1993, he suggests, shows the lack of relevance to indigenous people of this electoral process (Coe 1994, 36). There are two issues here. One is whether indigenous tradition provides ‘benchmark’ definitions of authentic regional boundaries. I doubt that ‘indigenous conceptions of boundaries’ are a binding point of reference – the sacrosanct traditions against which all political innovations must be evaluated. I was intrigued to hear a regional councillor in a southern rural region refer to his region as a ‘tribe’. This Councillor was criticising, as an inappropriate mingling of ‘tribes’, the foreshadowed amalgamation of their region with two others. The use of the word ‘tribe’ in this context suggests that the idiom of ‘tradition’ can be mobilised to defend even recently
contrived political arrangements if people have accepted them or become used to them. One can not necessarily predict, by reference to a ‘tradition’ which is itself often empirically unclear, the acceptability of contemporary insititutional arrangements to politically active Aboriginal people.

Coe’s second issue is whether ATSIC’s electoral machinery is a good way to produce a representative forum with a clear mandate. His critical observations about the electoral process are probably more relevant to some regions than to others. We should not assume that the shaping of mandates and the selection of representatives are best effected through the electoral process. There are other important political processes giving rise to mandates and to spokespersons for them – the Aboriginal organisations and the Aboriginalised sections of the State/Territory and Commonwealth bureaucracies. Coombs has suggested that each region should determine its own machineries of representation (Coombs 1994, 184).

Coombs’s recent suggestions about the reform of ATSIC seek to give practical expression to his hope that ATSIC, conceived according to the Hawke government’s notions of representativeness and accountability, will become more strongly identified with ‘an ideology of autonomous Aboriginal self-government’ (1994, 186). It is difficult to disagree with that aspiration, but that is partly because the terms of that ideology are emergent and controversial. Drawing inspiration from the work of Jones and Hill-Burnett (1982) I have argued elsewhere that notions of a culturally authentic ‘Aboriginality’ are too vague and disputed to be used as points of reference for a critical approach to the politics of indigenous mobilisation (Rowse 1993, 57–9). In an earlier paper I have also suggested that indigenous cultural identity is, in any case, not entirely external to the means of giving it political expression. ‘ATSIC may therefore be seen not only as a change in public policy formation, but also as a new stage in the formation of Aboriginal cultural identity’ (Rowse 1991, 12). After interviewing 25 Regional Councillors, I think I am in a better position to describe some features of that ‘new stage’. I suggest that with Australian governments pursuing the three-pronged strategy of ‘empowerment’ which I described in my
opening section, we are now witness to the exhaustion, as a critical device, of the rhetoric of cultural identity.

Coombs's phrase 'an ideology of autonomous Aboriginal self-government' requires our critical attention because its referent is necessarily unclear and disputed. To give his phrase the spurious clarity of a rhetoric of 'indigenous identity' — in which policies and structures are submitted to the test of their authenticity to something called indigenous traditions — will leave the debate about ATSIC chasing its tail. If an 'ideology of autonomous Aboriginal self-government' is to be programmatically developed, we must now do as Coombs and others have done in their promotion of regionalisation: that is, we must address the issues of institutional relationships such as those which emerge from Regional Councillors' reflections on their practice — the relationships within and between government agencies and between government agencies and indigenous associations and councils.

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Negotiating Indigenous Self-Determination at the Regional Level
Experiences with Regional Planning

Julie Finlayson and Allan Dale

INTRODUCTION

The Aborigina1 and Torres Strait Islander Commission Act 1989 established sixty Regional Councils across Australia.1 As the elected arm of the revamped, decentralised federal administration of Aboriginal affairs, these Regional Councils were to assume the role of decision-makers at the regional level and to feed into the national policy-making process via Zone Commissioners.

To help them achieve this, Regional Councils were required by legislation to establish a Regional Plan for:

Improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents in the Region (ATSIC 1991).

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1. In 1993 the number of Regional Councils was reduced to 36 following a review of boundaries.
ATSIC intended that the Regional Planning process would focus on the preparation of regional goals and strategies which Councils could work towards over a specific time frame, usually between three to five years. ATSIC expects Regional Planning to reflect community concerns as an integral part of the strategic plan, and that Regional Councils determine these concerns through a process of community-based consultation. Keeping this in mind, most Regional Councils have developed their plans through the application of a variety of participatory processes (see Wolfe 1993).

Regional Planning represents a new, and until recently, untried experiment in the decentralisation of government administration and the implementation of self-determination policies. However, Rowse has already cautioned that the concept of Regional Planning may either:

- do no more than oil the existing machinery of government, or ... open up government processes to new popular forces (Rowse 1992, 22)

If the latter eventuates, there is a real chance that Federal policies seeking self-determination for indigenous people can be achieved. The meaning of self-determination, however, is yet to be negotiated at a number of levels. The government can only do this by negotiating on a case by case basis with each of the many self-defined organisations and groups that constitute Australian indigenous society. Regional Councils provide an important opportunity to support such negotiations at the regional level.

This paper explores which of the alternatives suggested by Rowse (1992) will be the more likely outcome of the ATSIC Regional Planning experiment. We consider this by reflecting upon the constraints and opportunities that we faced while facilitating Regional Planning work on behalf of a first term Regional Council in Queensland between June 1992 and March 1993. It had a mixed urban and rural constituency.

Whatever the value of Rowse’s (1992) suggestion that Regional Planning could have administrative rather than political functions, in practice, up to 1993, ATSIC’s policy of community-based planning had emphasised the development of planning documents rather than the establishment of planning processes to
encourage the development of politically active and technically competent community-based strategies. Indeed, since ATSIC was established in March 1990, the concept of community-based planning (see Dale 1992) had not been promoted to, or financially supported within, any community organisations in this Regional Council’s region.

This raised questions about the ability of ATSIC Regional Councils across Australia to come to grips with the specifics of community issues and concerns when developing their Regional Plans. The Regional Council recognised this limitation, and as its Regional Planning process evolved, it became committed to using community-based plans in developing regional policies and actions and in prioritising the allocation of ATSIC resources to community organisations in the region. In the meantime, and until community-based planning became more common, the Council was forced to accept the next best option: conducting detailed community consultations without recourse to locally planned community priorities.

At that time, ATSIC field staff had only been provided with limited community-based planning guidelines to work with, and no detailed training in community development ethics and practices. Their excessive administrative workload precluded them from acting as partners in the facilitation of community-based and Regional Planning. ATSIC’s policy position on the integration of the administrative versus the developmental/facilitatory role of field staff also remained unclear.

Corporate, strategic and operational planning within ATSIC

In 1993, internal planning processes within ATSIC remained convoluted and disjointed (see Dale 1993). The ATSIC Corporate Plan was originally finalised well before Regional or community planning priorities had been developed to the point where they could provide a direct Aboriginal and Torres Strait Islander community input. This led to the establishment of a Commission with corporate priorities that differed from those experienced in the regional and community context. Though there were moves afoot to better incorporate Regional Plans within the ATSIC
corporate planning process in the future, the direction taken by the ATSIC administrative arm appeared likely to remain focussed on the original corporate directions established by the Commission. Continual struggles between the Canberra-based desire to maintain and strengthen national programs and the desire of Regional Councils and Regional ATSIC offices to increase the scope of decentralisation, reduced the impact that Regional and community plans could have had in allocating national priorities and future administrative styles.

Strategic Planning within ATSIC at the national and state levels suffered from similar deficiencies. Very little Strategic Planning occurred at the Regional Office level as there was a general assumption that Regional Plans fulfilled this role. Though this assumption may be true, it did not absolve Regional Office administrations from planning to address issues of strategic importance (such as relations with their Regional Council, staff training and administrative rationalisation).

This situation was complicated further by the fact that national-level strategic planning within ATSIC was not clearly linked with Corporate Planning. National strategic plans often bore little relevance to the issues being faced by field operators and Regional Councils. With little input from Regional, Community and Corporate priorities, national and state strategies had little real relevance or linkage to the ATSIC operational planning (draft estimates) process.

At the time ATSIC was unable to advise its Regional Offices and Regional Councils how best to integrate Regional and community planning with the draft estimates process. In the case we are considering, this resulted in some regional staff hoping to maintain a clear distinction between the Regional Planning and draft estimates processes. There were limitations on the ability of external consultants, as essentially ‘outside’ operators, to ensure that these processes were integrated to maximise the influence of community and Regional Plans on national/State funding allocations. ATSIC itself must ensure that an effective and relevant system of planning evolves and it must establish administrative mechanisms that encourage these linkages without impinging upon the independence of Regional Councils.
In 1993, the administrative arm of ATSIC was seriously under-resourced, limiting its ability to provide effective support to community organisations and Regional Councils. In the case of this Queensland Regional Council, this problem was exacerbated by the introduction of a plethora of new programs following the recommendations of the RCIADIC (1991) without a corresponding increase in administrative resources. There was a slow attrition of staff from the Regional Office and it was unable to recruit adequate staff replacements. This meant that the role of field staff was increasingly limited to program administration. They were unable to facilitate community and regional aspirations and planning. They were also unable to effectively monitor project implementation.

Although particular operators at the regional, State and national level supported the concept of Regional (and community-based) Planning, this has not been reflected in the provision of adequate funding of the process to facilitate ongoing strategy development, strategy negotiation, community consultation, implementation, monitoring and evaluation. There was also no significant increase in the administrative budgets of Regional Councils to allow for this. Funds specifically allocated for Regional Planning in the 1991/92 and 1992/93 financial years were not be continued in the 1993/94 financial year.

At the time, there was a common perception within ATSIC that once Regional Councils had established their plans, all they had to do was make decisions about the future allocation of resources within the context of these plans. This denied the role of Regional Planning as an ongoing process requiring further development and detailed negotiations that may lead to implementation and monitoring.

THE REGIONAL PLANNING PROCESS

The Queensland Regional Council which this chapter is about had mixed Aboriginal and Torres Strait Islander representation. Though its broad functions were determined by the Aboriginal and Torres Strait Islander Commission Act 1989, the Regional Council considered that its primary roles and responsibilities were to
actively represent the concerns of indigenous communities within their region. Councillors also agreed that they had an important responsibility to proactively plan at the regional level to ensure that community concerns were addressed and to ensure that communities were equitably catered for in funding terms. They clearly saw themselves as negotiatory advocates of community needs, rather than as a body whose sole function was to distribute government funds.

Given its roles and responsibilities, the Regional Council recognised that Regional Planning could: (i) establish and raise awareness of community needs; (ii) give it a clear picture of the environment in which it operated; and (iii) help it set goals and strategies to meet community needs and overcome constraints. Thus, soon after its inauguration, the Regional Council recognised that it had to give the planning process its full support.

In line with current developments in community-based planning theory (see Wolfe 1988; Dale 1992), in developing its Regional Plan, the Council adopted a number of broad principles, including:

- maximising community ownership and participation in the process;
- ensuring the process uses technical information effectively; and
- ensuring that the Regional Planning process encouraged negotiation with bodies that could assist or inhibit Regional Council goals.

