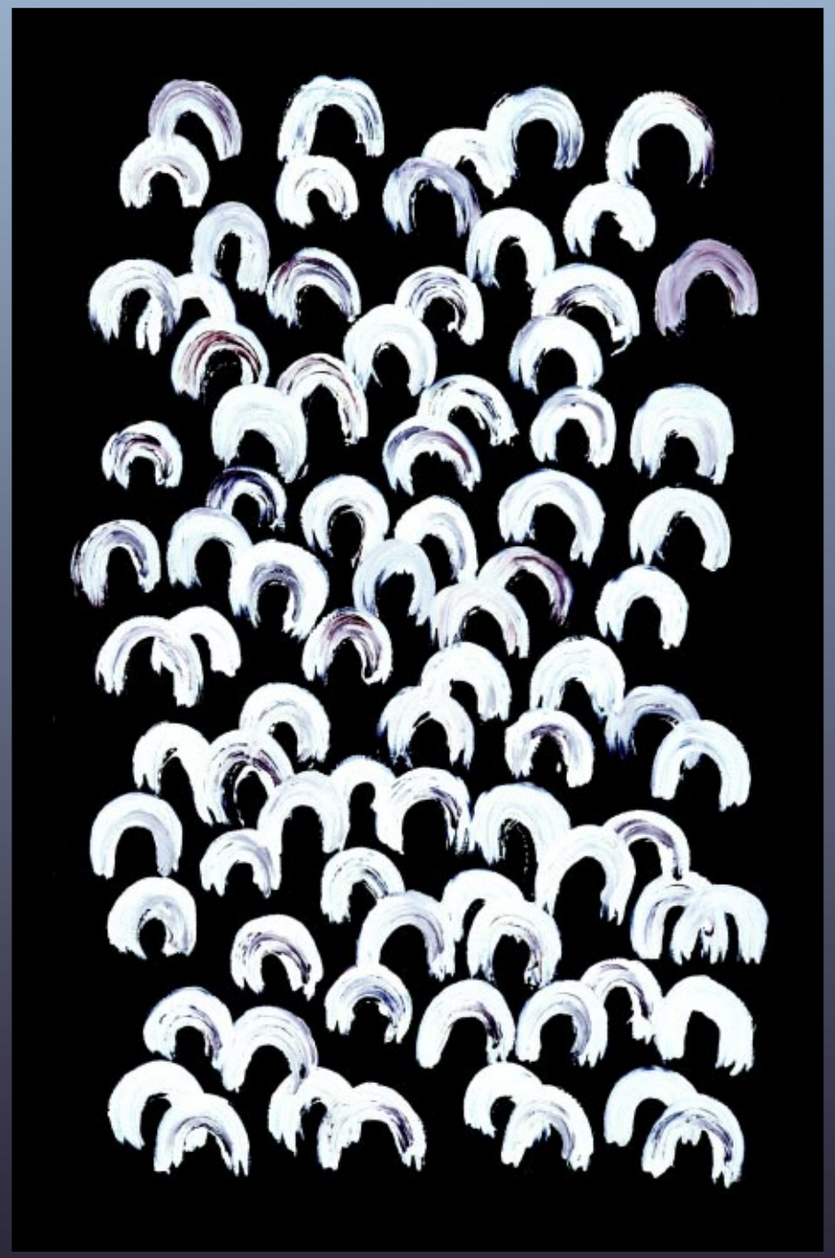
Image reproduced on the cover by Rosella Namok, All Those Women Dance (2004).

Photographer: Michael Marzik.

Human Rights and Equal Opportunity Commission

Aboriginal & Torres Strait Islander Social Justice Commissioner **Social Justice Report 2004**

Social Justice Report 2004



Aboriginal & Torres Strait Islander Social Justice Commissioner

Report No. 1/2005 Australia Post Print Post Approval PP255003/04753

Aboriginal & Torres Strait Islander Social Justice Commissioner

The position of Aboriginal and Torres Strait Islander Social Justice Commissioner was established within the Human Rights and Equal Opportunity Commission in 1993 to carry out the following functions:

(1) Report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and recommend where necessary on the action that should be taken to ensure these rights are observed.

(2) Promote awareness and discussion of human rights in relation to Aboriginal peoples and Torres Strait Islanders.

(3) Undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.

(4) Examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal peoples and Torres Strait Islanders.

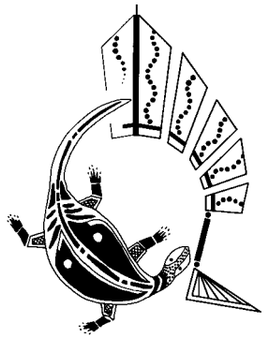
The Commissioner is also required, under Section 209 of the *Native Title Act 1993*, to report annually on the operation of the *Native Title Act* and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

For information on the work of the Social Justice Commissioner please visit the HREOC website at: http://www.hreoc.gov.au/social_justice/index.html

The Social Justice Commissioner can be contacted at the following address:

Aboriginal and Torres Strait Islander Social Justice Commissioner
Level 8, Piccadilly Tower, 133 Castlereagh Street
GPO Box 5218
Sydney NSW 1042

Telephone: (02) 9284 9600
Facsimile: (02) 9284 9611
Website: http://www.humanrights.gov.au



Recent publications of the Human Rights and Equal Opportunity Commission

REPORTS

- Human Rights and Equal Opportunity Commission Annual Report 2003-04
- Social Justice Report 2003 (Aboriginal and Torres Strait Islander Social Justice Commissioner)
- Native Title Report 2003 (Aboriginal and Torres Strait Islander Social Justice Commissioner)
- A last resort? The report of the National Inquiry into Children in Immigration Detention (Human Rights Commissioner)
- Ismaع - Listen: National consultations on eliminating prejudice against Arab and Muslim Australians (Race Discrimination Commissioner)
- Face the Facts: Some Questions and Answers about Immigration, Refugees and Indigenous Affairs (2003 edition) (Race Discrimination Commissioner)
- A Bad Business: Review of sexual harassment in employment complaints 2002 (Sex Discrimination Commissioner)
- 20 Years On: The Challenges Continue … Sexual Harassment in the Australian Workplace (Sex Discrimination Commissioner)
- Video/DVD entitled 'Pathways to Resolution': the Conciliation Process of the Human Rights and Equal Opportunity Commission
- Federal Discrimination Law 2004

GENERAL INFORMATION / BROCHURES

- The Human Rights and Equal Opportunity Commission
  An overview of the Commission's role, function and legislation plus publications and contact details
- The complaint guide
  An introduction for people considering making a complaint, or responding to a complaint, before the Human Rights and Equal Opportunity Commission
- Social justice and human rights for Aboriginal and Torres Strait Islander Peoples (Aboriginal and Torres Strait Islander Social Justice Commissioner)
- A brief guide to the Disability Discrimination Act (Disability Discrimination Commissioner)

Please forward requests for publications to:

Please ask us about publications in languages other than English.

Publications Officer, Human Rights and Equal Opportunity Commission, GPO Box 5218, Sydney NSW 1042
E-mail: publications@humanrights.gov.au Phone: (02) 9284 9672 Toll-free: 1300 369 711 Fax: (02) 9284 9611

For detailed and up to date information about HREOC visit our website at: www.humanrights.gov.au

The HREOC website contains submissions and transcripts of current HREOC inquiries; publications; speeches; a complaints help page; information for school children; an internet guide to human rights and information about HREOC Commissioners.

Social Justice Report

2004

Human Rights and
Equal Opportunity Commission

Social Justice Report

2004

Aboriginal & Torres Strait Islander Social Justice Commissioner

Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Attorney-General as required by section 46C(1)(a) Human Rights & Equal Opportunity Commission Act 1986.

ISSN 1321-11

Cover Design and Desktop Publishing by Jo Clark

Printed by J S McMillan Printing Group

The Aboriginal and Torres Strait Islander Social Justice Commissioner acknowledges the work of Human Rights and Equal Opportunity Commission staff (Janis Constable, Darren Dick, Christopher Holland, Natalie Siegel, and Natalie Walker) in producing this report.

Artist Acknowledgement

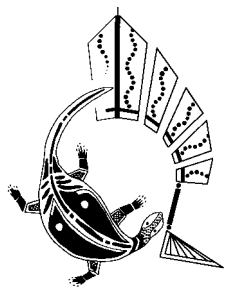
Image reproduced on the cover by Rosella Namok, All Those Women Dance (2004). Copyright © Rosella Namok, Lockhart River.

Photographer: Michael Marzik.

> *Every woman… they all got ready for the dance… they all get painted up. There are a lot of women… and young ones have joined to… they all get ready for that secret dance.*
>
> *But I haven't joined them yet… last time I didn't want to join. I was young last time… had small baby just born… and my brother was in there.*
>
> *Plus if I had joined… 'Dad and Mum Chippendale' they would have been my god-parents… didn't want that 'cause they are really close to me. If I joined… they couldn't talk to me… I didn't want that.*

We thank Rosella for granting us permission to use her artwork.

About the Social Justice Commission logo



The right section of the design is a contemporary view of a traditional Dari or head-dress, a symbol of the Torres Strait Islander people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commission. The dots placed in the Dari represent a brighter outlook for the future provided by the Commission's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.

The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Social Justice Commission and the support, strength and unity which it can provide through the pursuit of Social Justice and Human Rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander Social Justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

Human Rights and Equal Opportunity Commission

7 February 2005

The Hon Philip Ruddock MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I am pleased to present to you the *Social Justice Report 2004*.

The report is provided in accordance with section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986*. This provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner is to submit a report regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the exercise and enjoyment of human rights by those persons.

The report sets out an agenda for how I will approach the role of Social Justice Commissioner (Chapter 1); an overview of programs to support Indigenous women exiting prison (Chapter 2); and consideration of the potential impact of the new arrangements for the administration of Indigenous affairs (Chapter 3 and Appendices 1 and 2).

The report includes 5 recommendations and also identifies 10 actions that I will continue to monitor over the coming year. These all relate to the new arrangements.

I look forward to discussing the report with you.

Yours sincerely

Mr Tom Calma
Aboriginal and Torres Strait Islander
Social Justice Commissioner

Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner
Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney, NSW 2000
GPO Box 5218, Sydney, NSW 2001
Telephone: 02 9284 9600 Facsimile: 02 9284 9611
Website: http://www.humanrights.gov.au ABN 47 996 232 602

Contents

Recommendations and follow up actions

In accordance with the functions set out in section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), this report includes 5 recommendations – 2 in relation to the needs of Indigenous women exiting prison and 3 relating to the new arrangements for the administration of Indigenous affairs. The report also contains 10 follow up actions that my office will undertake over the next twelve months in relation to the new arrangements. These and the recommendations are reproduced here and appear at the relevant part of the report.

Addressing the needs of Indigenous women exiting prison

Recommendation 1

That each State and Territory designates a coordinating agency to develop a whole of government approach to addressing the needs of Indigenous women in corrections. The Department of Justice or Attorney-General's Department would appear to be the most appropriate department for this role. The objective should be to provide a continuity of support for Indigenous women from the pre-release through to the post-release phase.

Recommendation 2

That a National Roundtable be convened to identify best practice examples of coordinating pre and post release support for Indigenous women exiting prison. The roundtable should involve Indigenous women, service providers, relevant research institutes and government. Specific focus should also be given to healing models.

The new arrangements for the administration of Indigenous affairs

Recommendation 3

That the Office of Indigenous Policy Coordination conduct a comprehensive information campaign for Indigenous people and communities explaining the structures established by the new arrangements and the processes for engaging with Indigenous people. This information must be disseminated in forms that have regard to literacy levels among Indigenous peoples and English as a second language.

Recommendation 4

That the two identified criteria (namely, a demonstrated knowledge and understanding of Indigenous cultures; and an ability to communicate effectively with Indigenous peoples) be mandatory for all recruitment processes in the Australian Public Service relating to the new arrangements and in particular for positions in the Office of Indigenous Policy Coordination and Indigenous Coordination Centres.