These principles were adopted to maximise the ability of the Regional Council to establish a clear planning agenda which met community aspirations, which would not fail as a result of insufficient consideration of technical issues, and which would form a platform for the negotiation of self-determination at the regional level.

Activities in regional planning

The Regional Council had recognised the need to establish Regional Plans since its inauguration. While ATSIC was in the process of developing appropriate Regional Planning guidelines
and procedures during 1991/92, the Regional Council adopted an interim Regional Plan with two main objectives:

- to maintain existing levels of services within the Region for 1991/92; and
- to develop a Regional Plan during the course of 1991/92.

The formal Regional Plan developed by the Council was divided into two parts, each playing a different role. The first part, which has been printed and widely distributed, is the Strategic Plan which detailed strategies to be taken by the Council from 1993/94 to 1995/96. Budgets relating to these strategies were not included for confidentiality reasons.

Second, the summarised Supporting Information Dossiers were printed as a separate document to be made available upon request to the Regional Council. The overall Supporting Information Dossier was a detailed document that outlined the issues considered by the Regional Council in the development of its Strategic Plan. These issues were identified through the regional research process and during consultations with the Aboriginal and Torres Strait Islander community. The overall Supporting Information Dossier helped to justify the strategies developed by the Regional Council and to provide specific information to support issues raised in the Strategic Plan.

With the ATSIC Regional Council elections of December 1993 there were new ground rules for the regionalisation process. The incoming Regional Councils had full-time Chairs and deputy Chairs. The encumbents were fully employed in the position and operated from the ATSIC regional office. The second major change facing the new Councils was that the number of Regional Councils across Australia had been reduced.

Ironically, struggles for autonomy and control of the means to self-management are now played out in the tussle between Regional Councils and their regional and state administrative supports. It is equally apparent that a new tussle is emerging: a contest within and between regions for funding. This is a new ground for contest and one which pits Aboriginal and Torres Strait Islander organisations against one another. The political arena of contested decision-making has been moved from Canberra to regional and local politics. It was in this context that
the Regional Council's planning process occurred. A description of this process follows.

*The consultation process*

The Regional Council Regional Planning began when the Council considered the complexion of its constituency and established its vision and goals. From this point, planning depended on implementation of a wider consultation process around these goals, and following this with the development of strategies directed toward the achievement and implementation of the particular goals over a specified period of time. The series of meetings between service providers (government and private sectors) and Regional Councillors was organised to discuss each of the Council's thirteen goals. Broad meetings between Regional Councillors and community organisations were also held across the region.

Discussion at service-providers' meetings was open-ended to facilitate frank discussion of issues associated with implementation of each of the Council's goals. To this end, a diverse range of relevant service providers were invited to each meeting. For similar reasons, the tone of the meetings was deliberately kept informal and open-ended since we felt that participants should be encouraged to speak frankly about their experiences and knowledge of service delivery in the particular field.

The issues raised in these meetings were later sorted to form the basis of a needs analysis, whereby the strengths and weaknesses of each issue were separated and presented from the perspective of how the Council could positively address the issue. With the analysis available to them, the relevant Council Portfolio group met for intensive discussions. Their objective was to identify achievable strategies associated with implementation of the goal. These strategies were later incorporated in the Regional Plan to be acted upon in accordance with a specific time frame.

The Planning Officer, Julie Finlayson, organised and facilitated meetings with both service providers and Portfolio groups. Portfolio members usually had a special interest in the issues
The Planning Officer interpreted her role as a facilitator of the consultation process and consequently down-played the potential for an instrumental role in these and the Portfolio meetings. Although a large part of her work involved the practical details of meeting organisation (setting timetables for meetings, ensuring invitations were distributed and so forth), she purposely withdrew from pursuing any agenda other than that determined by the participants or the Councillors. In this way she deliberately encouraged a view of her role as that of providing only ancillary skills and not as a central resource to the Council, since it is within the Regional Council itself that the real planning skills must emerge and develop.

Assumptions about the consultation process

Unfortunately, ATSIC’s vision of decentralisation of power and community consultation in Regional Planning is at odds with its implementation of regional self-management. Assumptions about the consultation process must be examined from the perspective of the major stakeholders: the ATSIC administrative arm, the Regional Council, and Aboriginal community organisations.

ATSIC encourages community participation in Regional Planning both as part of a comprehensive and ambitious political vision and a more instrumental bureaucratic project. It has established and implemented common administrative and policy-making structures across Australia. In doing so, the Commission seeks to reverse the tradition of centralised decision-making in Aboriginal and Torres Strait Islander affairs and to encourage its devolution to local communities. Such devolution, it is implied, also shifts policy decisions back to a political structure which is locally representative and responsive to community concerns. Is this achievable, given the Commission’s maintenance of much of the financial power and decision-making for programs and policies at the national level?

The decision-making autonomy of the Regional Council was constantly eroded by a number of factors, beginning with the lack of executive support beyond that provided by the ATSIC Regional administration. Second, a number of policies and
programs were retained by the Commission with only limited and particular issues (such as housing or the Community Training Program) relegated to local decision-making. Third, and because of logistical problems with monthly Regional Council meetings, Councillors felt the presentation and timing of agenda items were often driven by Central Office imperatives. Fourth, the Regional Council had to establish its credibility with State government agencies while simultaneously grappling with the articulation of its autonomy within ATSIC's own structure. Finally, it is ironic that ATSIC's vision centres on Aboriginal and Torres Strait Islander political autonomy, but denies the instrument of this independence (namely the Regional Council) any financial or administrative support to operate with some independence. The Regional Council is aware of these anomalies and suffers from the frustration of working to represent community-based concerns and interests in the face of a bureaucracy that seeks to restrain the Council's autonomy and to manage its decisions.

Apart from the structural problems facing the Regional Council, scepticism of the Regional Planning process as a form of representative government decision-making flourishes in local Aboriginal and Torres Strait Islander communities. In some cases, the scepticism is fed by particular historical factors associated with the wider frame of relationships Aboriginal peoples have with the State.

Certainly, past relationships continue to influence contemporary Aboriginal community attitudes to government policy and decision-making processes, whether at State or Federal levels. This is illustrated by the persistence of oppositional politics as the foremost mode of political action by many Queensland Aboriginal community organisations to government sector programs for Aboriginal and Torres Strait Islander peoples. Irrespective of the historical legacy entailed in this kind of reaction, it is also the unresolved dialectical relationship between indigenous people and the State which is at issue. The granting of the Aboriginal Land Act 1991 in Queensland has done nothing to alleviate this tension for Aboriginal or non-Aboriginal people. At a deeper level, it is the inequality of the power relationship
inherent in the relationship between indigenous peoples and the State which is irksome.

The impact of the past continues as a dominant factor in personal attitudes to the State. Few older Councillors in this Queensland Regional Council were raised outside a reserve or mission. In these institutions, neither children nor adult Aboriginal and Torres Strait Islander people had the right to question the decisions or challenge the authority of the State invested in the role and persona of the superintendent. The material conditions on reserves and missions, including employment in the wider community, deprived Aboriginal and Torres Strait Islander people of their health, education, and ability to earn a decent wage. In such circumstances, even the most mundane daily experiences of Aboriginal people were ‘managed’ by the State; homes, for example, were regularly inspected by the mission/reserve staff to ensure appropriate standards of cleanliness and tidiness were adhered to. Many Aboriginal community organisations regard ATSIC with cynicism. Community experience of dealing with ATSIC’s administrative arm over funding issues entrenched these feelings.

Politically, the legacy of past relations between the Aborigines and the State encouraged a general belief among many Aboriginal community leaders that the State still has a moral obligation to provide for them. Consequently, many of their interactions with State and Commonwealth administrations are presented within a framework of oppositional strategies, as ‘demands’ that the State must satisfy. This view often ill-serves Aboriginal ends. Indeed, it distorts the community organisation’s understanding of how government distributes funds and resources. This makes it all the more important for Aboriginal organisations to break with the strategies of the past; indeed, to recognise that the current principle of political lobbying in the wider polity emphasises an active, assertive, coordinated approach, in contrast to a tradition of passive expectation that demands should be satisfied. Though issues of political strategy are certainly debated within community organisations, the present Aboriginal and Torres Strait Islander community confusion over how to secure and maintain funding is

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compounded by a suspicion that ATSIC is failing to recognise and serve their interests, despite the claims of self-determination.

The growing importance of developing effective political strategies to capture funding is an issue that is likely to become an acute concern under ATSIC. This is partly because ATSIC funding procedures require local organisations within a Region to compete with one another (Smith 1993). The competition is fierce and is exacerbated by inter-regional rivalry for funds. These Regions themselves differ in geographical area, population size and relative needs, but an equitable formula incorporating these differences has yet to be developed and implemented. Thus, the economic stringency of the 1990s heightens the need for new political strategies based on direct action from all levels of the Aboriginal and Torres Strait Islander community.

Of immediate concern to Regional Councillors is their disenchantment with ATSIC's ability to promote local decision-making, yet to require that ATSIC Regional Councils and Councillors operate in terms of the culture of the bureaucracy and its accountability procedures (Sanders 1993). Is this a valid outcome for a representative process aimed at self-management?

The point needs to be taken up in detail. Under the ATSIC structure, Regional Councils now have the means, through decision-making processes, for self-management. But they are also required to operate according to standardised administrative processes. Interestingly, such an emphasis contrasts with the recommendations of various House of Representatives Standing Committee reports on Aboriginal self-management (eg HRSCAA 1990). The Inquiries recommend that Aboriginal cultural practices and proclivities be accommodated in structures to monitor administrative concerns for accountability and performance. Yet, at the official level, ATSIC institutes decision-making procedures which, at best, ignore cultural differences of process, if not actively undermining them through an insistence on standardised procedures throughout indigenous Australia. ATSIC can be viewed as a means by which the problem of meeting the divergent needs of indigenous peoples across Australia in varying socio-economic circumstances could now be reduced and delivered according to a formula (see Smith, this volume).
Despite this, a cultural undercurrent persists in the conduct of Aboriginal business. The resilience of this cultural force challenges the bureaucratic hope that decision-making processes can be homogenised. But it also indicates that business is being conducted, even among Aboriginal people, according to different understandings of political decision-making.

Ultimately, the role played by local politics in community organisations will undermine ATSIC’s drive to institute and manage formal relations between Aboriginal peoples and the State throughout Australia. Indeed, many community organisations firmly reject the idea that structural relationships are the key to social justice and equity. In practice, they prefer to secure funds on the basis of direct, personal representation. For many organisations this means securing representation in competitive forums such as Regional Councils.

In this respect, the Commission has failed to acknowledge and confront the level of cynicism within the Aboriginal and Torres Strait Islander community about the Commission’s ability to adequately represent them. More seriously, the Commission has invested little effort in the task of converting constituents who elect Regional Councils to ATSIC’s vision, let alone their practice of self-government. Admittedly, plenty of brochures are produced from Canberra explaining ATSIC’s structure and roles, but the level of direct contact with community organisations remains poor.

In the wider indigenous community, knowledge and understanding of how ATSIC serves Aboriginal and Torres Strait Islander concerns or mediates their interests in Commonwealth and State policy decisions, is both flawed and ill-informed. Even Regional Councils are struggling to come to terms with this knowledge, operating in contexts where Commission decisions and procedures are constantly changing. Often it is Regional Councils who are left with the task of soothing tempers over the disparity between community demands and limited resources. In the process, these Councils are forced to confront the limitations on their own power and authority to make effective decisions independently of the ‘advice’ of the Commission.
Finally, ATSIC fails to enhance the Regional Council's role and credibility as a political player in State and regional politics. The failure to perceive the importance of this endorsement is illustrated by poor community and government education about Regional Councils. ATSIC's real focus is a consuming concern with the structural articulation of power and administrative practice between the tiers of ATSIC at the national, state, and regional levels. The power of the internal focus makes it difficult for Regional Councils to step outside a highly bureaucratic definition of their roles and responsibility and move into situations where their voices are now absent, but urgently needed. This applies specifically to political processes such as consultation, review procedures, management structures and legislation for accountability in local, regional and state development matters. If left unchecked, this will, in time, encourage other State and Federal instrumentalities to establish their own Aboriginal advisory/political arms.

No doubt 'unexpectedly', the Regional planning process has exposed some anomalies in the ATSIC vision of representative regional government. Though some of the anomalies are described here, no solutions have been offered. What next steps can be suggested depends, in part, on the ability of the Regional Councils to develop and control the means for a life independent of the bureaucracy which administers it. Much of their capacity to do this will, in turn, depend on mastery of the administrative and political process, although many Councillors continued to see a purpose and role for indigenous political practices. Nor has the Regional Council found a way to resolve many of the contradictions of its position or how it can make the process more responsive to community concerns and dynamics.

What seems clear to all, however, is that ATSIC's theory and vision of self-government sit unhappily alongside its self-management practices. This discomfort has much to do with the translation of a vision into sets of structural relationships determined largely by bureaucratic practices and administered by a centralised administration. It is equally patent that critiques of ATSIC and the Commission's commitment to Regional Planning, and hence to regional government, is a difficult undertaking for
Regional Councils. After all, who can bite the hand that feeds them?

CONCLUSION

Through our active involvement in assisting the Queensland Regional Council that we have described here to establish its first Regional Plan, we have examined a number of constraints facing the ability of ATSIC Regional Councils in their attempts to use the Regional Planning process to negotiate the terms of Aboriginal and Torres Strait Islander self-determination at the regional level. Most of these constraints relate to the lack of clarity in ATSIC's understanding of contemporary planning theories, and its inability to integrate such theories into the development of a more appropriate and sustainable system of planning for Aboriginal and Torres Strait Islander affairs. This experience suggests that there is a growing tension between the desire of Regional Councils to use Regional Planning to instigate detailed political strategies aimed at negotiating their view of self-determination, and the predominantly bureaucratic modus operandi of ATSIC's administrative arm.

The Regional Council, however, demonstrated its commitment to becoming a recognised actor in the broad range of planning and decision-making processes that affect Aboriginal and Torres Strait Islander people in its region. This offers some hope that, given clearer facilitatory and administrative support, the Regional Planning concept can establish an important political basis for the negotiation of self-determination with all Federal, State and local government concerns.

Reflecting on our active experience of the planning process, we would argue that the importance of community-based Regional Planning lies in its potential to incorporate indigenous peoples into the political debates of the wider community and to encourage the radicalisation of indigenous community politics. We do not see the value of the process wholly in terms of the achievement of ATSIC's internal goals.

For us Regional Planning is a crucial step in a political process where indigenous community organisations through their
Regional Councils emerge as forceful political agents in wider debates with the State. Regional Councils can and must also find a role in representing Aboriginal concerns in local and regional government activities. Councils must develop as effective negotiatory actors in decision-making for local development issues, and for appropriate planning in both the natural, built and human environments.

Regional planning as a community-based activity has a wider value as an educative process. It gives the participants opportunities to learn by doing, to learn from mistakes, and to initiate their own process of assessment and decision-making at their own pace.

There are a number of pressing reasons to support such a role for Regional Councils. One, is the marginalisation of indigenous communities in urban environments by mainstream population growth, tourism and infrastructure development (such as housing estates or recreation complexes). This has a dramatic effect on the quality of life of resident Aboriginal and Torres Strait Islander peoples. In terms of a wider political process, many indigenous community organisations face progressive de-funding as funds are diverted to more broad-based community groups servicing cultural diversity. Community organisations exclusively servicing Aboriginal and Torres Strait Islander peoples are directly affected by moves at the local government level to incorporate indigenous groups under an umbrella of multiculturalism.

Regional Councils are at the crossroads; they must fight to retain their own independence from the ATSIC administrative arm and for a measure of autonomy in financial management, while they also face urgent needs in their communities for equitable representation and participation in wider political processes.

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Institutional Structures in Indigenous Affairs
The Future of ATSIC

Michael Dillon

The Aboriginal and Torres Strait Islander Commission (ATSIC) is a unique government agency responsible for indigenous public policy, without parallel anywhere in the world. It involves an innovative structure which ambitiously attempts to combine both representative and executive responsibilities and functions.

When ATSIC was established in 1990, it took over the responsibilities of the Federal Department of Aboriginal Affairs (DAA) and the Aboriginal Development Commission (ADC), and became the Federal government’s primary adviser on indigenous affairs. To understand the origins of this agency, and the forces which shaped and influenced its final structure, one has to look at a range of circumstances and developments in Australian public administration in the 1970s and 1980s.

Federal governments had been grappling with ways of increasing indigenous involvement in policy-making since the 1960s, as the realisation slowly permeated through influential sections of society that Aboriginal people would increasingly

1. The views expressed here are the author's, and do not necessarily reflect the views of his employer, the Commonwealth government.
articulate their legitimate aspirations for social justice in forthright terms. Since the early 1970s, Federal governments had adopted as policy benchmarks in indigenous affairs the concepts of self-management and self-determination. However, the reality was that indigenous influence on the policy agenda was circumscribed both in terms of limited formal opportunities and the absence of effective indigenous organisations with the vision and capacity to influence the policy formulation processes at either State, Territory or Federal levels.

In retrospect, it is clear that Australia's political system failed to recognise the heterogeneity and diversity in indigenous Australia, nor did it recognise the complexity and sensitivity required in cross-cultural settings (see Smith, this volume). It did, however identify a need for indigenous interests to be represented, both formally and informally, in policy-making forums.

Hence, governments experimented with various executive and representative structures – the Council for Aboriginal Affairs, the DAA, the Aboriginal Land Fund Commission (ALFC), the ADC, the National Aboriginal Consultative Committee (NACC), and the National Aboriginal Conference (NAC).

I don't propose to analyse the detailed histories of these institutions here; suffice to say that they all were problematical in one way or another. See Hiatt (1976) on the NACC, Coombs (1978) on the Council for Aboriginal Affairs, Weaver (1983) and Coombs (1984; 1994, 131–142) on the NAC, Palmer (1988) on the ALFC and Sanders (1993) on ATSIC. The executive agencies grappled with the problems of service delivery and policy initiatives for a diverse and geographically remote minority population. The representative institutions grappled with deeply embedded cultural norms in indigenous societies antithetical to representation by others, cross-cultural politicking, and alien bureaucratic and political norms and values in the mainstream society.

By 1986, the then Minister for Aboriginal Affairs, Clyde Holding, had commissioned reports from HC Coombs and Lois O'Donoghue on a possible restructuring of the national Aboriginal representative institutions (Coombs 1984; O'Donoghue 1986); had abolished the NAC; and had appointed
Charles Perkins as Secretary of the DAA. Immediately following the re-election of the Labor government in 1987, Prime Minister Hawke amalgamated most mainline Commonwealth departments into so-called mega-departments.

DAA, along with the Department of Veterans Affairs, didn’t quite fit the mould, and these were left as separate portfolios. The Prime Minister announced, however, that he would be transforming DAA into a statutory commission. In the subsequent allocation of portfolios, Gerry Hand became the new Minister for Aboriginal Affairs.

Hand set about restructuring DAA and the ADC, and constructing a new commission which would give indigenous interests guaranteed involvement in both the policy development process and in funding decisions. In particular, Hand developed a concept with intellectual roots that can be traced to Coombs’s Report on the NAC, which in turn was based on his observation of the operations of the Combined Aboriginal Organisations, a loose federation of the Aboriginal organisations in Alice Springs which operated largely as a means of formulating coordinated political positions for Aboriginal interests in Central Australia.

In December 1987, Minister Hand released the blueprint for the statutory commission in the ministerial statement Foundations for the Future (Hand 1987). This proposed an amalgamation of DAA and the ADC, the establishment of some 30 elected regional councils across Australia, and a system of zones which would each elect a commissioner.

The ATSIC proposals triggered perhaps the most tumultuous period in the history of Aboriginal affairs. The Chair of the Aboriginal Development Commission, Shirley McPherson, and a number of ADC Commissioners and staff refused to accept the government’s proposals and openly attacked them. Minister Hand countered by dismissing a number of acting commissioners and making new appointments. Following an extensive series of consultative meetings across all States and Territories, a Bill was prepared and introduced into the Parliament. The Coalition parties mounted a sustained attack on both the ATSIC proposals and the administration of Aboriginal affairs generally. The ATSIC Bill was sent to a Select Committee by the Senate, and the Senate
Estimates process was used to pursue allegations that a 'black mafia' controlled indigenous affairs, forcing the government to initiate a series of formal inquiries into the administration of Aboriginal Affairs. In the wash up, Charles Perkins was forced out as Secretary of DAA, though ultimately none of the specific allegations made against him were proven.

Following the report of the Select Committee, the ATSIC Bill was revised, and reintroduced. In a marathon debate, the Senate forced myriad amendments, but failed to stop its passage.

In terms of political feasibility, the ATSIC proposals represented the outer bounds of what was possible and achievable at the time in Australia. They involved a truly radical reorientation of governmental institutions relating to indigenous affairs, one that transfers considerable responsibilities and functions to indigenous interests. This point is reinforced by the scale and intensity of the opposition to the proposals. It is noteworthy that no State or Territory government has been prepared to emulate the Commonwealth government in terms of the extent and type of responsibilities granted to indigenous interests, nor are there any comparative international institutions.

WHAT THEN ARE THE ESSENTIAL CONCEPTUAL ELEMENTS OF ATSIC?

First and foremost, the incorporation of both representative and executive functions within the one organisation represents an attempt to respond to the structural tensions which permeated previous attempts to address indigenous issues in the governmental framework. As a result, indigenous interests obtained unique access to the Executive processes of government.

Second, ATSIC resulted in a significant transfer of power over funding decisions from the Minister to indigenous interests. ATSIC took over the total budgets of the ADC and DAA totalling some $400m in 1990. This had grown to over $900m in 1995.