Recommendation 5

That the Government refer to the Commonwealth Grants Commission an inquiry on arrangements for Indigenous funding. The review should revisit the findings of the 2001 Report on Indigenous funding in light of the new arrangements, and specifically focus on:

- the role and operation of regional Indigenous Coordination Centres in targeting regional need and implementing a whole of government approach;
- processes for establishing regional need (including the adequacy of baseline data and collection processes) and allocating funding on the basis of such need through a single budget submission process;
- the integration of regional and local level need through the *Regional Participation Agreement* and *Shared Responsibility Agreement* processes; and
- the role of regional representative Indigenous structures in these processes.

Follow up actions by Social Justice Commissioner

1. In light of the importance of the lessons from the COAG whole of government community trials for the implementation of the new arrangements, the Social Justice Commissioner will over the coming twelve months:
    - Consider the adequacy of processes for monitoring and evaluating the COAG trials;
    - Consult with participants in the COAG trials (including Indigenous peoples) and analyse the outcomes of monitoring and evaluation processes; and
    - Identify implications from evaluation of the COAG trials for the ongoing implementation of the new arrangements.
2. The Social Justice Commissioner will, over the coming twelve months, seek to establish whether any Indigenous communities or organisations have experienced any ongoing financial difficulties or disadvantage as

a result of the transition of grant management processes from ATSIS to mainstream departments and if so, will draw these to the attention of the Government so they can rectify them.

3. The Social Justice Commissioner will, over the coming twelve months, establish what mechanisms have been put into place in framework agreements between the Commonwealth and the states and territories, including in relation to health and housing, to ensure appropriate participation of Indigenous peoples.

4. The Social Justice Commissioner will, over the coming twelve months, consider the adequacy of processes for the participation of Indigenous peoples in decision making. This will include considering the adequacy of processes to link local and regional representative structures to providing advice at the national level.

5. The Social Justice Commissioner will, over the coming twelve months, consult with Torres Strait Islanders living on the mainland and their organisations to establish whether the new arrangements enable their effective participation in decision making.

6. The Social Justice Commissioner will, over the coming twelve months, consult with governments, ATSIC Regional Councils and Indigenous communities and organisations about:

    - engagement by governments with ATSIC Regional Councils and the use of their Regional Plans;
    - progress in developing regional representative Indigenous structures, and mechanisms for integrating such structures with community level agreement making processes.

7. The Social Justice Commissioner will, over the coming twelve months, consult with governments, Indigenous communities and organisations and monitor:

    - processes for forming Shared Responsibility Agreements; and
    - the compliance of Shared Responsibility Agreements with human rights standards, and in particular with the *Racial Discrimination Act 1975* (Cth).

8. The Social Justice Commissioner will, over the coming twelve months, consult with the Australian Public Service Commission about:

    - recruitment strategies relating to positions in the Australian Public Service involving Indigenous service delivery, program and policy design, and in particular, promoting understanding and use of identified criteria;
    - the use of cultural awareness training by agencies involved in the new arrangements;
    - trends in the retention of Indigenous staff across the Australian Public Service; and

- the assistance that the Commission is providing to agencies involved in the new arrangements with developing or revising Indigenous recruitment and retention policies.

9. The Social Justice Commissioner will, over the coming twelve months, consult with governments, Indigenous organisations and communities about:

   - whether there has been a reduction in the flexibility in interpreting program guidelines since the transfer of programs from ATSIS to mainstream departments;
   - best practice arrangements for coordinating the interface with Indigenous communities through the operation of ICCs; and
   - arrangements to coordinate federal government processes with those of the states and territories on a regional basis.

10. The Social Justice Commissioner will, over the coming twelve months, consult with governments and representative Indigenous structures about the adequacy of performance monitoring and evaluation processes to link government programs and service delivery to the commitments made through COAG, particularly the National Reporting Framework on Indigenous Disadvantage.

Chapter 1

Introduction

This is my first *Social Justice Report* to the federal Parliament as Aboriginal and Torres Strait Islander Social Justice Commissioner. I commenced my five year term at the Human Rights and Equal Opportunity Commission on 12 July 2004.

I write this report as a Kungarakan and Iwadja man. My peoples are traditional owners of lands in the Top End of the Northern Territory. For the past three plus decades I have worked in numerous Indigenous specific and mainstream Australian government and academic roles in the Northern Territory, Canberra, India and Vietnam. Most recently, I worked in the agency Aboriginal and Torres Strait Islander Services on community development, capacity building and Indigenous education policy and programs.

The *Social Justice Report* is produced in accordance with section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). This requires that the Social Justice Commissioner report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and to make recommendations where necessary on the action that should be taken to ensure that these rights are observed.

I have taken up the position of Social Justice Commissioner at a time of great uncertainty for Indigenous peoples. As the report documents, there are significant changes underway in the approach of the federal government to Indigenous affairs. These range from the proposed abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) through to the movement to new arrangements for administering Indigenous programs and developing Indigenous policy.

The changes will leave the Human Rights and Equal Opportunity Commission (HREOC), and specifically the position of Aboriginal and Torres Strait Islander Social Justice Commissioner, as one of very few mechanisms remaining that are able to independently monitor the activities of governments from a national perspective.

Accordingly, I have decided to use this introductory chapter of my first *Social Justice Report* to indicate to Indigenous peoples and communities, governments and to the federal Parliament, how I intend to fulfil the duties of the role that I have been tasked with.

The role of the Social Justice Commissioner

The position of Social Justice Commissioner was created in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody and HREOC's National Inquiry into Racist Violence. It was created to ensure an ongoing, national monitoring agency for the human rights of Indigenous peoples.

Both previous Commissioners (Professor Mick Dodson and Dr William Jonas) have made a significant and lasting contribution to the promotion of Indigenous human rights in Australia. This has also been recognised internationally, as most recently demonstrated by the election of Professor Mick Dodson to the position of regional representative of the Indigenous peoples of the Pacific to the United Nations Permanent Forum on Indigenous Issues.

The legacy of my predecessors is vast. It includes that Indigenous peoples, non-government organisations and governments have come to expect rigorous analysis and fierce advocacy for the promotion and protection of Indigenous human rights by the Social Justice Commissioner. This will continue.

The Social Justice Commissioner is tasked with a range of significant roles in promoting acceptance of and compliance with the human rights of Indigenous peoples. Specifically, the Commissioner is required to:

- prepare the annual *Social Justice Report* to the federal Parliament;
- prepare an annual report on the impact of the *Native Title Act 1993* (Cth) on the exercise and enjoyment of human rights by Indigenous peoples (the *Native Title Report*);
- promote awareness and discussion of the human rights of Indigenous peoples;
- undertake research and educational programs for the purposes of promoting respect for, and exercise and enjoyment of, human rights by Indigenous peoples; and
- examine and report on laws and proposed laws at any level of government to ascertain whether they recognise and protect Indigenous peoples' human rights.

The Social Justice Commissioner is also a member of the Human Rights and Equal Opportunity Commission. There are two main consequences of this. First, I have responsibilities collectively with the other Commissioners and the President of HREOC in promoting awareness and respect for the human rights of all Australians. At present, I also have significant responsibilities as the acting Race Discrimination Commissioner. Second, HREOC is recognised at the United Nations as complying with principles adopted by the General Assembly for the establishment and operation of independent national human rights institutions. In performing my duties, I will not compromise this independence.

In light of current events, the need for a Social Justice Commissioner has never been stronger. As I discuss in detail in the report, the abolition of ATSIC and the movement to new arrangements for designing policy and delivering programs

and services to Indigenous peoples raise many challenges for governments at all levels. It has the potential to impact significantly on the enjoyment of human rights by Indigenous peoples by either leading to improved performance and outcomes by government, or by undermining the enjoyment of human rights by Indigenous peoples.

The existence of an independent monitoring agency specifically tasked with establishing the impact of governmental activity on the ability of Indigenous peoples to enjoy their human rights is essential in this climate.

My functions, as set out above, envisage that my activities as Commissioner will be a mix of reactive and proactive measures. Where significant human rights issues are raised by an event in the community or action or decision by government, the Social Justice Commissioner will respond to it. This is particularly where situations arise that may involve significant or systemic breaches of Indigenous peoples human rights. I will respond through engagement with the relevant government and/or the media, the making of submissions to Parliament or governments, appearing in court cases, or providing appropriate support (such as education and training) to Indigenous communities or groups.

However, I hope that the majority of my work will not be dictated by a need to respond to abuses of Indigenous peoples' human rights.

I will seek to proactively engage in emerging debates and issues to promote best practice and celebrate success, as well as set out a forward looking agenda to address potential breaches of Indigenous peoples' human rights *before* they happen.

My annual *Social Justice Report* and *Native Title Report* will be vital tools in achieving this. This year's *Social Justice Report*, for example, clearly elaborates what are the key challenges raised by the new arrangements for the administration of Indigenous affairs at the federal level. It explicitly sets out the role of the Social Justice Commissioner in monitoring these arrangements. This provides clear guidance to governments and Indigenous peoples as to my forthcoming activities. Governments are on notice about particular issues of concern, and Indigenous people have a focal point through which they can direct information and their concerns.

Given the very different audiences that I will need to engage with, I also intend to produce the *Social Justice Report* and *Native Title Report* in several formats. This is particularly to ensure that the issues raised are in an acceptable language style and are accessible to Indigenous people and communities.

I will also be seeking to focus debate on key human rights issues through the release of discussion / issues papers, the convening of regional forums as well as national roundtables, and through building partnerships with community and government agencies, as appropriate and within my resources.

There are two further features of how I intend to fulfil my role as Social Justice Commissioner.

First, I have already indicated to government that I intend to engage fully with them and maintain an ongoing dialogue about issues of mutual interest and concern. I will raise concerns with government when they come to my attention

and seek resolution of them. The findings of a *Social Justice Report*, for example, will not be a surprise to the Government as significant concerns will already have been raised with them. The report will provide acknowledgement where concerns have been raised with the Government and subsequently addressed and will identify good practice.

It is not realistic for the Government to expect that it will receive a report which does not contain some criticism of government activity. This is particularly so when the statutory obligation in producing the report is specifically to analyse the impact of government activity on the enjoyment of human rights by Indigenous peoples.

I consider it important that in engaging fully with government we will be able to exchange frank views. Accordingly, the Government should expect that there will be constructive criticism in the report and I should be able to expect a reasoned and timely response to this.

Second, I will also seek to consult widely with Indigenous peoples and communities. Indigenous peoples are the experts on the needs and priorities in Indigenous communities. I also consider that it is only through processes of community engagement and education that the findings of a specialist, national human rights office such as HREOC can have true meaning at the grass roots level. Not only are Indigenous people the intended beneficiaries of the findings and proposals for reform identified in processes such as my reports to Parliament, but they are also the best advocates for seeking these changes to be put into place.

The challenge of protecting the human rights of Indigenous peoples

As Social Justice Commissioner, my role is to monitor the ability of Indigenous peoples to enjoy their human rights. As this is the touchstone for my work, it is important to make some general comments about current debates about human rights.

It is unfortunate that we currently live in a time in which human rights are seen by some as either well intentioned platitudes; distractions from the real issues at hand; good in principle but difficult to implement in practice; or even by some as the cause of problems that we currently face in our society.

People who criticise governments on human rights grounds have been dismissed for focusing on 'symbolic' or unimportant issues, while the government gets about the business of dealing with the real or 'practical' issues being faced in the community.

And when push comes to shove, human rights have even been blamed for the failures of governments over successive decades. In Indigenous affairs, for example, we have been told that it is precisely because of commitments to human rights such as the right to self-determination that Indigenous peoples continue to suffer unequal conditions of life today.

I don't agree with these arguments. What is clear, however, is that such arguments have been very effective in distancing human rights perspectives

from the way governments go about their business. There are, for example, very few explicit commitments to human rights through processes such as the Australian National Action Plan on Human Rights. This has led to commitments to human rights being reduced to aspirational statements by some in our society.

If human rights are understood to be nothing more than platitudes, then it is a self-fulfilling prophecy that they will become exactly that – empty, rhetorical words.

It is worth remembering that human rights standards are not intended to be associated with particular political standpoints. They are not 'left-wing' tools or constructs. They are objective standards that are intended to transcend particular legal systems, ideology or political persuasion. Human rights are intended to reflect the core of humanity – setting out standards of treatment that individuals and groups should receive for no reason other than that they are members of the human family.

The problem we face – and the challenge we must address - is the general lack of understanding of what human rights are; of what is required to implement human rights; and as a consequence, an inability to know whether governments are meeting their human rights obligations.

The challenge we have in promoting human rights is to give content and meaning to human rights and to hold governments to account for whether or not they have faithfully *implemented* the content of these rights. Human rights standards have a very detailed content that ought to be guiding the development of policy and the delivery of programmes to Indigenous peoples.

It is a great tragedy that those who suffer most from the lack of understanding of human rights are those who are worst off in our society. Indigenous people, for example, are continually blamed and subject to community anger for the lack of improvement in our social and economic conditions. But for Indigenous peoples, such commitments have been made for thirty plus years. The reality is that Indigenous people still suffer at the hands of such good will. Good will alone does not improve livelihoods.

I am very strongly of the view that individual responsibility is critical for people to be empowered and to achieve lasting improvements in their social conditions. But I also believe that for too long we have let governments off the hook for the lack of improvement in the conditions in which our communities live. Effective and sustainable change will only occur with the empowerment of Indigenous peoples to identify issues and solutions and to do this in partnership with governments at all levels.

Forthcoming work of the Social Justice Commissioner

There are many human rights challenges that remain in Australia, particularly in relation to Indigenous peoples. In the first six months of my term as Commissioner, I have indicated some of the issues that I propose to address in the coming years. They include the following.

First, perhaps more so than any other area of life, programmes for addressing **Indigenous health** reveal the problem of a lack of implementation of human

rights. It doesn't matter whether we look at the National Aboriginal Health Strategy of 1989 or the current National Strategic Framework for Aboriginal and Torres Strait Islander Health. The issue is the same with both.

Each of these frameworks has been agreed by the Commonwealth with the states and territories. They provide a detailed series of commitments and identify a range of areas that require attention. Both documents identify, from a human rights perspective, the key issues that must be addressed to improve Indigenous health. They are good, solid policy documents.

And yet they have made very little difference to Indigenous health. Indeed, it is arguable that health standards have declined in many key areas over the past decade. Worryingly, the gap between Indigenous people and non-Indigenous people has increased in recent years and progress has not matched that achieved in other countries, such as New Zealand, Canada and the United States, with a similar history in relation to Indigenous peoples.

It appears that the lack of progress can not be explained as a result of there not being any answers to the problems faced by Indigenous people - instead it appears to be a matter of taking the necessary steps to implement what are fairly universally agreed solutions.

The Social Justice Commissioner's office has already undertaken extensive research into issues relating to Indigenous health status. Over the next six months I will be releasing the outcomes of this research and looking to engage with governments, communities and organisations about how to address this situation.

I think we should have a campaign for *equality within our lifetime.* I consider that it is feasible for governments to commit to meet the outstanding primary health care and health infrastructure needs of Indigenous communities within a reasonable time period of say 5 to10 years and with the goal of achieving equality of health status and life expectation within the next generation (approximately 25 years).

Second, while there has been significant focus on the challenges in addressing Indigenous health status in recent years, there has been very little attention devoted to the issue of **Indigenous mental health**.

My experience in communities is that there is very little infrastructure or expertise in addressing mental health issues facing Indigenous peoples. It is a forgotten issue. Mental health issues are often masked through passive welfare or dealt with, inappropriately, through the criminal justice system. I have no doubt that mental health issues contribute to the crisis of family violence, anti-social behaviour, substance misuse and confrontation with the legal system, in Indigenous society. Similarly, while there are not very accurate figures on suicide, it is anecdotally known that Indigenous youth suicide is disproportionately high.

I intend to consider the adequacy of current approaches in addressing Indigenous mental health issues.

Third, I will continue to engage with **international processes for the recognition of the rights of Indigenous peoples**. 2004 signified an uncertain time in the recognition of Indigenous rights in the international system. The First International Decade for the World's Indigenous People ended in December and the Working

Group on the Draft Declaration on the Rights of Indigenous Peoples concluded its tenth session without consensus on a Declaration.

However, there were significant achievements in the first International Decade, such as the establishment of the Permanent Forum on Indigenous Issues within the United Nations and the work of the Special Rapporteur on Indigenous Issues. Despite these, Indigenous peoples were dismayed by the overall achievements of the decade – and in particular by the failure to adopt the Draft Declaration on the Rights of Indigenous Peoples. This had been one of the objectives of the Decade.

On 20 December 2004, the United Nations General Assembly proclaimed the Second International Decade of the World's Indigenous People. The Decade commenced on 1 January 2005 and its goal is the further strengthening of international cooperation for the solution of problems faced by Indigenous peoples in such areas as culture, education, health, human rights, the environment and social and economic development.

In April 2005, the Commission on Human Rights will consider the adequacy of progress in the negotiations of the Draft Declaration. The Chairman of the Working Group on the Draft Declaration has recommended a continuation of the process in order to build on the significant progress achieved in recent years. There appears to be a narrowing of positions in the Draft Declaration process and it is feasible that there could be agreement on this important document with some more time.

The Social Justice Commissioner's office will continue to engage with government and Indigenous peoples about the Draft Declaration process. In light of the demise of ATSIC, I see it as particularly important to disseminate information about this process. In March 2004, the Social Justice Commissioner's office convened a technical workshop on the Draft Declaration and ran community workshops to provide information about developments in the recognition of Indigenous rights through international processes from March through to July, and co-hosted a workshop on self-determination in November. We also maintain a detailed website with updates on international issues (available at www.humanrights.gov.au/social_justice/internat_develop.html) These are examples of the type of activities that I will continue to undertake.

I will also work with Indigenous organisations and government to consider domestic programs of action for the second international decade. I note that ATSIC was the coordinator for activities in Australia during the first decade and it is not clear, as yet, who will coordinate activities for the second decade.

I will also work to promote awareness of the role of the Permanent Forum on Indigenous Issues. I anticipate that I will be co-hosting some events in Australia with the Permanent Forum in mid-2005.

Fourth, I will also continue the focus on **the reconciliation process** that my predecessor has established. In the *Social Justice Report 2001* my predecessor committed to providing consideration of progress on reconciliation in each Social Justice Report. This commitment has met with approval from the Senate Legal and Constitutional Committee, which recommended in its report into reconciliation in 2004 that this be made a statutory requirement.

This year's focus on reconciliation is provided through the consideration of the new arrangements currently being introduced for the administration of Indigenous affairs at the federal level. This focus is due to the importance of these new arrangements, and their relationship to the commitments on reconciliation made by the Council of Australian Governments – most recently through the adoption in June 2004 of a series of principles on the delivery of services to Indigenous peoples. I anticipate that in subsequent years, I will also look to different components of reconciliation, such as performance monitoring and evaluation processes established through COAG, the role of the private sector and success stories at the community level.

Contents of this report

This report focuses on two issues – programs addressing the needs of Indigenous women exiting prison, and the new arrangements for the administration of Indigenous affairs at the federal level.

Chapter two of the report considers the needs of Indigenous women upon exiting prison.

The *Social Justice Report* 2002 contained research about the contact of Indigenous women with criminal justice processes. It found that there has been very little specific attention devoted to the needs of Indigenous women, despite there being a significant rise in imprisonment of Indigenous women over the past decade as well as high rates of recidivism. The report called for further research into the needs of Indigenous women, including upon exiting prison.

In 2003 and 2004, the Social Justice Commissioner's office conducted research into these needs. Information was requested from all governments and forums were held with Indigenous women and service providers across Australia. The title of the chapter - 'walking with the women' – expresses the sentiments of many of the participants in consultations for the chapter that greater support needs to be provide to Indigenous women in their transition from prison back to society.

The chapter provides an overview of government and community sector support programs for Indigenous women upon release from prison. The main findings of the consultations and research were the importance of housing and emergency accommodation options for Indigenous women when released from prison; the importance of being able to access a broad range of programs upon release, including healing; and the lack of coordination of existing government and community services, which has the result of limiting the accessibility of services to Indigenous women. Anecdotal evidence suggests that Indigenous women have difficulty in accessing support programs upon their release and are left to fend for themselves, sometimes leading them to homelessness, returning to abusive relationships or re-offending.

Chapter three then considers the new arrangements for the administration of Indigenous affairs at the federal level.

In early 2004, the federal government announced that it was introducing significant changes to the way that it delivers services to Indigenous communities and engages with Indigenous peoples. It announced that the Aboriginal and

Torres Strait Islander Commission (ATSIC) and its service delivery arm, Aboriginal and Torres Strait Islander Services (ATSIS), would be abolished and responsibility for the delivery of all Indigenous specific programs would be transferred to mainstream government departments. It further announced that all government departments would be required to coordinate their service delivery to Indigenous peoples through the adoption of whole of government approaches, with a greater emphasis on regional service delivery. This new approach is to be based on a process of negotiating agreements with Indigenous families and communities at the local level, and setting priorities at the regional level. Central to this negotiation process is the concept of mutual obligation or reciprocity for service delivery.

These changes have become known as 'the new arrangements for the administration of Indigenous affairs'. The government begun to implement these changes from 1 July 2004. In light of the preliminary nature of the changes, the chapter is intended to provide information so that the commitments of the government and its intended approach are identified. Preliminary concerns about the new arrangements are expressed in the chapter.

Where there is a clear need for guidance for the process, I make recommendations. Where I maintain an ongoing concern, but consider it too early to know the impact of a particular change on Indigenous people and communities, I have explicitly identified how I will follow up and monitor the new arrangements over the next twelve months.

The chapter is supported by two appendices. **Appendix one** provides a timeline of events leading up to the announcement of the new arrangements as well as events in introducing them. It provides a straight forward, factual account of how events have unfolded over the past two years. I have included extracts from key Government documents to fully set out the intentions of government. I anticipate that this material will prove to be a useful reference point for people into the future. It is only through providing the information about the commitments and intentions of government that they can be held to account.

Appendix two provides information relating to one of the most important emerging issues for Indigenous peoples – the protections provided by race discrimination laws in negotiating agreements with the Government about mutual obligation. As I state in the appendix, it is too early to tell whether the Shared Responsibility Agreement process that is being embarked on by government will transgress the non-discrimination principle. The appendix sets out the relevant factors to identify where a particular situation may amount to discriminatory treatment.

Conclusion

Overall, this report is intended to provide clear guidance as to how I will be undertaking my role as Social Justice Commissioner over the coming years. I look forward to maintaining a robust dialogue with government about processes for improving the recognition and protection of Indigenous peoples human rights. And I look forward to working with Indigenous people and communities to support them in their efforts to freely determine their political status and freely pursue their economic, social and cultural development.

Chapter 2

Walking with the Women – Addressing the needs of Indigenous women exiting prison

Introduction

The *Social Justice Report 2002* provided an overview of the experiences of Indigenous women in corrections. It highlighted the 'landscape of risk'[1] that Indigenous women are exposed to which leads to their high level of involvement with the criminal justice system. The report expressed concern at the rapid growth of the Indigenous female prison population, as well as high rates of recidivism.[2] The report identified a lack of post-release support programs for Indigenous women when they exit prison. It called for further research to address the lack of information on the existence and accessibility of such programs.