Third, the decentralised structure of ATSIC based on regional councils was the first time that governmental institutions were structured to recognise the inherent heterogeneity and diversity of indigenous interests. In particular, elected regional
representatives obtained real power over program funding for the first time. Early decisions by ATSIC to retain central control over many programs created structural tensions within the organisation. I have argued elsewhere that ATSIC should consider utilising a geographically-based, rather than functionally-based, program structure (Dillon 1992). In any event, in the five years since its establishment, ATSIC has devolved a steadily increasing amount of program funds to regional councils.

Fourth, the creation of ATSIC meant that the indigenous affairs bureaucracy was brought under the control of a predominantly elected Commission. Again, however, structural tensions emerged with many indigenous people taking the view that ATSIC staff ought not to be public servants. Long standing structural tensions between ‘the field’ (with allegiances to regional councils) and ‘central office’ in Canberra (which was focussed primarily on servicing the Commission) were also exacerbated by the creation of the new organisation.

How then do we assess ATSIC, both as a concept and in practice? Clearly there is no way of knowing what an alternative approach would have delivered, both to indigenous interests and Australian society generally. ATSIC is important precisely because it is an organisation with executive functions within the national government. Consequently any assessment of ATSIC which ignores the broader societal constituency which it serves would be flawed.

From the start, ATSIC was criticised from all sides. Conservative interests saw it as inherently separatist in concept and practice. It was alleged to amount to the creation of a fourth tier of government in Australia, and to undermine key Westminster concepts such as ministerial responsibility. The vehemence with which these views were held and articulated was remarkable, and formed the basis for the sustained parliamentary attack on the ATSIC proposals and Minister Hand. When the subsequent non-compulsory elections were held to choose regional councillors and commissioners, the relatively low turnout of around 25% across the country was criticised as proving that ATSIC was undemocratic and lacked legitimacy. In recent years the federal
coalition parties have moderated their position and no longer take the view that ATSIC should be dismantled.

Radical indigenous interests, plus disenchanted players associated with the ADC, found much to criticise in the ATSIC proposals. While ADC interests took the initial running, developing a detailed critique of the ATSIC proposals, ultimately a more radical critique emerged amongst indigenous interests and some supporters which continues to this day.

In essence, this radical critique argues that ATSIC is an imposed structure, and thus does not and can not truly reflect indigenous views and aspirations. Rather, it is a co-opted part of government, and inherently insensitive to the real needs of indigenous people and communities (Coombs 1994, 183–6). The touchstone here is the fact that ATSIC inherited staff from its predecessor agencies, and that its staff continue to be engaged under the Public Service Act. Related elements of this critique relate to the alleged excessive influence of bureaucrats over the Commission, and the imposition of excessive accountability on ATSIC and indigenous funding generally not least through the unique statutory Office of Evaluation and Audit established by the ATSIC legislation.

This critique is reinforced in many indigenous people’s minds by the structural tensions referred to above, by the inevitable tensions which emerge in any organisation between management and staff. These tensions are exacerbated in ATSIC by the fact that ‘management’ is structurally, politically and culturally diffuse, comprising as it does 20 Commissioners, the Torres Strait Regional Authority (TSRA), and 35 regional councils (there had originally been 60 regional councils). The comparatively high levels of indigenous staffing and the intricacies of indigenous politics mean that all ATSIC staff operate in a complex cross-cultural environment. Indigenous staff face particular pressures and challenges not always obvious to their peers or management. Overlaying these factors is the challenge of delivering services into the most remote parts of the Australian mainland; ATSIC is perhaps the most geographically disparate organisation in Australia.

ATSIC is now at a watershed. Six years after its establishment, it appears to be confronting a crisis of legitimacy within its own
constituency. Key indigenous organisations are pursuing an agenda based on the negotiation of regional agreements which would provide for direct funding to regional organisations, bypassing ATSIC. The recent transfer of responsibility for funding of indigenous health services to the Department of Health and Human Services at the behest of most indigenous health services, reflects a degree of indigenous dissatisfaction with ATSIC. Other program allocation and delivery mechanisms are under pressure, with recent robust criticism from the courts in relation to land acquisition allocations and the Commonwealth Ombudsman in relation to regional office grant and contract administration. At the macro policy level, the establishment within the Prime Minister's Department of an Office of Indigenous Affairs has formalised and focused what always existed, an alternative bureaucratic source of advice to the government.

Any assessment of ATSIC's future viability must be based on an analysis of its situation and circumstances. And any analysis of ATSIC's current situation needs to be informed by a notional alternative, a default scenario, which adverts to the organisation's fundamental purposes, its raison d'être.

ATSIC's critics invariably ignore the situation which pertained before it existed. In essence, the Minister for Aboriginal Affairs exercised total control over funding decisions across all sectors of indigenous affairs. He was advised by a hierarchically organised department which was centrally focussed and almost totally removed from the day to day realities of life for indigenous people. The department's advice on policy was tempered by the advice of consultative institutions in the periods when they existed, which themselves were centrally focussed and thus intensely subject to structural conflicts within the heterogeneous interests they represented. The lack of access to the "real game" made the provision of effective advice problematic for even the most effective indigenous players. The lack of transparency meant that most funding decisions were made in secret, and handed down from on high without any opportunity for indigenous interests to be involved.

In this context, ATSIC can be seen to be a major reform, involving the transfer of real decision-making to indigenous
interests, and the establishment of a structure which inherently recognises the diversity and heterogeneity of indigenous interests. Moreover, the combination of decision-making power and a decentralised structure necessitated open and transparent processes for the allocation of funding resources. These are substantial steps forward, the significance of which is magnified by the preparedness of the Federal government to allocate significantly increased amounts to ATSIC in every year since it has been established.

Moreover, ATSIC has operated in ways which have in fact provided indigenous interests with new and effective conduits into the policy formulation processes of government, particularly at the Federal level. This is against a backdrop of relatively ineffective and fluctuating policy influence by most other indigenous peak organisations, which tend to be focussed on local issues, are often caught up in internecine politicking within the indigenous realm, and lack the organisational resilience to adopt and implement longer-term political strategies. The Northern Territory Land Councils have been the major exception to this generalisation over the past decade, but even they have difficulty holding their constituency on issues which extend beyond the Northern Territory.

Thus, ATSIC by virtue of its national coverage, its bureaucratic support structure, its statutory framework which brings a degree of stability, and the size of its budget has been able to develop and maintain a strong leadership role in terms of advocacy and influence on national policies which impact on indigenous interests. This success is relatively intangible, but real nonetheless, and not to be underestimated. The question remains, however, could ATSIC have done better?

The answer is undoubtedly ‘yes’. There are two major problems, the solutions to which need to be found in strategic leadership by ATSIC’s commissioners and senior staff.

First, ATSIC has attempted to do too much. It has taken the view that it should be involved in virtually every area of public sector activity which affects indigenous interests. As a consequence, it duplicates the activities of other State and Federal agencies, and more importantly, spreads its human and financial
resources very thinly. The inevitable result is that in virtually every area ATSIC is involved in, it is not the dominant player. The multitude of relatively small programs, each with their own guidelines and criteria, combined with the political imperative for accountability and compliance with grant procedures, and the decentralised structure, mean that ATSIC is often bogged down in administration. The risk is that opportunities are missed, and resources misallocated to lower priority issues. A strategy of simplifying ATSIC’s program structure, of doing a few important things well, and of devoting resources to ensuring other agencies also perform, would leave indigenous interests better off than the current approach. Being a bit player in every game going will not lead to many victories.

For example, one possible strategy would be to concentrate on CDEP, already ATSIC’s largest program, and begin to move away from basic infrastructure (water, sewerage, power) provision in rural and remote areas by imposing much tougher needs-based targeting for funding allocations. Basic infrastructure is, after all, a State and Territory responsibility. It is arguable that the major policy issue in indigenous affairs should be the lack of commitment by the States and Territories to provision of basic infrastructure. The Commonwealth has to date been ineffective in pressuring the States to meet these responsibilities, due in some measure to ATSIC’s continuing role in this area.

Second, ATSIC has been overwhelmed by the ubiquity of existing vested interests within the Commission, and this has created an all-encompassing ‘gridlock’. Parochial indigenous politics and politicking has come to dominate key issues; the presence of indigenous politicians on the Commission means that logrolling and vote-trading determines the outcomes of many issues. The overriding organisational culture within ATSIC of consultation (with regional councils, with commissioners) combined with the reluctance of the Commission to delegate much routine decision-making means that ATSIC staff are often not prepared to take responsibility or to act speedily, thus exacerbating external perceptions that the Commission is overly bureaucratic, and consequently is missing important opportunities.
These two problems clearly reinforce each other. They contribute to what has been termed ATSIC's 'contested structure' (see Smith, this volume). Importantly, this contestedness is almost entirely focussed internally, and revolves primarily around ATSIC's representative role, and in particular, the processes by which ATSIC formulates representations of indigenous views and policy to the non-indigenous society.

The Commission, regional councils, and individual commissioners give overriding priority to funding allocations, and to establishing policy stances on an extremely wide array of related issues. These processes are inherently political, being the means by which significant resources and influence are allocated, but are also culturally significant with most decisions being determined according to indigenous norms and criteria. Indeed, indigenous identity (in all its myriad manifestations) is the value or norm which infuses all these processes. This has a number of consequences: almost by definition, indigenous identity' is established and determined in contradistinction to non-indigenous concepts and values. There is thus a propensity to emphasise the separateness and unique nature of indigenous issues and concerns. Second, the pre-eminence of indigenous identity as an allocational and policy determining value creates strong incentives for indigenous players in these processes to adopt stances which symbolically highlight their aboriginality. This in turn militates against the easy negotiation of compromise with external (non-indigenous) interests.

In other words, contrary to critics such as Coombs (1994) who emphasise that ATSIC is an imposed structure, and is thus ineffective, I would argue that it is the very appropriation of the ATSIC structure by indigenous interests which makes ATSIC a problematic executive agency.

An example of this dynamic can be seen in ATSIC's role in the formulation of the Native Title Act. ATSIC opted to actively join with the indigenous negotiators and was a key player in negotiations with the Federal government. Commissioners clearly felt that ATSIC's credibility within the indigenous community would have been irrevocably damaged had they not adopted this approach. During the complex negotiations over the detailed
provisions of the Bill, a number of touchstone issues were accorded 'non-negotiable' status by indigenous interests. For example, the possibility that the *Racial Discrimination Act* might be amended; the concept that native title is *sui generis* and, though not like other property rights, was indeed a property right; and the view that native title, by its very nature, entailed a veto over any development, were three such examples. The final outcome did not meet indigenous aspirations on all these (the first two examples were achieved in the legislation, not the third), and as a consequence created significant tensions within ATSIC and indigenous interests generally.

The extraordinary achievement for indigenous interests in the passage of the *Native Title Act* lies precisely in the fact that indigenous leaders recognised that a second best compromise was better than the alternative. The seriousness of the internal strains was evident in the emergence of the so-called 'B-team' of indigenous negotiators and the continuing scepticism amongst many indigenous people as to the value of the outcome achieved.

The native title debate was a once-in-a-lifetime issue, of unique importance and salience. In my view, ATSIC Commissioners had no choice but to give priority to representing their constituency given the prevailing circumstances and array of forces at work. However, in relation to most other issues, ATSIC's dual executive and representative functions give it a unique opportunity to continue to represent indigenous interests, but on the basis of privileged access to the executive processes of government.