Addressing this, the Social Justice Commissioner's Unit conducted research and consultations during 2003 and 2004 to identify what support programs are available to Indigenous women upon their release from prison. This included accommodation options, counselling and other programs which may assist in reconnecting Indigenous women with their families and communities.

Consultations were held with Indigenous women (including prisoners and ex-prisoners), Indigenous and other community organisations, government departments and academics across Australia. These consultations took the form of focus groups, public forums as well as individual meetings with some organisations and government departments. Consultations were held in cities and towns located near women's prisons or where a high proportion of Indigenous women reside after exiting prison (either permanently or when transiting between prison and their community of residence).[3] Specific

1 For further details see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission, Sydney, 2003, pp135-177 (herein, *Social Justice Report 2002)*.

2 Although there are few Indigenous women in prison at any one time in absolute terms, the figure is significantly higher than for other population groups when considered as a ratio of the Indigenous female population.

3 Community consultations were held in Alice Springs (6 May 2004), Darwin (4 May 2004), Brisbane (15 August 2003 and 22 September 2004), Townsville (8 June 2004), Cairns (9 June 2004), Sydney (22 August 2003), Melbourne (29 August 2003 and 28-29 April 2004), Adelaide (25 March 2004) and Perth (19-23 April 2004).

information regarding government policies and programs addressing post-release support for Indigenous women was also formally requested in writing from each of the relevant federal, state and territory Ministers and departments. In addition a mapping exercise of existing government and community-based post-release support services was conducted based on the information collected.

This chapter then details the main findings of the research and provides an overview of government and community sector post-release support programs. The main findings of the consultations and research were the importance of housing and emergency accommodation options for Indigenous women when released from prison; the importance of being able to access a broad range of programs upon release, including healing; and the lack of coordination of existing government and community services, which has the result of limiting the accessibility of services to Indigenous women. Anecdotal evidence suggests that Indigenous women have difficulty in accessing support programs upon their release and are left to fend for themselves, sometimes leading them to homelessness, returning to abusive relationships or re-offending.

The chapter begins by providing an overview of factors relating to the involvement of Indigenous women in criminal justice processes in order to contextualise the discussion of post-release programs. This includes a statistical overview of the involvement of Indigenous women in corrections, as well as discussion of the need to address the specific circumstances faced by Indigenous women in order to avoid intersectional discrimination. The chapter then provides an overview of the existing level of programmatic support available to Indigenous women upon exiting prison, with a particular emphasis on housing and healing programs. Overall, it considers options for better service provision and policy development in relation to post-release support programs for Indigenous women.

Pre and post-release programs for Indigenous women exiting prison

The focus of this chapter is on the availability of post-release programs to Indigenous women exiting prison. Post-release support can include everything from assisting a releasee with arranging Centrelink/welfare payments, gaining employment, finding suitable accommodation or accessing health services, through to counselling or reconnecting with their communities in a more general sense.

The availability of post-release support programs is especially important given the level of disruption incarceration causes to any person's life. Generally, the experience of people returning from prison to the wider community 'involves dealing with the negative experiences of imprisonment, in a context all too often characterised by isolation, accommodation difficulties, financial and material constraints and a lack of significant emotional support'.[4] As highlighted in the *Social Justice Report 2002*, incarceration can contribute to an Indigenous woman

4 Department of Justice (WA), *Corrections is not an Island: Partnerships in corrections*, Presentation, Working with Female Offenders Forum – Fourth National CSAC Female Offenders Conference, Perth, September 2003, p12.

becoming dislocated from her family, community, cultural responsibilities, services she may have been accessing prior to incarceration and housing.[5]

It is acknowledged that focussing solely on the post-release phase could be seen as arbitrary or creating an artificial distinction, partitioning off post-release experiences from pre-incarceration and incarceration experiences. This is because you cannot compartmentalise an Indigenous woman's life neatly into separate spheres of experiences. The issues affecting Indigenous women post-release are often the very same issues confronted prior to, and in some cases during, imprisonment. Accordingly, the inter-connections between the experiences of Indigenous women prior to and during imprisonment must be borne in mind when considering program support provided to them upon release from prison.

A woman's knowledge of, and ability to, negotiate programs and services once she is released from prison is similarly influenced by the level and quality of pre-release support she has access to while in prison.[6] Pre-release support programs can include visits by Centrelink staff to discuss how to arrange crisis payments upon their release and arranging identification; visits by Department of Housing and community housing representatives to assist in lodging housing applications; and visits by other community agencies so as to receive information about the types of support programs available on the outside and who to contact once released.

Not all women in prison have the same access to pre and post-release programs. Programs a woman can access varies according to whether she is in prison on remand or whether she has been sentenced; if she is released on parole or on a community-based order; or if she has served a finite sentence. The 'status' of a female prisoner affects the types of programs that can be accessed in the following ways.

- *Women on remand ('remandees')* – The general policy in prisons across all states and territories is that prisoners on remand are not eligible to participate in any prison programs, including any pre-release support programs that may be available.[7] This is primarily because the length of time a person is remanded is not fixed, can be as short as one night to as long as two years and theoretically a remandee can be released once a court feels they are able to meet the requirements of bail.
- *Women on parole and/or community-based orders* – Women who are released from prison on parole or community-based orders remain clients of community corrections until the parole or community order is complete. This usually means that these women will receive some degree of support from

5 *Social Justice Report 2002*, pp157-165.

6 Baldry, E., McDonnell, D., Maplestone, P. and Peeters, M. *Ex-prisoners and accommodation: what bearing do different forms of housing have on social integration for ex-prisoners?,* Positioning Paper, Australian Housing and Urban Research Institute, Canberra, March 2002, p5.

7 Information provided by consultation participants.

their community corrections officer. Additionally, if a woman has served a term of imprisonment she would have been eligible to participate in prison programs, including pre-release programs where they exist.

- *Women who have served 'finite' sentences* – Women serving finite sentences have been sentenced to a fixed period of imprisonment without parole, therefore, once they are released from prison having served their 'time' they have no other order requirements to fulfil. This also means they are usually released without being provided any further formal support as they are no longer clients of community corrections. However women serving finite sentences are able to access programs while in prison, including pre-release programs where they exist.

Women who have served finite sentences or have been remandees have less access to formal or statutory post-release programs when in the community, compared to parolees and women with community-based order obligations. While many of the issues discussed throughout this chapter are relevant to women in each of the above categories, they are exacerbated for women who have served finite sentences or who were remandees due to the lack of access to the programs provided by departments of community corrections.

An overview of Indigenous women in corrections

The *Social Justice Report 2002* provided a detailed overview of the involvement of Indigenous women in the criminal justice system.[8] Despite Indigenous women having been described as the 'most legally disadvantaged group in Australia',[9] very little research has been conducted on the needs of Indigenous women in the criminal justice system, and more specifically, their needs when they are released from prison.

This section provides a statistical snapshot of Indigenous women in custody and the broader factors that impact on Indigenous women who come into contact with the criminal justice system. While many Indigenous women exiting prison share common experiences there is still considerable diversity among these women. There is no 'one size fits all' solution to the over-representation of Indigenous women in the criminal justice system.[10]

While most States and Territories collect crime and prison data, this is limited to basic statistical information such as prison population, gender, types of offences committed and duration of sentence. There is paucity of more detailed information about Indigenous women in the criminal justice system.

The lack of detailed up to date statistical data poses a problem for policy makers and service providers as it renders it difficult to obtain an accurate picture of the needs of Indigenous women. As far back as 1985 the Taskforce on Women in

8 See: *Social Justice Report 2002*, Chapter 5.

9 ATSIC, *Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice,* ATSIC Canberra, 13 November 2003, p4.

10 Department of Justice (WA), *Corrections is not an Island: Partnerships in corrections*, *op.cit.,* p7.

Prison was unable to locate research data or 'any clear policy' specifically on Aboriginal women and the criminal justice.[11] Recommendations were made to rectify the scarcity of information but the lack of information about Indigenous women in the Australian criminal justice system remains today.

Generally too, there is little empirical information available on people's post-release experiences and what is available has been garnered from anecdotal evidence or assumptions made from the available data on recidivism. Again, there is little available data relating specifically to Indigenous women's post-release experiences. Therefore much of the information developed in this report is contingent on available data, from information gathered from community consultations and available research.

a) Rates of incarceration of Indigenous women

Indigenous women are currently the fastest growing prison population. This is despite there being relatively few Indigenous female prisoners at any one time, when expressed in raw numbers.

Since the reports of the Royal Commission into Aboriginal Deaths in Custody report were released there has been increase in the overall national prison population. Since 1993 the prison population in Australia has increased by nearly 50%.[12] In this same time period, Indigenous people (male and female) have gone from comprising 15% of the national prison population to 20%.[13] The rate of imprisonment for Indigenous people on a national basis is 16 times higher than that of the non-Indigenous population.[14]

Incarceration rates for women have increased more rapidly than for men. The increase in imprisonment of Indigenous women has also been much greater over the period compared with non-Indigenous women.[15] Between 1993 and 2003 the general female prison population increased by 110%, as compared with a 45% increase in the general male prison population.[16] However, over the same time period the Indigenous female prison population increased from 111 women in 1993[17] to 381 women in 2003.[18] This represents an increase of 343% over the decade.

11 New South Wales Law Reform Commission, *Sentencing: Aboriginal Offenders*, Report 96, NSWLRC, Sydney 2000, Chapter 6.
12 Australia Bureau of Statistics, *Prisoner numbers have increased by 50% over past 10 years*, Media Release, Canberra, 22 January 2004.
13 *ibid.*
14 Australian Bureau of Statistics, *Corrective Services, Australia*, September Quarter 2003, ABS, Canberra 2003, p5.
15 Cameron, M., *Women Prisoners and Correctional Programs, Trends and Issues*, No.194, Australian Institute of Criminology, Feb 2001, p1.
16 *ibid.*
17 *ibid.*
18 ABS, *Corrective Services*, *op.cit.,* p20.

As at March 2004, Indigenous women were imprisoned nationally at a rate 20.8 times that of non-Indigenous women.[19] The rate of over-representation by state and territory is contained in Table 1 below.

Table 1: Indigenous women – rates of incarceration, March Quarter 2004[20]

State/Territory	Number of Indigenous females in corrections	Rate per 100,000 for Indigenous females	Rate per 100,000 for females	Ratio: Indigenous to non-Indigenous females in corrections
NSW	178	489.4	2 22.1	31.9
Victoria	14	186.1	1 12.0	16.4
Queensland	76	202.7	22.0	12.0
South Australia	16	297.0	14.1	16.0
Western Australia	98	518.5	31.0	28.7
Tasmania	7	np	16.7	np
Northern Territory	12	68.1	1 29.5	4.7
ACT	–	np[21]	10.5	np
Total	**401**	**303.7**	**19.5**	**20.8**

There are many possible reasons for the increases in female Indigenous prison populations, with variations occurring in each State and Territory and again between regional and urban centres.

In New South Wales, the Select Committee into the Increase in Prison Population found in 2001 that the most significant contributing factor was the increase in the remand population. There was no evidence to suggest that an in increase in actual crime accounted for the prison increase, although increases in police activity and changes in judicial attitudes to sentencing were also important.[22]

Other statistical reports also tell us the following about Indigenous women in corrections:

- In New South Wales, Indigenous women represented approximately 30 percent of the total female population in

19 Australian Bureau of Statistics, *Corrective Services, Australia*, March Quarter 2004, ABS Canberra 2004, p5. Note: When publishing the corrective services data for the June 2004 quarter, the Australian Bureau of Statistics noted that it had temporarily discontinued publication of Indigenous imprisonment rates pending the release of new experimental estimates and projections based on the 2001 Census data. See: ABS, *Corrective Services*, *Australia*, *June Quarter 2004*, ABS Canberra 2004, p33. The March 2004 data is the most recent data available.

20 *ibid*, pp13, 20-22.