ATSIC Commissioners – who in my view do control the organisation – have consistently opted for giving precedence to the representation of indigenous interests over participation in the executive processes of government. For example, ATSIC has recently obtained Non-Governmental Organisation (NGO) status in various UN forums dealing with proposed international conventions, thus potentially dealing itself out of the 'end game' negotiations where governments (not NGOs) take final decisions on text (see Sullivan, this volume).

The dilemma is that ATSIC never had (and never will have) a monopoly on representing indigenous interests and aspirations. With over 2000 funded indigenous organisations, including an
increasing number with the capacity and resources to participate in national policy formulation processes and political debate, it is clear that there is a surfeit of representational bodies in the indigenous sector. ATSIC does have a monopoly (vis-a-vis other indigenous organisations) on access to the executive processes of the national government.

ATSIC's access to the executive processes of the Federal government derive from its statutory powers to provide advice to governments, and the stated policy of the Labor government that ATSIC is the primary source of advice on indigenous issues.

The executive processes of government involve a fusion of politics and policy, personal and structural influences, and an array of legal and institutional rules and conventions. Like ATSIC's own processes, there are formal and informal aspects, and these are symbiotically related. Access to these processes includes access to Ministers, other agencies, the Parliament and its committees, and to the Cabinet process which is at the centre of government decision-making. Aside from the direct provision of advice, opportunities exist for agenda setting on a broad basis, monitoring the activities of other agencies, involvement in the ubiquitous inter-departmental committees (IDCs) which coordinate and develop cross-cutting policy initiatives, and for the gradual accumulation of influence and information through informal networks.

There are thus significant potential advantages for indigenous interests in ATSIC's unique structure, since it provides them with 'insider' status as decisions are made. The disadvantage is that insiders have to accept the outcomes, the final decisions, once they are taken (though nothing is ever truly 'final' in public policy). For the reasons outlined above, it is exceedingly difficult for indigenous leaders to operate on this basis and retain credibility with their constituency.

Recognising the magnitude of the challenge involved, it remains the case that ATSIC's total preoccupation and focus on articulating the strongest possible indigenous perspective has meant giving up influence and power in the one area where it has a comparative advantage (namely, the executive processes of government). The irony is that in attempting to represent an
indigenous perspective and position to the world on any issue, the very 'contestedness' which permeates ATSIC (that is, the inevitability that any position it adopts will advantage some indigenous interests over other indigenous interests) has undermined its legitimacy in the eyes of many indigenous people. In other words, in most situations, there is no one indigenous interest to promote and advocate.

Strategically, ATSIC would be a more effective and influential organisation if its leadership gave priority to maintaining and strengthening its access to and influence within the executive arm of government, particularly as its decentralised structure provides regional councils with the flexibility and independence to adopt a more representative focus.

FUTURE PROSPECTS

ATSIC emerged from a maelstrom, and has the inherent capacity to sail blithely back into one. Its most valuable resource is the vision and resourcefulness of its leadership and close supporters. The quality of that vision, and the determination to proactively ensure it is implemented, will be the ultimate determinants of ATSIC's future.

On its present course, where emphasis is laid primarily on its representative functions, ATSIC runs the risk that it could progressively lose the capacity to influence policy outcomes as other bureaucratic players take advantage of the vacuum it has itself created, and other indigenous organisations utilise their regional presence and sectoral constituencies to undermine ATSIC's legitimacy amongst indigenous interests.

Countervailing forces include the fact that governments are likely to want to retain a national indigenous organisation to facilitate policy development in what is a highly pluralistic environment where policies and policy options are increasingly evaluated in terms of the reactions of key interest groups. To date, indigenous interests have not developed an organised lobbying presence equivalent to the Minerals Council of Australia, the National Farmers Federation, or the Business Council of Australia, and consequently, ATSIC fills the gap at least from a
governmental perspective. While any public sector agency has to justify its existence day by day, a practical problem for any government wishing to dismantle ATSIC is the form of a replacement; it is certainly far from clear that any potential replacement structure or arrangement would automatically deliver the efficiency and social justice gains which would warrant the welfare and political costs involved in dismantling ATSIC.

The bottom line, however, is that if the current course is maintained, in the medium term, ATSIC will be cut out of the policy formulation process. Even if the risks of wholesale change are avoided, the risk exists of a gradual slide into irrelevance.

A new strategic direction will also be risky, and not pain free for ATSIC’s leadership. In my view, a starting point must be an acceptance of the reality that because of the wider ramifications of indigenous affairs policies, governments require, and consequently will maintain, independent sources of advice on indigenous issues. ATSIC should seek to strengthen the autonomy and responsibilities of its regional structure, perhaps upgrading and amalgamating regional councils into a smaller number of independent ‘regional authorities’ with their own staff and budgets and the capacity to influence public administration at regional and local levels. These organisations should be seen as the key institutions in indigenous affairs, controlling the bulk of ATSIC’s budget. Even though many of the structural tensions within ATSIC would apply equally to regional authorities, their tighter geographical focus should allow them to operate with greater effectiveness and accountability to their constituencies.

At a national level, ATSIC should seek to be a policy clearing house and coordinator, working as a mediator between indigenous organisations such as the regional authorities and the mainstream government and its agencies. Already there are indications that ATSIC’s leadership is moving in these directions. At the Global Diversity Conference in early 1995, the Chairperson of ATSIC, Lois O’Donoghue, outlined a vision of upgraded regional authorities and greater devolution of functions and powers.
ATSIC's future is bound into the same array of forces which are shaping and reshaping the institutional structures of governments across the world. Increasing globalisation, increasing complexity, increasing use of market-based structures, trends in federalism and inter-governmental relationships and the inevitability of continuing change will all impact on the shape and form of both ATSIC and the policy environment in indigenous affairs. The High Court's Mabo decision and the subsequent passage of the Native Title Act has created a complex and uncertain political and policy dynamic across the nation which demands a creative and realistic response from indigenous interests, including, most obviously, an imperative to develop and strengthen local and regional indigenous organisations which can develop strategies and respond proactively to the issues which are emerging. The important strategic decision for indigenous interests is whether they wish to merely react to these forces or proactively work to temper and shape the forces already working themselves out in ways none of us can fully anticipate.

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All Things to All People
ATSIC and Australia’s international obligation to uphold indigenous self-determination

Patrick Sullivan

INTRODUCTION

ATSIC was designed to be both a functional and a representative body. Its representative role derives from its electoral structure, with regionally elected councils, electoral college zones, and a board of both elected and appointed Commissioners. Its functional status is carried out by the staff of its headquarters, state and regional offices, who are largely career civil servants.1 These are grouped into functional sections to address the problem of material improvement in the conditions under which Aboriginal people live – development planning and implementation. More recently the Commissioners have also been allocated portfolios and grouped into portfolio committees that match the program functions of administrative sections, as a bridge between the administrative and representative arms

1. 45% of them Aboriginal in June 1992, declining to 37% by June 1993 mainly due to the rapid expansion of the organisation over this period (Rowse, this volume).
(ATSIC 1994, agenda item 6). This dual structure of ATSIC derives from its origin on the one hand as a replacement for the National Aboriginal Conference (NAC), and on the other as an amalgamation of the Department of Aboriginal Affairs (DAA) and the Aboriginal Development Commission (ADC). The NAC was the last of a series of elected Aboriginal organisations, funded by, but independent of, government which were to provide policy advice and a forum for the debate of Aboriginal issues (see Coombs, this volume; and also Dillon, this volume). The DAA, on the other hand, was often perceived, particularly at the local level, as a colonialist development agency that contained and administered the ‘Aboriginal problem’, while the ADC was primarily charged with providing funding and advice for Aboriginal enterprises (see Sullivan 1996).

The amalgamation of these quite separate roles and functions took place after a two-year period of community consultation, bureaucratic analysis, and political amendment in the legislative process. In the ensuing years much attention has been paid to ATSIC’s performance in administering program funds. Throughout Australia ATSIC fields criticism both from entrenched conservative groups which are unsympathetic to the level of funding for Aboriginal needs, as well as from the applicant organisations in its electorate. For example, the Independent Aboriginal Organisations (IAOK) of the Kimberley in their submission to the Council for Aboriginal Reconciliation on Social Justice matters said:

As a result of poor advice, inconsistent funding decisions, lost submissions and late releases, Aboriginal people are disillusioned with the ATSIC administration (IAOK 1994, 1).

2. Here and elsewhere in this chapter reference is made to papers presented to the ATSIC Annual Conference 1994 on the theme ‘Effective Representation and Decision-Making’ held at Rockhampton. These have been compiled in a single volume but each paper retains its original unique pagination. Reference is therefore made to the agenda item under which it appears.
It went on to say:

ATSIC funding is conditional on communities and organisations complying with the most rigorous financial accountability reporting of any Commonwealth funding agency. While other Commonwealth agencies have moved towards outcomes-based accountability, ATSIC focuses on the public reporting of how funds are spent rather than the results of the funding.

Both employees of Aboriginal organisations and communities and ATSIC Regional officers share the same frustration with this onerous and burdensome funding and accountability process. The process is dominated by excessive paperwork, including funding applications, requests for additional information, quarterly and annual reporting, audit requirements, reporting under the Aboriginal Councils and Associations Act, and performance indicator reporting (IAOK 1994, 6).

Regional Councils themselves are frequently as frustrated by ATSIC administrative procedures as the organisations and communities they fund. In rare instances these frustrations surface publicly as when the Chairperson of the Binjirri Regional Council (Marion Hansen) told the ATSIC Annual Conference that ATSIC procedures are:

difficult to understand;
far in excess of existing standards of other agencies;
don’t conform to plain English standards;
don’t meet benchmarks for efficient and effective procedures;
don’t guarantee in themselves that there won’t be breaches of conditions and guidelines;
create situations where minor infringements can delay funding;
frustrate the hell out of workers and Regional Councillors.

and recommended:

that there be a major review of current systems and procedures with particular attention to the grants administration with an aim to simplifying such procedures and producing a client friendly system (ATSIC 1994, agenda item 5).

Such attacks on ATSIC funding processes are also fuelled by frustration at ATSIC’s attempts to control the representation of Aboriginal views. The same community organisations that are confounded in their attempts to further their members’ aims by
ATSIC procedures are also those that consider themselves to have a role as representative organisations, either in specialist areas or in general terms. They find themselves frustrated in their attempts to represent and service their area, and paradoxically be required to rely on ATSIC as an organisation that government considers to represent themselves and their members. The competition at the local level over the 'right to represent' and representative legitimacy is complicated by ATSIC's dual funding and political roles.

For their part the ATSIC senior staff are aware of the potential damage such internal divisions in the Aboriginal electorate can cause. The Chairperson and Chief Executive Officer have not forgotten the conservative opposition, both in Parliament and in the press, to the original idea of ATSIC that Aborigines should be put in direct control of their own funds (see Dillon, this volume). Having an eye on the larger political picture they persuade the elected arm to unity (ATSIC 1994, agenda item 1) and put considerable effort into explaining the constraints and conciliating for a united voice. The recently appointed Aboriginal Chief Executive Officer, Pat Turner, for instance, turned attention at the Annual Conference to what ATSIC has achieved for Aboriginal communities and pointed out:

All of this has been done with administrative costs at 11.9% of budget – or 13.9% if you include expenditure associated with the elected arm, which no other agency has to resource. By any standard this is something which ATSIC can be proud of and which, as Chief Executive Officer, I would like to see maintained... To be frank – much of ATSIC's first three years of life has been dominated by trying to put basics of administration in place to cope with a budget which has more than doubled since 1989/90 from $505 million to $1052 million in 1994/5.

Add to that the Royal commission into Aboriginal Deaths in Custody, the Review of ATSIC and the new legislation, and the Native Title debate and you have a turbulent three years (ATSIC 1994, agenda item 1).

The pressures on ATSIC are a combination of this concern over funding, accountability issues and sheer workload. ATSIC staff fend off attacks from within as well as outside the organisation
and at the same time perform a massive material development task where it is very conscious of the consequences of failure. It is not surprising, then, that detailed analysis of the political implications of placing a representative body in the front line of unpopular funding decisions, and attempting to channel all government policy advice through that organisation, is rarely attempted. Indeed, questioning ATSIC's ability, and its right, to represent the Aboriginal people as a whole is seen as joining forces with those who wish to undermine it.

This chapter is not concerned with any lack of efficiency of ATSIC as a bureaucracy, which, as Turner says, it continually strives to improve, but to the problem of ATSIC as a representative structure that requires more critical attention. The chapter asks some fundamental questions. Firstly, does the Commission fulfil Australia's international obligations to encourage the self-determination and de-colonisation of its indigenous people? It provides some analysis of what these terms may mean in the Australian context and information on recent developments. Secondly, if the Commission is not itself an organisation of self-determination, is it at least an effective instrument for the formulation of government policy and the representation of Aboriginal needs and aspirations? This chapter suggests that the role of development funding and coordination overshadows the more deep-seated need for political representation. Indeed, by being taken to mean the same thing, it substitutes for it (but compare the arguments of Smith, and Dillon, this volume). The proximity to government, its internal structure, and the rudimentary nature of its electoral system in comparison with Aboriginal social complexity and regional diversity (Smith, this volume) all render it difficult for it to perform well its representative role as a peak political, rather than advisory, body. Thirdly, if this is the case, may it not also be true that, despite the goodwill and hard work of the many Aboriginal people associated with it, ATSIC is more a mechanism for the continuation of colonial control than a step on the way to the self-determination of a separate and distinct people?
THE INTERNATIONAL PRINCIPLE OF SELF-DETERMINATION AND INDIGENOUS PEOPLES

Internationally, Australia is in the forefront of formulating international law concerning the right to self-determination of indigenous peoples, primarily by its interventions at the United Nations Human Rights Commission Working Group on Indigenous Populations (WGIP). The most contentious and complex right to be discussed by indigenous representatives and member governments in this forum has been the right of indigenous peoples to self-determination, since, on some interpretations of this right, it constitutes a challenge to the sovereignty and territorial integrity of states (Iorns 1992, 220; Pritchard 1992, 5–6; Thornberry 1991). In 1992 the Australian delegation to the WGIP from the Department of Foreign Affairs and Trade (DFAT) made a careful and considered intervention on the question of self-determination of indigenous peoples which it put in the context of the process of international de-colonisation. Pointing out that Australia had endorsed the inclusion of a clause on the right of self-determination of indigenous people in the draft Declaration on the Rights of Indigenous People, and ‘conscious that Australia is one of the very few states that have supported this point of view’ Australia then said:

The Australian government delegation to this meeting considers that indigenous peoples are among those groups which may have to overcome barriers inhibiting their full democratic participation in the political process by which they are governed so that the full range of human rights are theirs to enjoy. Specific recognition of the right of self-determination for indigenous peoples, as separate and distinct peoples, will assist them to overcome the barriers to full democratic participation [my emphasis].

But the concerns of indigenous peoples clearly do not stop here. Given the variety of circumstances in which indigenous peoples find themselves, we would not want to be prescriptive as to the exact form self-determination should take for indigenous peoples. Obviously, it

should encompass a range of possibilities. In our view a system which guarantees full and genuine participation and fundamental human rights as well as recognising the special position of indigenous peoples could provide an adequate and real realisation of self-determination.

In Australia, Aboriginal and Torres Strait Islander peoples are empowering themselves to take control of their own lives. They are moving to overcome social and economic barriers which may inhibit the full enjoyment of the right of political participation and the range of fundamental human rights to which they are legally entitled. The establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) has given greater effect to the policy of self-determination of indigenous peoples in Australia (DFAT 1993, 3–4).

So far in the speech, then, the self-determination of indigenous peoples involves making use of legitimate democratic rights within the state, and, in Australia, it is embodied by ATSIC. The intervention then steps into more controversial territory:

Clearly, if self-determination in general means that each people has the option of full independence and forming their own state, it will be very difficult for states to accept the application of the right to many groups, including indigenous peoples... As the general debate on self-determination has developed in international forums, however, the view has emerged that there may be ways in which the right may legitimately be exercised short of the choice of separate status as an independent sovereign state. The Committee of 24 has always contemplated more decolonisation options than sovereign independence; acts of self-determination for colonial territories have included options such as free association or integration with the colonial power.4

4. The Committee of 24 is the popular name for the ‘Special Committee on the Implementation of the Declaration on Decolonisation’. The committee was established by the UN General Assembly by resolution 1654(XVI) of 1961. It is a Standing Committee of the General Assembly, and therefore at the highest level, and has had the task of overseeing post-World War II decolonisation. At the November 1995 meeting of the special working group considering the draft Declaration on the Rights of Indigenous Peoples, an Aboriginal delegate, Olga Havnen of the CLC, proposed that the committee, or one established at the same level, oversee the implementation of this Declaration as well (CLC 1995). This would tie indigenous self-determination into the same process as that for the creation of independent or self-governing states.
The significance of the statement is in suggesting that Aborigines, as a separate and distinct people, may have the right in international law to determine their political status in ‘free association’ with the colonial power. In subsequent correspondence the DFAT representative was asked to clarify which particular models of de-colonisation proposed by the Committee of 24 may be under consideration by the Australian government. The reply, which was long in coming and carefully worded by a DFAT legal adviser, concluded ‘the final paragraph of the statement does envisage that giving meaningful effect to the concept of self-determination would be part of the “internal political processes of states”. Indeed, this statement suggested that a form of internal administrative arrangement, namely the creation of ATSIC, could be seen as an expression of self-determination for indigenous peoples...’ (Christopher Lamb, DFAT, pers. comm.).

Essentially the Australian government statement points out the need to develop the concept at international law to deal with the decolonisation of peoples embedded within states, proposes on the one hand that self-determination requires free and equal participation in democratic structures, and on the other hand that means of free association of separate and distinct peoples should be found as part of internal political processes. ATSIC is then held up in international forums as a unique contribution to decolonisation, rather than a highly effective means of continuing colonial control. This has so far gone unchallenged by Australian indigenous representatives.⁵

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⁵ Since its first attendance at the WGIP, ATSIC has insisted that other Australian indigenous representatives do not use the forum to criticise ATSIC. Effectively this has meant not criticising the Commonwealth. Initially, the benefits of a united front at the WGIP for the Aboriginal bloc seemed a politic trade-off for accepting these constraints. In recent years delegates have increasingly questioned it. At the most recent meeting in November 1995 ATSIC delegates debated with the CLC representative, Olga Havnen, about whether she could bluntly state that ATSIC does not fulfil Australia’s obligation to Aboriginal self-determination. Despite their moral and collegiate pressure she went ahead with the statement. In the event, ATSIC proved more sensitive to this issue than the Australian government itself. The Australian government statement in November
The right of all peoples to self-determination is clearly a controversial concept, particularly for recently decolonised nations with embedded indigenous populations. The response from states has been to rely on the principle of non-intervention in domestic affairs which is part of the United Nations Charter and the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the 'Charter of the United Nations (Iorns 1992, 42). Australia's position stems from its need to be seen to be upholding the firmest interpretations of human rights law, particularly in regard to questions of racism and decolonisation, in order to continue to exert far greater influence internationally than either its population or the size of its economy warrants. Indeed, changes in Aboriginal affairs policies have always been driven by international pressure.6 On the other hand there is the pragmatic need to have regard to the fears of states who see their sovereignty or territorial integrity challenged by too unqualified a definition of the right of indigenous peoples to self-determination. There is also in the Australian position a recognition that human rights also consist of the right to equal access for the fulfilment of basic needs and equal representations within a composite society. It recognises that in many countries (perhaps also in Australia) many indigenous groups do not have this.

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6 1995 simply made reference to ATSIC and the TSRA as 'significant steps towards self-determination' (UN E/CN.4/1995/WG.15/2/Add.2).

6 The British-based anti-slavery movement at the turn of the century, which did much to precipitate the protectionist and segregationist eras, is an example of this. The policy of assimilation, and later the mis-named self-determination policy, were also responses to Australia's international profile. The international alignments at the end of the Second World War brought pressure upon Australia to institute policies that were defensible in international forums such as the United Nations (Bolton 1981, 151, Beckett 1987, 173). In 1949, for example, Kim Beazley suggested to the Prime Minister that special Aboriginal representation in Federal Parliament be instituted. He suggested also that the Federal government move to take over responsibility for Aboriginal affairs in the States because of the constant reference to Australian Aborigines at international conferences, where it was assumed that the Federal government was held responsible for the lack of progress in the States (Tatz 1979, 99).
The position elaborated in 1992 was in response to these pressures. This position has largely appeared to have been ignored in Australia as matter of public debate, but it emerges in another form in recommendations to the government (by ATSIC) and the Parliament (by the Aboriginal and Torres Strait Islander Commissioner for Social Justice) on the proposed Social Justice Package, which is the third leg of the government’s response to the Mabo decision.

In both reports separate sections deal with ‘citizenship rights’ and the rights of Aborigines as a separate and distinct people. The first of these topics is plainly rooted in a familiar need to impress on government its responsibility to address the appalling disparity between the economic and social conditions of Aborigines and non-Aborigines. The second is emerging as a struggle on a new level in which the principles negotiated at the international level are being urged domestically. So far in Australia the whole thrust of Aboriginal affairs policy (and it is suggested below the ATSIC Act) has been to meet the first approach to human rights and self-determination, which is the raising of material standards and standards of representation within the society to the same level as all other groups. Gradually, as the Social Justice Commissioner’s submission shows, the second approach to self-determination of indigenous peoples, that it requires an act of free association between separate and distinct peoples within the same state structure, is emerging. As the Aboriginal and Torres Strait Islander Social Justice Commissioner put it:

While the High Court decision [in Mabo] was specifically concerned with Indigenous land title and rights, its acknowledgment of the ongoing legal validity of Indigenous law and custom pointed to the need for a broader recognition of the fact that as distinct peoples, Aboriginal and Torres Strait Islander peoples are entitled to enjoy distinct and unique rights. Such rights arise from our status as the First peoples of this country, peoples whose rights predated its colonisation and the imposition of non-Indigenous law and social structures. Such distinct rights include, but are not limited to, the right to practice and enjoy our distinct cultures, the right to control over natural resources and the environment, and the right to self determination... If it is the aim of the proposed social justice initiatives to reverse the historical
violation of the rights of Indigenous peoples, then they must address both our distinct rights and the rights which we are entitled to enjoy alongside all other Australians (ATSISJC 1995, 2).