21 Not available for publication but included in totals where applicable unless otherwise indicated.

22 Cunneen, C., *NSW Aboriginal Justice Plan – Discussion Paper*, 2002, p26.

custody as at March 1 2004 despite constituting only 2 percent of the female population of the state.[23]

- At 1 March 2004 Indigenous women represented 23.4 per cent of the total female population in Queensland open and secure centres.[24]
- In Western Australia, Indigenous women constituted approximately 42 percent[25] of the female prison population although only constituting 3.2 percent of the female population of Western Australia.[26]

b) Types of offences

It is difficult to provide an overview on the types of offences that Indigenous women are being sentenced for. While states and territories collect data on the number of Aboriginal women convicted, they do not at the same time publish data on the types of offences for which they are being convicted. While the Australian Bureau of Statistics (ABS) publishes a range of data relating to prison populations, including a breakdown of offences committed by Indigenous and non-Indigenous inmates, there is no gender specific data available in this particular category.

The *Social Justice Report 2002* identified the limitations of the available statistical data on crimes committed by Indigenous women. It pointed to the prison census data as being unreliable in the sense that it only provides information about prisoners present on the date of the census. Prisoners who serve short sentences and are not in prison the census day are not recorded. Secondly, prison census data records only the most serious crime for which the person is convicted leaving other offences which might contextualise the crime generally not recorded.[27]

The NSW Law Reform Commission in its report on Sentencing Aboriginal Offenders (2000)[28] noted that,

> in the 1990 National Prison Census, the offences recorded as being most frequently committed by Aboriginal women involved non-payment of fines, drunkenness and social security fraud … which are 'the result of extreme poverty'.[29]

A profile of Queensland female offenders revealed that 45.3 percent of Indigenous female inmates were sentenced for a violent crime, 28.3 percent for property crime, 24.5 percent for 'Other' crime (which includes social security fraud, procedures offences, unlawful possession of weapons and driving related

23 Australian Bureau of Statistics, *Corrective Services, Australia*, March Quarter 2004, *op.cit.,* pp13,20-22.
24 *ibid.*
25 *ibid.*
26 Australian Bureau of Statistics, *Indigenous Profile - Western Australia 2001*, Community Profile Series 2001 Census , Australian Bureau of Statistics, Canberra 2002, Table 1 02.
27 *Social Justice Report 2002*, *op.cit.,* pp141-142.
28 NSW Law Reform Commission, *Sentencing: Aboriginal offenders*, *op.cit.*, Chapter 6, p5.
29 Payne, S., cited in *ibid.*

offences) and 1.9 percent for drug offences.[30] The statistics on violent offences indicate that Indigenous women are more likely than non-Indigenous (38.6%) to commit a violent offence. However, Indigenous women are less likely to be incarcerated for drug offences as compared with non-Indigenous women (15.2%).

As a corollary Indigenous women are also more likely, than non-Indigenous women, to be the victims of a violent crime.

Figures released by the Australian Institute of Health and Welfare in 2003 revealed that Indigenous women were 28.3 times more likely to be victims of assault than non-Indigenous women.[31]

Similar statistics are replicated in a number of significant studies and reports concerned with Indigenous family violence. Reports such as the *Gordon Report*, *Cape York Justice Study*, the *Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report* and *Violence in Indigenous Communities* all contain a litany of statistics revealing the extent of violence in Indigenous communities including the scope of violence perpetrated against Indigenous women.[32]

Reflecting the concern these kinds of reports and statistics generate the *Social Justice Report 2003* examining the issue of family violence in Indigenous communities concluded that:

> The criminal justice system is extremely poor at dealing with the underlying causes of criminal behaviour and makes a negligible contribution to addressing the consequences of crime in the community. One of the consequences of this, and a vital factor that is often overlooked, is that Indigenous victims of crime and communities are poorly served by the current system.
>
> Accordingly, the current system disadvantages Indigenous people from both ends – it has a deleterious effect on Indigenous communities through over-representation of Indigenous people in custody combined with the lack of attention it gives to the high rate of Indigenous victimisation, particularly through violence and abuse in communities. Reform to criminal justice processes, including through community justice initiatives, must be responsive to these factors.[33]

30 Department of Corrective Services (Women's Policy Unit), *Profile of female offenders under community and custodial supervision in Queensland*, Queensland Government, Brisbane 2003, Chapter 3, p13.

31 Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, AIHW, Canberra 2003, p117.

32 Gordon, S., *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, State Law Publisher, Perth 2002; Justice Fitzgerald, *Cape York Justice Study*, Queensland Government, Brisbane 2001; Robertson, B., *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, Queensland Department of Aboriginal and Torres Strait Islander Policy, Brisbane 1999; Memmot, P., Stacy, R., Chambers, C. and Keys, C., *Violence in Indigenous Communities-Full Report*, Commonwealth Attorney General's Department, Canberra 2001.

33 Aboriginal and Torres Strait Islander Commissioner, *Social Justice Report 2003*, Human Rights and Equal Opportunity Commission, Sydney, p186.

c) Recidivism rates among Indigenous women

A significant factor among the Indigenous female prisoner population is the high rate of recidivism (or repeat offenders). National statistical data reports that 77% Indigenous prisoners had been previously imprisoned.[34]

In New South Wales almost 85% of Aboriginal women in prison have previously been in custody compared with 71% of non-Aboriginal women.[35] In 2003 the NSW Aboriginal Justice Advisory Committee reported that 98% of Indigenous women participating in interviews for the 'Speak Out Speak Strong' report had a prior conviction as an adult.[36]

As reported in the *Social Justice Report 2002*, preliminary findings of a Victorian study on the prison population in that state found a rate of re-offending of 71% among Indigenous women compared to a rate of 61% average in 2000 among the female population. The report noted:

> The emerging pattern amongst this group of offenders is that they have had a history of contact with the criminal justice system throughout all of their adult lives. Such a pattern appears to be directly linked to the fact that the majority of women suffered from some sort of long term drug addiction that required constant funding.[37]

These figures are higher than recidivism rates for the general prison population. In 2003, approximately 58% of all male prisoners and 49% of all female prisoners are known to have prior imprisonment. This is compared with 77% of all Indigenous prisoners.[38] The Productivity Commission's *Report on government services* noted in 2003 that 37.4% of prisoners released in 1999-2000 had returned to prison by 2001-02.[39]

The high recidivism rate of Indigenous women contributes to the increasing over-representation of Indigenous women in Australian prisons. The Queensland Criminal Justice Commission suggested that the rise in imprisonment rates 'may reflect greater law enforcement activity by police, rather than an increase in offending'.[40] An investigation on the determinants of recidivism among Queensland prisoners suggested that sentencing alternatives, like suspended sentences and home detention, are under-utilised leading to an increase in prison population.[41]

---

34 ABS, *Prisoners in Australia*, 4517.0, Canberra, 2003.
35 Cunneen, C., NSW *Aboriginal Justice Plan – Discussion Paper*, *op.cit.,* 2002, p25.
36 Lawrie, R., *Speak Out Speak Strong: Researching the Needs of Aboriginal Women in Custody,* New South Wales Aboriginal Justice Advisory Council, Sydney 2002, p25.
37 Brenner, K., in *Social Justice Report 2002, op.cit.*, p141.
38 ABS, *Prisoners in Australia,*. 4517.0, 2003, *op.cit.,* p6.
39 Steering Committee for the Review of Commonwealth/State Service Provision 2003, *Report on Government Services 2003: Review of Government Service Provision,* Productivity Commission, Melbourne (also cited in Borzycki and Baldry, AIC).
40 Criminal Justice Commission, *Criminal Justice System Monitor*, Vol , April 1998, p4.
41 Worthington, A., Higgs, H. and Edwards, G., *Determinants of Recidivism in Paroled Queensland Prisoners: A Comparative Analysis of Custodial and Socioeconomic Characteristics*, Australian Economic Papers, Blackwell Publishers, Adelaide, September 2000, p313.

Intersectional discrimination – Addressing the distinct experiences of Indigenous women

Previous *Social Justice Reports* have noted the apparent invisibility of Indigenous women to policy makers and program designers in a criminal justice context, with very little attention devoted to their specific needs and circumstances.[42]

There are two main reasons for this. First, there is the practical issue that at any given time the number of Indigenous women in prison in a state or territory is relatively few (in raw numbers). This poses practical problems in establishing programs specifically for Indigenous women that are sustainable. It also means that Indigenous women do not have a strong voice to be able to advocate for their needs through the criminal justice system. It is clear that Indigenous women tend to be overlooked as a group of prisoners with distinct needs as a result of these factors.

Second, and connected to these issues, is that the needs of Indigenous women are generally treated as being met through services which are designed for Indigenous men or through the operation of mainstream services for women (which are not culturally specific). Throughout the consultations undertaken for this chapter we were informed by government and mainstream community agencies that there are a range of general programs available to all women, including Indigenous women. However other participants in the consultations indicated that only a small fraction of Indigenous women requiring support are in fact accessing these services.

One of the main findings of this research is confirmation that an approach that assumes that the needs of Indigenous women will be met through services designed for Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises them and entrenches inequalities in service delivery. It can lead to intersectional discrimination.

Intersectional discrimination, or intersectionality, refers to the connection between aspects of identity, such as race, gender, sexuality, religion, culture, disability and age. An intersectional approach asserts that aspects of identity are interconnected and discussing them in isolation from each other results in concrete disadvantage. 'Intersectional discrimination' refers to the types of discrimination or disadvantage that compound on each other and are inseparable. As the *Social Justice Report 2002* noted:

> Intersectional discrimination is not understood by merely adding together the consequences of race, class and gender discrimination. That is, an indigenous woman's life is not simply the sum of the sexism she experiences because she is a women *plus* the racism she experiences because she is indigenous *plus* the disadvantage she experiences because of poverty and exclusion from services. A person may be discriminated against in qualitatively different ways as a consequence of the combination of the aspects of their identity…[43]

42 *Social Justice Report 2002*, *op.cit.,* p135; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001,* HREOC Sydney 2001, p15.

43 *Social Justice Report 2002*, *op.cit.,* pp154-55.

> The discrimination faced by Indigenous women is more than a combination of race, gender and class. It includes dispossession, cultural oppression, disrespect of spiritual beliefs, economic disempowerment, but from traditional economies, not just post-colonisation economies and more…[44]

Indigenous women are particularly vulnerable to intersectional discrimination within criminal justice processes. This is due to a number of factors.

First, it is due to the combination of socio-economic conditions faced by many Indigenous women. Many Indigenous women in Australia today live well below the poverty line. Indigenous women's life expectancy (like Indigenous men) is considerably less than non-Indigenous Australians. They are more likely than non-Indigenous women to be unemployed, to have carer responsibilities for children other than their own, to receive welfare payments and to have finished school at an earlier age. Indigenous women are also more likely to be a victim of violence and also more likely to live in communities where violence is prevalent. These factors combine to make Indigenous women particularly vulnerable and their needs more complex than others.

Second, the consequences of family violence in Indigenous communities, and its impact on Indigenous women, have not been grappled with appropriately by the criminal justice system. The criminal justice system is extremely poor at dealing with the underlying causes of criminal behaviour and makes a negligible contribution to addressing the consequences of crime in the community. Policies and programs provide relatively little attention to the high rate of Indigenous victimisation, particularly through violence and abuse in communities. Indigenous women disproportionately bear the consequences of this.

It is now well understood that Indigenous women experience extremely high rates of family violence[45] and that past experiences of violence or abuse are extremely common among Indigenous female prisoners.[46] As the *Social Justice Report 2002* noted:

> It is beginning to be accepted that while much offending behaviour is linked to social marginalisation and economic disadvantage, the impact of non-economic deprivation, such as damage to identity and culture, as well as trauma and grief, have a significant relationship to offending behaviour.[47]

The *Social Justice Report 2003* identified a range of significant initiatives currently underway at all levels of government to address family violence in Indigenous communities. It expressed concern, however, that often responses to such

---

44 *ibid.,* p155-156.