This assertion of political rights as a separate and distinct people can be expected to develop significantly over the next decade, pushed on by the fall-out from the Mabo decision. One recent development in particular threatens to knock down the door of resistance to a reinterpretation of fundamental relationships. This is the indigenous rejection of the principle of the legitimate extinguishment of Aboriginal title by the exercise of sovereign power.

One major principle of the Mabo judgement that has received wide acceptance is that native title may only be recognised in the common law where it has not been extinguished by an act of sovereign power such as the grant of another substantial interest over the same land. However, recent analysis suggests that there is no right in British common law for the sovereign to issue grants incompatible with other common law rights, even customary rights.

McNeil, who has worked extensively on the problem of extinguishment of native title in Canada, has exhaustively analysed the reasoning of the judges in the Mabo cases and compared this with established law and legal principles. He states:

Applying the principles outlined above to executive extinguishment of native title, the correct position in law should be as follows. The Executive acting on behalf of the Crown can extinguish native title by executive act if unambiguously authorized by valid legislation to do so and the intention to extinguish is clear and plain. Statutes authorizing the Crown compulsorily to acquire lands for public purposes, for example, might apply to lands held by native title, permitting that title to be extinguished in accordance with the legislation. However, if that is the case, compensation would have to be paid to the native titleholders unless the legislation clearly provided otherwise. As for statutes authorizing the Crown to grant interests in lands, in the absence of unambiguous legislative intention to the contrary, that authority, like the common law power to grant, extends only to interests which are the Crown’s to give. The Crown cannot grant interests which it does not have, nor can it extinguish the property
rights and interests of its subjects by granting their lands to someone else. For example, if the Crown has a fee simple estate in reversion subject to an existing leasehold estate, it can only grant the fee simple subject to the leasehold. Similarly, if the Crown's radical title is burdened by an existing native title, the Crown can only grant an interest subject to the native title. If the interest granted is inconsistent with the native title, the grant should be void and of no effect (McNeil 1996, 189–190).

McNeil concludes that all three judges in the Mabo case made their decision on the basis of political expediency rather than established law.

The question is further complicated by the existence of two systems of law. If extinguishment is to be considered valid and binding by both sides it must occur in both systems. In the Aboriginal land tenure system extinguishment can only be effected by Aboriginal land holders. The Social Justice Commissioner's submission to the UN WGIP in 1995 put this case very forcefully:

In my opinion, discriminatory extinguishment of native title at common law amounts to an arbitrary deprivation of property. This is particularly so given that the majority of the court held that extinguishment of native title would not give rise to compensation ... The word 'extinguishment' is a misnomer. As long as our laws and customs exist, native title is not extinguished in Indigenous law. The common law may not recognise those rights, but governments and lawyers should not fool themselves that a declaration that extinguishment has occurred will make our laws and customs disappear. Nor will it dispose of the grievances of Indigenous peoples. The simple reality is that it will not. A fence is not so grand a structure that it can destroy our relationship to our land. A piece of paper cannot destroy our culture, except perhaps in the the perverse imaginings of lawyers (ATSISJC 1995, 3).

Regardless of the question of sovereignty, finding that all Australian land grants are, at worst, invalid, and at best compensatable, lifts the native title issue from one that can be settled on a case-by-case claimant basis to one that can only be dealt with in the context of an overall negotiated accommodation between peoples. Following from this, the primary political question before Aborigines today is, as identified by the
Australian delegation to the UN in 1992, to formulate a relationship within the Australian polity that is a political accommodation between separate and distinct peoples. It is clear how useful ATSIC is to government in papering over this problem. ATSIC has been put forward in the same statement and in subsequent statements as meeting Australia's international obligations in this respect. The question to be explored here is whether ATSIC is constitutionally structured in such a way. If not, can it be put to this purpose by broadening its role from the simple provider and coordinator of development services to a leading role in negotiating an accommodation? If even that is problematic the question must be asked how it may be reformed and what other forms of organisation may be required.

MEETING THE HUMAN RIGHT OF SELF-DETERMINATION OF INDIGENOUS PEOPLES

It is clear from an examination of the intentions of the Government in the Preamble to the ATSIC Act (1989), the Objects of the Act (S.3.) and the Functions of the Commission under the Act (S.7) that it does not itself, as presently constituted, represent anything like such a political accommodation. The Preamble to the Act tries to encompass the diversity of purposes of the organisation and yet steer an even course between the various mainstream political positions on the nature of the relationship between Aborigines and non-Aborigines in Australia. The Preamble begins with the statement of the right of the Commonwealth to make such laws as a result of overwhelming popular vote in a referendum (1967) and ends with Australia's international treaty obligations under the international law instruments of the Universal Declaration of Human Rights, the two Conventions that implement it and the International Convention on the Elimination of All Forms of Racial Discrimination. It states that Australia's acceptance of the first and ratification of the other three has been done to protect its indigenous people as well as the rights of other citizens. The ATSIC Act, then, is intended at least in part to give domestic expression to Australia's international treaty obligations. The
Preamble describes the purpose of the Act as one of national reconciliation, yet only concedes to Aborigines the status of prior 'inhabitants' rather than prior owners. Anomally, it also refers to dispossession of land without compensation. This implies an ownership right rather than simply one of occupation. A highly suspicious reading of the Preamble would see this use to the term compensation in this context as implying that the ATSIC structure and the benefits it delivers are compensatory. To counter this Aboriginal initiatives, such as the Report to Parliament of the ATSISJC in 1995, stress their citizenship rights as well as their separate rights (ATSICSJC 1995, v.1:7, 32–3).

It is noteworthy that the Preamble refers to the objective of overcoming disadvantage and facilitating the enjoyment of culture in a manner consistent with self-management and 'self-sufficiency'. There is no mention of 'self-determination' in the Preamble or in the Act, much less that ATSIC represents the free association of a separate and distinct people with the Australian state. The discrepancy between what Australia's statement to the United Nations says the ATSIC Act achieves and its actual intentions is clear. It is also noteworthy that the Preamble only sees the need to establish representative structures for Aboriginal and Torres Strait Islander people in order for them to participate in development programs and to provide them with a voice 'within the Australian government'. ATSIC, then, is not intended as a representative structure within Australian society in general, or the nation or the state, but explicitly within government.7

7. This may raise problems for ATSIC's consultative status as a Non-Governmental Organisation (NGO) at the United Nations. Consultative status is not easy to achieve and requires the NGO to meet a number of requirements. Only NGOs with consultative status may address most of the committees of the UN system. In Australia only ATSIC and the National Aboriginal and Islander Legal Service are accredited indigenous organisations. In the light of this reading of the ATSIC Act (1989) it may be in breach of the UN guidelines. Dillon (this volume) points out that ATSIC's need to be seen as an Aboriginal representative NGO at the UN, while ideologically satisfying, may be a tactical error. Its members are excluded from sitting with governments when the actual decisions on procedure and on the wording of the Declaration on the Rights of Indigenous Peoples are made.
Another paragraph of the Preamble explicitly states the Parliament's intention to legislate to increase economic status, social well-being, and provision of community services.

In summary the Preamble, rather than giving the ATSIC Act a clear and precise purpose, very well reflects the confusion of aims of the Australian Parliament. These are threefold: the need for a representative structure within government but explicitly falling short of international standards of self-determination, even as articulated internationally by Australia's own representative; the need to increase the material well-being of Aborigines and that Aborigines be seen to be in control of this process; and the need to meet the national objective of reconciliation and provide domestic legislation that appears to meet international obligations. The Objects of the Act (S.3) and the Functions of the Commission (S.7) dilute even further the political functions of ATSIC both in terms of day-to-day representation of Aboriginal positions and the more far reaching requirements of self-determination. The Act states:

The objects of this Act are, in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society:

(a) to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;

(b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;

(c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and

(d) to 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.

Clearly the Objects follow from a conceptualisation of Aborigines as dispossessed, dispersed and disadvantaged – not a people with rights but a welfare community. Two of the objects are concerned
with delivery of development programs and two involve formulating and coordinating the formulation and implementation of policy. In the first there is a clear intention that there should be maximum participation of Aboriginal and Torres Strait Islanders in the formulation and implementation of policy. The question arises: does policy relate to all policy, including the response to common law native title, the need for a treaty, implementation of human rights and so on? The terminology used and the preponderance of concerns with development issues tend to indicate that 'policy' here means 'development funding policy' and Aboriginal politics has in practice meant ATSIC representing views about allocating development funds. This interpretation is reinforced by Section Seven (S.7) of the Act on the Functions of the Commission.

There are thirteen functions of the Commission. They can be summarised as implementing and monitoring programs and policy, carrying out research, advising the Minister, and protecting Aboriginal and Torres Strait Islander cultural material. Against the overall tenor of the wording of these functions it may be possible to argue that 'programs' and 'policy' can be broadly defined to embrace Aboriginal political objectives as a distinct and separate people. If so, functions such as "to formulate and implement programs for Aboriginal persons and Torres Strait Islanders" (S.7.(1)(a)), and 'to develop policy proposals to meet national State and Territory and regional needs and priorities of Aboriginal persons and Torres Strait Islanders' (S.7.(1)(d)) could be used to develop a political position. In reality, there are a number of mechanisms in the Act and in the operation of ATSIC that make it extremely difficult for ATSIC to take a broad interpretation of its role and therefore to provide effective political leadership at this critical time.

Section Seven of the Act gives the Commission responsibility to formulate policy proposals at the national, State and regional levels, to monitor programs carried out by other bodies, and to coordinate the programs of other Commonwealth bodies. It is left unstated whether ATSIC is to be the sole policy formulating body, but the recognition of other programs indicates it is accepted that ATSIC should simply be one among a number of players. In
particular, the role of Cabinet in the formulation of policy is not undermined. The ATSIC Act does not formally delegate the sole ability to devise Aboriginal affairs policy so conflicts are likely to arise, particularly since the Office of Indigenous Affairs (OIA) has been established within the Department of Prime Minister and Cabinet to offer an alternative source of policy advice. The ATSIC Act does, however, make it clear whose views would prevail if the policy of the Commission differed substantially from government policy. The Minister has considerable oversight of draft budgets and estimates, and can intervene more directly to direct the financial activity of the Commission (S.63.(7)(8); S.64; S.65; S.74). This constraint on the Commission to make policy decisions independent of government and the decisions of other branches of the public service firmly entrenches it in the process of advice, consultation and compromise that is part of the normal process of public administration, and constrains it to act as little more than an arm of government like any other government department.8 In practice, it is often in the Minister's interest to take a 'hands off' approach to the nuts and bolts of program funding, and particularly to the differing views of Aboriginal advancement among Aboriginal groups themselves (see Sullivan 1995, 4–6). This can give the appearance of substantial power in the hands of the Commissioners. It is susceptible, however, to changes in national political circumstances and dependent on the Commissioners remaining within the bounds of an unstated consensus on the limits of acceptable actions.

8. The possible disagreement between myself and Dillon (this volume) is less than it might seem. Dillon says ATSIC does not use its power as a government body well enough, instead insisting on its distinctive identity among quasi-government instrumentalities as the legitimate voice of Aboriginal people. This is not really contradictory of my analysis which is that ATSIC is constituted as a government body, performs as one in its day-to-day operations (but not in its relations with government, Dillon would say) and cannot be representative because of structural and legislative constraints. Our conclusions are very similar.
ATSIC'S REPRESENTATIVE ROLE IN PRACTICE

The ATSIC system, partly defined by the Act, partly as a result of its origins in the DAA, tends to provide a highly elaborated bureaucracy for development funding which perpetuates at the core of the Commission the model of a government department. Side by side with this is a representative structure, which may be complex and diverse at the regional level, but which nationally is modelled on crude non-Aboriginal electoral principles. It is potentially dominated by Ministerial oversight, lacking independent resources, and having laid before it only the task of allocating funds for material development. The Minister for Aboriginal Affairs appoints the Chief Executive Officer of the Commission (S.46.(1)) who has the powers of a Departmental Secretary in the mainstream civil service (S.55.(2)) and the staff of the Commission are all appointed or employed under the terms of the Public Service Act 1922 (S.55.1)). Taking over the existing programs and functions of the Department of Aboriginal Affairs, as well as the Aboriginal Development Commission, meant at the same time taking over the culture of 'cradle-to-grave' service delivery. In the initial years ATSIC functioned as nothing but a government department with an advisory arm, despite the fact that the Act clearly gives the Commission power to formulate policy and give direction to the CEO (S.46.(4)). This is still very much the case at the Regional level as the operation of Regional Councils is still dominated by the functional service delivery

9. ATSIC's role in negotiations over the Native Title Act 1993 are anomalous. An extended discussion would be out of place here. However, posing one or two questions can highlight some of the complexities of representative legitimacy. Under other circumstances the government of the day could well have reduced ATSIC to a policy advisor, rather than a negotiator, by reminding its officers of their statutory position. To do this would, of course have provoked an Aboriginal outcry and increased ATSIC's credibility and legitimacy. On the other hand, if only ATSIC had been involved in negotiations the result would have been the reverse. ATSIC's capabilities in this respect would certainly have been rejected by other Aboriginal interests, and the Act would never have received the necessary cooperation of the other players. In the event it suited all sides to have ATSIC sitting at the table, as it does at the United Nations; in both cases this may not lead to the best outcomes.

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requirements of the Regional Offices (see Finlayson & Dale, this volume). At the level of the national Board increasing intervention and control over the bureaucracy can be discerned, but this can only be glossed over as political activity if the essential function of politics is seen to be the control and distribution of resources. If in fact it is wider than this, the assertion of values, the propagation of system ideas about what is 'right', on which resource distribution and all other activities rest, the Board falls well short of a political role.

The administrative culture of ATSIC, that inhibits it taking a strong advocacy role or operating as an expression of Aboriginal political aspirations, is strongly encouraged by the Ministerial influence that permeates the ATSIC Act. The Minister appoints two of the Commissioners as well as the Chief Executive Officer (S.27(3), S.46(1)). He may direct the Commission in general terms (S.12) and may take complete control of ATSIC financial decisions (S.74). He has the power to dismiss Commissioners for misbehaviour and the power to determine what constitutes misbehaviour (S 40, S 4A). Indeed, the Act explicitly defines one instance of misbehaviour as Commissioners making recommendations in contradiction of a Ministerial direction over finances (S.40(9)). ATSIC has also conferred on it an Office of Internal Audit responsible to the Minister, as well as being required to adhere in the same way as other government departments to the requirements of the Auditor General. These factors combine to limit the potential for ATSIC to intervene in political issues, remaining primarily a funding organisation with its finances under intense scrutiny and Ministerial control. Within these informal as well as structural constraints the ATSIC Commissioners are free to make policy. It is not clear what the reaction of government would be if they decided to step outside of these constraints either by determining a policy that would challenge the role of Cabinet in its policy functions, or by direct advocacy of a particular cause in opposition to government, since this has neither been done nor contemplated.

This perception of ATSIC as an extension of government, which is partly due to its constitution, partly its history, and partly its present functioning, produces tension and often outright conflict
with community organisations. Numerous functional organisations came into existence or transformed themselves from pre-existing organisations during the days of the DAA. Some are nationally-coordinated organisations such as the Aboriginal Medical Services and the Aboriginal Legal Services, but more commonly they are functional organisations at the local level. Almost universally they have seen themselves as being in opposition to government both as the political expression of non-Aboriginal domination (which they hold responsible for the conditions they attempt to redress) and because they are usually dependent on government for funds which always fall short of requirements. Inheriting the role of government in funding these organisations, and formulating policy that affects them, ATSIC inherited also this hostility. This has been compounded by the fact that these organisations have always seen themselves to be representative both in their structures and by virtue of their close interactions at the coal-face of Aboriginal disadvantage (see Sullivan, 1996). A damaging rivalry can develop between community based organisations and ATSIC for the role of true representative of the people, which is exacerbated by ATSIC’s control of community organisation funding.

ATSIC representatives commonly refer to ATSIC as the only truly representative national Aboriginal organisation. Against this must be reckoned the fact that there are no other truly national organisations, but there are a number of organisations that can credibly speak for large regions or in particular areas of endeavour. These organisations also have representative structures, though these are rarely based on the formal elections that ATSIC is required to undertake. This does not call into question their legitimacy (though other local factors may). Coombs has argued that alternative means of appointing local delegates to an organisation, and that organisation delegating representative power to an individual, is more congenial to Aboriginal culture. People are not elected to speak in a particular area but are more naturally appointed as having particular qualities, socially recognised, that confer on them the right to represent an issue or a group. The confederation of delegated representatives is a model much closer to Aboriginal cultural
processes than the mimicry of Australian electoral practice that
the ATSIC Act requires (Coombs 1994, 131, 183).

Even if a majority of Aboriginal voters turn out for ATSIC
elections (in fact only 32.15% did so in 1993), the system suffers
firstly from the problem across the country that prominent
individuals with knowledge and experience of Aboriginal issues,
and the authority that comes from this, rarely nominate for
positions. The reasons for this are hard to discern; perhaps they
find it more fruitful to be involved in service organisations such
as Land Councils and health services. Secondly, the preferential
voting system can ensure that a third choice candidate can get up
regularly in place of the person with most first preference votes
(Native Council of Canada 1995, 105). That this is deemed a fair
and honourable system for the majority white population is no
guarantee that it is the same for the Aboriginal electorate. There is
the further danger that frustration with the power of ATSIC over
the independent action of the community organisations will lead
them to greater attempts to influence the electoral choices of the
Aboriginal constituency. This will advantage those who
understand electoral boundaries, numbers, preferential voting
rules and so on. This alternative has so far been unacceptable to
Land Councils and other influential Aboriginal lobby groups
since it would represent a further distortion of Aboriginal cultural
approaches that they wish to further and support. If mainstream
style electioneering does develop, the ATSIC electoral process will
be a supreme example of assimilation.

These two models of community representation come together
to a great extent at the regional level where Regional Councillors
are often intimately associated with community organisations.
Here there is the greatest potential for structural change and
adequate representation of local Aboriginal needs and solutions.
A rapprochement between Regional Councils and the network of
community-based functional organisations that exist in each
region could, if combined with firm control over the officials of
the Regional Offices, be a potentially powerful means of regional
self-determination. The problem is that the major issues facing
Aboriginal people are best dealt with nationally, even though
their impact is regionally felt. The procedures of the Native Title
Tribunal, for instance, are largely formulated without any Aboriginal input because of the lack of coordination at the regional level and the comparative weakness of the Commission structure of nineteen national representatives.¹⁰

The pressure of events does, nevertheless, frequently force ATSIC to take positions on national political issues or to be left behind. Negotiations over the Native Title Act 1993 is one example, representation at the United Nations WGIP is another, and ATSIC’s submission on the potential content of a social justice package a third. Positions on these matters are not, however, generated from ATSIC’s representational structure of regions and zones – they are produced, in the same way as development funding policy, by internal processes of the bureaucracy. Assuming that, on at least some of these issues the rank and file are consulted (at least as far as the Regional Council members, not usually beyond this to the communities and their organisations), there is still the problem that ATSIC forms its own position rather than the position of the Aboriginal people it represents. All major policy issues have implications for ATSIC as an organisation struggling for funds with its own aims and purposes. Any policy position formulated from within ATSIC must always pay as much attention to what is good for ATSIC as to what is good for Aboriginal communities. The issues raised here indicate the number of areas in which these may not always be the same thing.

CONCLUSION

ATSIC, then, is not a useful mechanism for self-determination if this is taken in its internationally recognised sense of the freely

¹⁰ The emergence of the ATSIC zone as an entity rather than a simple electoral college may go some way to empowering Commissioners to speak with the voice of their zones, but this is a long way off and Commissioners still largely see themselves as properly only concerned with development funding policy and resource allocation. Grouping themselves into portfolio committees is more likely to indoctrinate them with the views of the administration than to empower them to influence these views.
determined political relationship between indigenous peoples and sovereign states. While it fitfully attempts to be a political voice it is hampered by its involvement with government, its role as a development funding administration, and its inappropriate electoral structure.

The regions could be empowered by the devolution of funding decisions, leaving the central administration as simply a national policy coordinating body. This would do nothing to increase ATSIC's capacity to address the national political issues, such as the coming challenge to the doctrine of the legitimate extinguishment of native title. This will require, sooner or later, a nationally negotiated settlement. Not a static 'once and for all' settlement in an attempt to make the problem go away, but a settlement that puts in place adequate procedures for a continuing dialogue over issues of civil rights, development needs, compensation and self-government. The eventual form of this accommodation cannot yet be guessed, but certainly it needs to go well beyond the present structure of ATSIC.

The inescapable conclusion of this chapter is also that ATSIC can neither constitute the negotiating body, nor be seen as the only indigenous player among the many. A more adequate model for the negotiation of a settlement process is under discussion in the context of the need for a 'document of reconciliation'. It proposes reproducing domestically a structure similar to the Working Group on Indigenous Populations which would have an investigative, report receiving and standard setting capacity. In outline, it could consist of a forum convened by a panel of indigenous experts, having available to them both indigenous and non-indigenous experts in an advisory capacity, at which any incorporated representative body could participate in drafting a model for future relations. This drafting process may take place over a number of years and would need to be tied to continuous regional consultations. Whether it would lead to the removal of ATSIC, its renewal, or simply a more precise definition of its place in the total picture of Aboriginal representations is, at present, a matter for speculation.
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