45 For a discussion of available statistics and research see: *Social Justice Report 2003*, *op.cit.,* pp161-168.

46 See for example the findings of: Aboriginal Justice Advisory Council (NSW), *Speak out speak strong: Researching the needs of Aboriginal Women in Custody*, AJAC, NSW Attorney-General's Department, 2003, p6, p54. Surveys of Indigenous female prisoners in NSW found that 70% of respondents stated they had been sexually abused as children; 78% stated they had been victims of abuse as adults; and approximately 80% stated they had experienced domestic violence.

47 *Social Justice Report 2002*, *op.cit.,* p136.

violence have not recognised the distinct situation of Indigenous women. It argued that Indigenous women:

> do not have a purely gendered experience of violence... They, along with their men, experienced and continue to experience, the racist violence of the State. Aboriginal women do not share a common experience of sexism and patriarchal oppression, which binds them with non-Aboriginal women…[48]
>
> Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender… The unique dimensions of violence against Aboriginal women are a result of complex factors and socio-historical and contemporary experiences and must be considered when attempting to provide solutions that are relevant to the specific situations and needs of Aboriginal women. Solutions to problems, no matter how well-intentioned, can create further problems for subordinated groups within a society, particularly when the 'solutions' are based in a systemic structure that has functioned abusively on the subordinated group.[49]

The prevalence of experiences of violence among Indigenous women, and the unique dimensions of this, make Indigenous women particularly vulnerable to intersectional discrimination through a failure to specifically respond to their distinct needs.

Third, responses to Indigenous over-representation in criminal justice processes over the past decade have been focused on responding (though not in a sustained manner or very fully) to the findings of the Royal Commission into Aboriginal Deaths in Custody. These almost exclusively focused on the circumstances of Aboriginal men, with none of the Royal Commission's recommendations specifically addressing the circumstances of Indigenous women.[50] This also has the potential to render Indigenous women invisible to policy makers.

Overall, the consultations with Indigenous women for this chapter revealed that the development of strategies for reducing Indigenous women's over-representation in the criminal justice system must be approached in a different way. Strategies should not be viewed purely as addressing post-release needs, but rather they need to respond to the circumstances of Indigenous women holistically. Discussions on post-release support programs available to Indigenous communities identified the need to move away from reliance on mainstream western-style programs to a more holistic approach, which seeks to not only address offending behaviours but also focus on healing the distress and grief experienced by many Indigenous women and their communities.

---

48 *Social Justice Report 2003*, *op.cit.,* pp158-159.

49 *ibid.,* p159.

50 Royal Commission into Aboriginal Deaths in Custody, *National Report,* AGPS, 1991 – The Royal Commission was an inquiry into the causes of death of 99 Indigenous people in custody – 11 of whom were women. The terms of reference were expanded during the Commission to consider broader implications from these inquests. The findings and recommendations of the reports were therefore drawn from the evaluation of these deaths, which largely explains the lack of focus specifically on issues faced by Indigenous women.

Post-release programs for Indigenous women exiting prison – common themes from consultations

Through the public consultations held for this chapter, there were a number of overarching points identified about the existing state of post-release programs for Indigenous women.

First, the consultations revealed variations in the level and type of post-release support programs provided by each state and territory government depending on your prisoner status. As noted earlier, there are variations in the availability of post-release programs provided by government depending on the reasons why a person was imprisoned (eg, depending on whether they were on remand, community service orders or sentenced to a finite term of imprisonment). A common feature in most states and territories was that the prime responsibility for post-release services lay with the department responsible for corrections. The clients of these departments are those prisoners who continue to have obligations towards the criminal justice system, such as parolees and/or offenders who have community-based orders to complete upon their release. Those who have completed their sentences are no longer clients of this department and hence are unable to access the programs that are otherwise available through the department.

For those who continue to have obligations to the corrections department, the nature of this relationship is involuntary on the part of the offender as the focus of the intervention is on meeting the conditions of their order or parole. The support that is provided is therefore directed towards a more limited purpose and is not aimed *per se* at addressing the basic support and survival needs of the person to re-enter the community. This does not promote a holistic approach to such re-entry.

Second, a feature that also emerged regularly throughout the consultations was concern at the lack of communication and coordination between prisons, community corrections, housing providers, government agencies and other community services prior to and after the release of an Indigenous woman from prison.

The consultations revealed differences in understanding about what programs and supports were available to Indigenous women. On several occasions, community-based service providers, Indigenous women and other non-government representatives either stated that services did not exist or were unaware of services and programs which government departments stated did exist.

Additionally, where multiple service providers were involved in a woman's life, it appeared that there was often a lack of awareness between them about the role or involvement of other organisations. In one major urban centre, the community consultation for this chapter was the first time that people who worked in different organisations that provided related or complementary services had met. Soon after the consultation meeting we were informed that this meeting had led to these organisations working together more collaboratively to resolve problems by drawing on the capabilities of each organisation rather than by over-stretching their own capacity.

The consultations suggested that generally there is room for improved information sharing and coordination of activities between community-based service providers, government departments and prisons.

Such a lack of coordination can impact negatively on a woman's successful re-integration into the community. Of great benefit to a woman about to be released, it was frequently proposed throughout the consultations, would be the development of a relationship with a person from a community organisation prior to her release. This person could be then responsible for assisting the woman to prepare for her release and then continue that support post-release, including referral to appropriate services. This could be a way of reducing the duplication of services; the number of support people involved in a woman's life; and improve the delivery of support programs provided to a woman from the pre-release to the post-release phase. There are a number of new initiatives, described below, which provide hope that such an approach is beginning to be adopted in some states.

Third, a further concern raised by a number of participants in consultations related to the limited availability of pre-release supports to prepare Indigenous women for their release from prison. This was combined with a lack of continuity between the support provided prior to a woman's release (where it exists) and the support provided after her release. This issue is addressed further below in relation to specific programs and services.

Fourth, it was also noted that there is limited attention to post-release needs of Indigenous prisoners (male or female) within the main policy documents for addressing Indigenous over-representation in the criminal justice system. This includes within Aboriginal Justice Agreements and justice frameworks.

All state and territory governments committed to the development of strategic plans to address the over-representation of Indigenous peoples in criminal justice processes and to improve the coordination of Commonwealth/State funding and service delivery for Indigenous programs and services at the Ministerial Summit on Indigenous Deaths in Custody in 1997.[51] Justice agreements have emerged as the process for this (although they generally lack a key feature agreed at the 1997 Summit – namely, a focus on inter-governmental coordination). An overview of these frameworks was provided in the appendix to the *Social Justice Report 2001*.

Four states currently have fully operational justice agreements. The Northern Territory, South Australia and the ACT are either in the process of developing their justice agreements or have draft agreements. Tasmania is the only state that does not have an Aboriginal Justice Agreement as its overarching framework.

There is very little mention of the importance of post-release support programs in any justice agreements and a failure to identify the importance of adopting a holistic approach to the needs of Indigenous people exiting prison. Further,

51 With the exception of the Northern Territory, which subsequently committed to such an approach in 2001. For details of the outcomes statement of the Summit. See: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1997,* HREOC, Sydney, 1997, pp153-54.

none of the agreements specifically acknowledge that Indigenous women have distinct needs and contain strategies for addressing these.

However, as a recent report noted on the Victoria agreement process, the justice agreement framework and the consultative and representative processes which are created by this, provide a forum through which such issues may be brought to the negotiating table on a regular basis and with the presence of relevant government agencies. The Regional Aboriginal Justice Advisory Committee structure established under the Victorian agreement, for example, provides 'a possible forum in which the issues can potentially be better addressed'.[52]

Finally, although Indigenous women face a wide range of issues upon their release from prison, two issues were continually highlighted as of greatest importance during the consultations. Housing and healing were continually identified as the critical issues to be addressed if a woman exiting prison is to attend to other areas of her life. Participants in the consultations stressed that having access to adequate and affordable housing is a key determinate for a woman's successful reconnection with her community after release from prison. Additionally, consultation participants also felt that healing is critical in addressing Indigenous women's involvement in the criminal justice system.

The next section identifies the main government policies as well as community programs and services which support women exiting prison and the accessibility of these to Indigenous women. Programs and services for housing and healing are then discussed in further detail.

Policy and programs relating to Indigenous women exiting prison

This section provides an overview of policies of governments as well as services available to Indigenous women upon release from prison. It includes those programs which prisoners can access prior to release in order to facilitate their transition back into society. Programs specifically relating to housing and accommodation issues and healing are discussed separately in the following section.

a) Australian government – Centrelink's Pre-Release Support Programs for Prisoners

Since 2002, Centrelink has developed a Memorandum of Understanding (MOU) and Program Protocol Agreement with each state or territory government department responsible for adult correctional and juvenile justice centres. There are currently agreements covering 80 correctional centres across all states and territories, with the exception of South Australia. The terms of the Program Protocol Agreement with South Australia had been agreed to, although it had not been finalised at the time of writing.

52 Blagg, H., Morgan, N., Cunneen, C. and Ferrante, A. *Systemic racism as a factor in the over-representation of Aboriginal people in the Victorian criminal justice system.* Draft Final Report 2004, p150.

These arrangements allow Centrelink to work with prisoners to ensure that their Centrelink payments are arranged prior to their release. This can involve facilitating cash payments (known as 'Crisis Payment') to be provided to people released from prison outside business hours, assistance with issues relating to proof of identity and study expenses while in custody, prevention of debts upon entry to prison and better access to Centrelink services prior to release.[53]

The specific roles expected to be fulfilled by both Centrelink and the Correctional institutions are outlined in the MOU. In ensuring Centrelink is able to provide a service to prisoners, the Correctional facility is required to provide Centrelink staff with:

- streamlined access to the facility;
- all the relevant paperwork regarding the prisoners entry to and release from prison; and
- details regarding any rehabilitation or other programs the inmate is required to participate in after release that may effect their ability to look for work, or may better assist assessment for appropriate payment/services.[54]

In return Centrelink is expected to promptly accept and process inmates claims for Crisis Payment, interview inmates and provide group information seminars on the pre-release support service to inmates.[55]

The pre-release support provided by Centrelink through the MOU's is particularly important as inmates do not require standard identification to receive a crisis payment upon release from prison.[56] Alternative proof of identity procedures are available to verify the identity of prisoners. In many cases inmates are given a longer period of time to provide appropriate identification in order to continue their payments. This is of particular relevance to Indigenous inmates who are less likely to have the appropriate identification to commence payments.[57]

The rationale behind these agreements is that the provision of pre-release support by way of arranging for a simpler transition to Centrelink payments upon release reduces the vulnerability of the ex-prisoner and accordingly reduces the chance that they will re-offend in the short term. It also ensures that support is provided to prisoners with mental illness, intellectual disabilities, low literacy, and/or drug and alcohol problems, and minimises the impact of Centrelink debts for people entering and exiting custody.[58]

This innovation is encouraging given the services that Centrelink provides, such as crisis payments, family payments and general welfare benefits, form the

53 Centrelink, *Prison Servicing Innovations by Centrelink.* Extract from an entry by Centrelink in the Prime Minister's awards for excellence in public sector management, 2004, pp3-4.
54 Centrelink, *Draft Memorandum of Understanding*, Schedule 2.
55 *ibid*.
56 Information provided by Centrelink staff during consultation on 14 October 2004.
57 If an inmate does not have a birth certificate and requires it as proof of identification, in exceptional circumstances Centrelink can waive the fee for obtaining a birth certificate.
58 Centrelink, *Prison Servicing Innovations by Centrelink.* Extract from an entry by Centrelink in the Prime Minister's awards for excellence in public sector management, *op.cit.,* p2.

starting point for successfully re-integrating a former prisoner back into the community.

Information provided by community-based service providers and Indigenous women during our consultations for this chapter suggests that there may be a gap between the existing policies and what services are actually provided on the ground. While the policies and agreements are in place, there may be issues with the actual implementation of the initiative within particular prisons.

For example, service providers expressed concern on many occasions during the consultation process for this chapter that women were not getting enough pre-release support from Centrelink to ensure that their payments upon release were received in a timely manner. In the case of Townsville Correctional Centre for example, community-based service providers were concerned that Centrelink staff were not visiting the women in the facility. There was also concern around the nation that many Indigenous women do not have appropriate identification, therefore, were unable to apply for Centrelink support. In most cases women and service providers stated that they did not have the appropriate identification in which case they were required to pay for it when they could not afford the cost.

Centrelink, however, has been responsive to these concerns: the Townsville Correctional Centre has since taken measures to ensure inmates can arrange their Centrelink payments including accessing Personal Advisers[59] prior to their release meaning that inmates are no longer required to go to a Customer Service Centre on the day of their release to arrange their payments.[60]

b) Western Australia – Community Re-entry Program

In 2004, Western Australia became the first state in Australia to provide voluntary post-release support services to offenders exiting prison with the introduction of the *Community re-entry program* by the Department of Justice. Offenders who require supervision as a condition of their release are eligible to access this support. The primary focus of the program, however, is on those who are released without requiring further supervision.[61]

Key components of community re-entry include:

- A Community Re-entry Coordination Service;
- Transitional Accommodation and Support Service;
- Justice mediation service; and
- Focus on drug management, building stronger family relationships and managing people with mental health issues.[62]

---

59 Personal Advisers provide inmates who are to receive Centrelink benefits upon release with assistance and referrals regarding work or study, or to get involved in the community. See: Centrelink, *JET Advisers and Personal Advisers Factsheet,* p1, www.centrelink.gov.au.

60 Information provided by Centrelink staff on 22 October 2004.

61 Department of Justice (WA), *Community Re-entry Program: Coordination Service Contracts Q&A*, Department of Justice, Perth, 2004, p1.

62 Department of Justice (WA), *Community Re-entry for Prisoners Program*, www.justice.wa.gov.au.

Community re-entry is designed to reduce offending and create safer communities by enhancing the services provided to offenders on release from prison.[63] The Department of Justice contracts community organisations to provide a 'community re-entry coordination service'. This can include assisting an offender in accessing accommodation, arranging Centrelink payments and storage of their personal possessions, providing counselling and going shopping for personal effects.[64] A key part of this service is the continuity of support provided to offenders from the pre-release stage to post-release. That is, through the service providers, 'offenders will be able to access basic transitional support services while in custody and continue with the same service (and service provider) after release'.[65]

Eight community-based service providers in Western Australia have been contracted to provide the 'community re-entry coordination service'. There are two service providers in Perth; Outcare which is contracted to work with male offenders from the Perth metropolitan prisons and Ruah which provides services to female offenders from Bandyup and Boronia – the two women's prisons in Perth. Outcare has worked with Indigenous offenders for over 25 years and Ruah has worked with a range of marginalised groups including female offenders for over six years.

This program is the first government-funded justice program to specifically target prisoners who have served finite sentences and those who were in custody on remand, and to provide continuity of support from imprisonment through to when a prisoner is released. It also utilises established and recognised community organisations to provide pre and post-release support programs.

To date, community re-entry provides the most comprehensive response in addressing the lack of post-release support programs for people exiting prison. The scheme is in its infancy and no solid conclusions can be drawn from it.

Missing from community re-entry is the particular focus on the needs of Indigenous women exiting prison. To date, the services provided through community re-entry are available to all exiting prisoners. In Perth the mainstream community-based organisation, Ruah, provides re-entry services to both Indigenous and non-Indigenous women. While Ruah is a mainstream service, it does have a long history of working with Indigenous women.

To overcome the gap in re-entry supports specifically for Indigenous women in remote areas in particular, the Department of Justice and its Broome based re-entry service provider, the Men's Outreach Service, agreed that the service would ensure that Indigenous women returning to the Kimberly region would have access to an Indigenous women's specific support service. To this end, the Men's Outreach Service entered into a Memorandum of Understanding with Marnja Jarndu Women's Refuge to provide services to women in the

63 Department of Justice (WA), *Community Re-entry Program: Coordination Service Contracts Q&A*, Department of Justice, Perth, 2004, p1.

64 Department of Justice (WA), *Community Re-entry Coordination Services User Information*, March 2004, p2.

65 Department of Justice (WA), *Community Re-entry Program: Coordination Service Contracts Q&A*, *op.cit.,* p1.

Kimberley region.[66] This MOU forms part of the Men's Outreach Service's agreement with the Department of Justice.

The effectiveness of the scheme in addressing the specific needs of Indigenous women remains to be seen. During the consultations in Perth, concerns were raised that re-entry did not adequately recognise and take into account the unique needs of Indigenous people exiting prison. For example, returning to a community after being imprisoned a distance away from their home communities. With regard to travel back to regional communities all regional re-entry service providers must coordinate the transport for prisoners released from custody, back into their communities. However, under re-entry service providers have little if any funding to cover the travel costs for Indigenous women and men who need to return to their communities after being imprisoned. This has particular impacts for women who have children or who have other carer responsibilities. The inability to return home due to the cost of travel only serves to continue their dislocation from their families and communities.

c) New South Wales – Throughcare Strategic Framework

The Department of Corrective Services in New South Wales launched its *Throughcare Strategic Framework* in January 2003.[67] It is based on the throughcare model which has been introduced in other countries in recent years, notably in the United Kingdom.

Throughcare is defined as providing a 'continuity of care – from the community, through prison, and back out into the community – aimed at giving ex-prisoners a chance to integrate socially and desist from further offending'.[68] The essential characteristic of throughcare is that offenders are supported to re-integrate back into their communities after being imprisoned. This support can include coordinating assistance in accessing accommodation, getting employment and receiving welfare payments.

Research shows that the throughcare approach – with longer term, coordinated post-release support – increases the chance that treatment (or rehabilitation) received while in prison will be more successful.[69] The key to the success of throughcare is that all agencies involved in an offenders life pre and post-release must deliver their services in a coordinated and integrated manner.[70]

In New South Wales, the aim of the program is to create linkages between the Department of Corrective Services, other relevant government agencies and non-government organisations. According to the department:

66 Email correspondence from Ms Donna Herdsman of Department of Justice (WA) 7 January 2005.

67 New South Wales Department of Corrective Services, *Annual Report 2002/2003,* NSW DCS, Sydney, 2003, p12.

68 Tombs, J., *The Chance for Change: A Study of the Throughcare Centre Edinburgh Prison,* SPS Occasional Papers Series, Edinburgh, 2004.

69 Criminal Justice Social Work Development Centre for Scotland (CJSW), *Throughcare: A process of change*, CJSW Briefing, Paper 7, February 2004, UK, p2.

70 *ibid.,* p3.

> Throughcare is the co-ordinated and integrated approach to reducing re-offending by people who are the responsibility of Corrective Services, from their first point of contact with the Department to the completion of their legal orders and their transition to law-abiding community living.[71] Continuity of care is the definitive characteristic of throughcare.[72]

This recognises the benefits of ongoing, client-centred case work to both ex-prisoners and the community in general. The program endeavours to establish links with a person being released with services like housing, TAFE, health professionals and employment opportunities. As part of an overall case-plan for an adult's community-based order, the Community Corrections Officer, upon the advice of their client, may assist the person in making contact with employment agencies, educational institutions and other services. Once the person has completed the requirements of their community-based order, the throughcare services and support provided by their Community Corrections Officer usually cease.

At this stage the program's reach is to only those individuals completing 'their legal orders'. This leaves a person exiting prison, having served their full sentence, without access to this program.

As part of the Throughcare Strategic Framework, the Department of Corrective Services has finalised a *Centrelink Program Protocol Agreement*[73] which establishes a specific Offenders Unit in the Centrelink office to deal specifically with the needs of prisoners prior to, and upon, their release from prison.[74]

d) New South Wales – Yulawirri Nurai

Yulawirri Nurai, located in Morisset on the central coast of New South Wales, is an Indigenous Corporation established in 1996 in response to the Royal Commission into Aboriginal Deaths in Custody (RCIADIC).[75] The sole purpose of Yulawirri Nurai is to provide support and assistance to Aboriginal people in New South Wales with their accommodation, employment, educational, legal and training needs before, during and after their release from prison.

The women's post-release program is funded by NSW Department of Corrective Services Community Grants program.[76] This funding includes provision for the

71 New South Wales Department of Corrective Services, *Throughcare Strategic Framework 2002-2005*, p3.

72 Criminal Justice Social Work Development Centre for Scotland (CJSW), *Throughcare: A process of change*, *op.cit.,* p1.

73 See discussion regarding Centrelink's Pre-release support service earlier in this chapter.

74 New South Wales Department of Corrective Services, *Annual Report 2002/2003,* NSW DCS, Sydney, 2003, p20.

75 In particular recommendations 187 and 188 which relate to the greater involvement of communities and Aboriginal organisations in correctional processes and negotiation with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.

76 The men's post-release program operating at Yulawirri Nurai was funded by the Aboriginal and Torres Strait Islander Services (ATSIS, formerly ATSIC). Funding is now administered by the Commonwealth Attorney General's Department.

salary of the Aboriginal Women's Post-release and Case Management Officer as well as some additional running costs such as rent and administration. The service relies on the support of volunteer staff for the ongoing functioning of the program. The post-release Officer is responsible for supporting Aboriginal women exiting NSW prisons with their needs, including accommodation, health, custody issues, employment and education. It is the only such position funded by the Department of Corrective Services in New South Wales. In fact there are no comparable positions funded in other States or Territories.

The post-release worker at Yulawirri Nurai aims to develop a supportive relationship with women during their incarceration and prior to their release, in order to establish an understanding of the woman's individual needs. Unlike the Throughcare Strategy, Yulawirri Nurai continues to provide support to women well after they have completed their orders.

The post-release worker currently sees women at Emu Plains Correctional Centre, on the outskirts of Sydney, Mulawa Correctional Centre, situated in the Sydney metropolitan area, as well Grafton (northern NSW), Berrima (south west of Sydney) and Broken Hill (far western NSW). As at June 2003 the worker was supporting approximately 100 women, including 40 releasees (of whom one third were estimated to be homeless).[77]

e) Queensland

At present, there is no co-ordinated government policy to address the needs of people exiting prison in Queensland. As a result, community organisations around the state are heavily relied on to provide a range of support services. The Catholic Prisons Ministry in Brisbane, for example, receives limited funding to provide pre and post-release support programs although at this stage it is only able to provide services for men.

Sisters Inside Inc, a Brisbane-based community organisation, is funded to provide pre and post-release support programs to women prisoners and releasees (including Indigenous women). It receives funding from a variety of sources including Queensland Department of Communities, Queensland Health, Department of Corrective Services, Commonwealth Department of Family and Community Services and through the National Drug Strategy (Commonwealth) to run a range of counselling and support programs. Sisters Inside employs 3 Indigenous workers and has Indigenous women on their management board. Programs which specifically relate to women exiting prison include:[78]

- *Women's Transition Program:* This program works with women about to be released back into the community and supports the women, their children and families through this

77 In this sense homelessness is defined as the absence of or threat of loss of shelter, constant moving from place to place, physically inadequate accommodation, lack of social and familial support networks, restrictive access to alternative housing. Definition taken from Victorian Homelessness Association.

78 Further information regarding Sisters Inside programs can be found on their website: http://www.sistersinside.com.au.

process. This pilot project aims to reduce deaths and recidivism. It provides support programs for the women, their children and families through this transition period. Family and Community Services (Federal) and Department of Corrective Services fund this program.

- *Release Kit – Indigenous and Non Indigenous Kit*: A resource kit for women leaving prison which provides information about services, including accommodation, transport, finances, custody issues and health. The Release Kits are distributed to all women regularly to ensure each woman has a copy.
- *Personal Support Program (PSP):* PSP assists women released from prison to achieve their economic and social goals. The program will achieve this through counselling, personal support, guidance, referral and advocacy services.
- *Building On Women's Strength's Program (BOWS):* This is a program for women who are being released from prison who are primary care givers and their children. BOWS workers provide intensive support for women and their children in rebuilding their lives after the trauma of prison.

This year, Sisters Inside successfully lobbied the Queensland Anti-Discrimination Commission to conduct an inquiry into systemic discrimination experienced by women in prisons. This inquiry is currently underway. A concern was raised by Sisters Inside during the course of the consultations for this report that since the commencement of the inquiry the Brisbane women's prison has restricted Sisters Inside's access to women in the prison.

f) Victoria

The *Victorian Aboriginal Justice Agreement* aims to 'minimise Indigenous overrepresentation in the criminal justice systems [sic] by improving accessibility, utilisation and effectiveness of justice-related programs and services in partnership with the Aboriginal community'.[79] This agreement has an evaluation process where the Aboriginal Justice Forum, with the assistance of the Aboriginal Justice Working Group, is responsible for monitoring and evaluating the agreement and related initiatives.[80] Overarching this process, the Indigenous Issues Unit of the Department of Justice will co-ordinate and monitor the overall effectiveness of the agreement. Unfortunately, the *Victorian Aboriginal Justice Agreement* does not have a specific strategy (or strategies) to address the needs of Indigenous women.

The Victorian Association of the Care and Resettlement of Offenders (or VACRO) is a community organisation that provides support, advice and referral and

79 Victorian Aboriginal Justice Advisory Committee, *Victorian Aboriginal Justice Agreement*, Victorian Department of Justice, Melbourne,1999, p25.

80 *ibid.,* p28.

telephone counselling to prisoner and their families. VACRO has also developed a booklet 'Getting Out and How to Survive' which provides information to assist prisoners being released from prison.

Also in Victoria a media tool (in CD form) developed by the Ballarat and District Aboriginal Co-operative in partnership with the Grampians Regional Area Justice Advisory Council (RAJAC) aims to provide Indigenous prisoners in that State with information about programs and services they can access pre and post release, as well as information about their rights as prisoners. The information having been developed by an Indigenous organisation will address the current paucity of culturally appropriate information being provided to Indigenous prisoners in Victoria.[81]

g) South Australia

The Department of Correctional Services (DCS) SA, Aboriginal Services Unit and the Community Corrections Division in partnership with Aboriginal Hostels Unit have developed a Prison Release and Diversion Hostel specifically for Indigenous women (see later in the chapter for discussion of Karinga Hostel). This is the only Indigenous female specific program available in SA.

According to the DCS 2002/03 Annual Report, the Department was planning to implement a Throughcare program, similar to the Throughcare programs implemented in Western Australia and New South Wales.

h) Northern Territory

The Northern Territory does not provide any specific post-release programs to Indigenous women exiting prison.

The Department has recently developed the Reintegration after Prison Program (RAPP). The service aims to provide practical assistance to ex-prisoners by helping them plan for their release as well as assisting with immediate post-release needs, such as organising Centrelink payments, banking, getting identification an so on. The program also works closely with organisations such as Salvation Army, NT Legal Aid Commission, Aboriginal Legal Services, and Anglicare.[82]

i) Australian Capital Territory and Tasmania

There is little information available regarding post-release programs for Indigenous women in the ACT or Tasmania. Neither have an Indigenous Justice Agreement as the framework for addressing Indigenous issues relating to the criminal justice system.

---

81 CD is to be launched in February 2005. For further details contact Department of Justice Victoria.

82 Northern Territory Minister for Justice and Attorney-General, correspondence received 2 September 2003.

Post-release housing programs for Indigenous women exiting prison

> Clearly, any successful return to the community from prison should involve the return to suitable housing.[83]

This section examines what Federal, State and Territory government policies and practices, as well as community initiatives, are currently in place to respond to Indigenous women's housing needs upon release from prison. It also considers the barriers to Indigenous women accessing various forms of housing and identifies housing options that would improve accessibility of housing for Indigenous women upon release from prison.

Accommodation and housing can include everything from staying with relatives, private rental, public housing and emergency shelter-like accommodation. For the purposes of this research we focussed on Indigenous women's access to public housing and emergency accommodation upon release, the types of support programs that may or may not be provided with housing, and how the accessibility of housing impacts on a woman being able to exercise her human right to housing.

a) The link between housing and post-release experiences

There is limited data available on what kinds of accommodation options people access upon release from prison. Despite this, existing research demonstrates a clear relationship between poor post- release housing experiences and recidivism. As Eileen Baldry *et.al.* states:

> Studies into the relationship between social issues and difficulties amongst prisoners, such as homelessness, mental illness/disturbance, intellectual disability and drug abuse, and post-release experience have indicated consistently a high level of difficulty in securing suitable accommodation upon release.[84]

Similarly, Lisa Ward has stated:

> the link between reduced re-offending and stable post-release housing, employment and social connections is so well established that these three areas of practical assistance should be a primary focus of transitional support services that seek to impact on recidivism… [Such] rates are still the most common form of outcome measure applied to transitional support services.[85]

Overseas studies too have drawn similar conclusions about the connection between accessing adequate and appropriate transitional support programs

83 Meehan, A., *Report on Pre and Post Release-release Housing Services for Prisoners in NSW*, NSW Federation of Housing Associations, 2002, p3.

84 Baldry, E., McDonnell, D., Maplestone, P. and Peeters, M., *Ex-Prisoners and Accommodation: What Bearing do Different Forms of Housing Have on Social Reintegration of Ex-Prisoners?,* Australian Housing and Urban Research Institute, August 2003, p5. (References removed from citation).

85 Ward, L., *Transition to Custody to Community*, Corrections Victoria, June, 2001, p23.

and the decrease in re-offending behaviours.[86] These studies consistently show a relationship between recidivism and difficulty in securing suitable accommodation post-release.[87]

Studies in Australia have identified a number of barriers that people face upon exiting prison. These include growing waiting lists for public and community housing; a decrease in the availability of boarding housing accommodation; discrimination faced in the private rental market as well as the difficulties of ex-prisoners obtaining employment. People leaving prison not only face the aforementioned barriers but also face the additional barriers of disjointed, poor or no rental references, low social skills/low self esteem, prejudice and discrimination, having been taken off the public housing list, or coming out with a public housing debt or other debts.[88]

The barriers confronting women post-release are often issues that they faced prior to their incarceration. Jail exacerbates the difficulties that they face. In her research of mortality among women prisoners after being released from jail in Victoria, Martyres identifies the importance of contextualising a women's life circumstances prior to, during and immediately following imprisonment:

> Most women who enter prison do so from a background of extreme social and economic disadvantage. Factors such as high unemployment rates, substance abuse, complex mental health needs and poor education impact on the lives of many women prisoners. It is estimated that up to eighty percent of women who enter the prison system in Victoria have a history of drug dependence. Most women prisoners have also experienced some form of sexual assault or family violence prior to imprisonment.[89]

For Indigenous women, this picture is even starker. As noted earlier, Indigenous women face a number of entrenched problems (such as the impact of Indigenous family violence and its associated social issues) which can render them more vulnerable to intersectional discrimination.

Indigenous women participating in consultations for this report relayed how finding appropriate and affordable housing is difficult even without the added burdens of post-release stress. An Australian Housing and Urban Research Institute (AHURI) paper investigating the issues surrounding sustainable tenancies for Indigenous families identify the structural and formal barriers Indigenous people face when attempting to access appropriate housing. They include:

---

86 See in Ward, McCarthy, B. and Hagan J., *Homelessness: a crimogenic situation?,* British Journal of Criminology, 1991, 31(3); Ramsay, M., *Homelessness and Offending: A Review of the research,* Home Office Research Bulletin No.20, London, 1986.

87 Baldry, E. *et.al., Ex-Prisoners and Accommodation: What Bearing do Different Forms of Housing Have on Social Reintegration of Ex-Prisoners?*, *op.cit.,* pvi.

88 Davis, J., *Post Release-release Issues and Accommodation,* Parity, Post Release-release and Homelessness Issue, Vol 14, Issue 10, November 2001, pp13-15.

89 Martyres, K., *Getting Out and Surviving: Providing Support to Women Exiting Prison,* Parity: On the Outside – Revisiting Post Release-release Issues, Council to Homeless Persons, Vol.16, Issue 5, June 2003, p7.

> Racial discrimination; higher than average rates of incarceration; lower rates of employment; low education levels; problems meeting social security requirements; mental illness; the cost of providing suitable, safe housing in remote areas; temporary housing; lack of long term affordable housing; lack of appropriate crisis accommodation for women and their children; long waiting lists for public housing; and family violence, which is a particular problem for Indigenous women, who rarely report it to police. The issue of disempowerment, with its roots in colonisation, is identifies as a major factor in family violence, which is one of the main reasons for the cycle of homelessness among Indigenous women and their children.[90]

As previously indicated many Indigenous women are reluctant to use mainstream support services as they feel they do not meet their needs or understand their particular problems. Considering the need for the provision of culturally relevant services the AHURI paper points out:

> It is futile and perhaps dangerous to impose non-Indigenous norms onto Indigenous people. If Indigenous homelessness is to be addressed effectively, it must be understood in an historical and cultural context that takes account of past injustices … Without taking this historical perspective into account, and the sustained marginalised treatment of Indigenous people by the State, it is not possible to fully identify and address the barriers to Indigenous people, and women in particular, accessing appropriate services.[91]

Throughout the consultations for this report it was frequently said that Indigenous women, who do not have the support of family and community, generally find it difficult to access any kind of housing. They encounter long public housing waiting lists (as does the rest of the community), discrimination by the private rental market and due to low income, are not able to consider home ownership or private rental. The difficulties of finding suitable and affordable accommodation are compounded where Aboriginal women have children in their care.

In a study examining the experiences of people when they leave prison, Baldry notes that many of the 45 Indigenous people (22 of whom were women) participating in the study had returned to prison within nine months of release. The study goes on to consider the role of housing as a contributing factor to recidivism. It claims that not only is the standard of housing a factor, but where the housing is located is also a key element. The study notes that many of the participants returned to 'disadvantaged suburbs'. These are suburbs that:

> Have poor infrastructure and are extremely economically and socially disadvantaged. There is little alternative for Aboriginal people leaving prison other than to return to these communities that are already drained of social capacity to meet their multiple needs.[92]

---

90 Cooper, L. and Morris, M., *Sustainable Tenancy for Indigenous Families: What Services and Policy Supports are Needed*?, Australian Housing and Urban Research Institute, August 2003, pii.

91 *ibid.,* p7.

92 Baldry, E. and Maplestone, P., 'Aboriginal Prison Releasees In New South Wales – Preliminary Comments Based on ex-Prisoner Research', *Indigenous Law Bulletin*, 2003, ILB 4 ; See also: T. Vinson, *Unequal in life: The distribution of social disadvantage in Victoria and New South Wales*, Jesuit Social Services, August, 1999.

Throughout the consultations, Indigenous women also expressed concerns about the location of public housing in relation to infrastructure and amenities. For example, in Western Australia many *HomesWest* homes were located in the suburbs of Mirrabooka and Balga on the outskirts of Perth. These are located a significant distance from public transport, shopping centres, health services, the community corrections and Centrelink offices and often require a woman to catch a taxi in order to access these amenities. Another common theme arising from the consultations was that often housing was not safe enough to protect women from family violence. That is, many women stated that public housing needed to have doors that could not be 'bashed in'.

The workers at Elizabeth Hoffman House, a crisis accommodation service for Indigenous women located in Melbourne said that Aboriginal women being released from prison have very few options. If they do not have family and community to return to, they rely on whatever crisis accommodation is available (often inappropriate and very short term) or return to violent partners. The workers said that many of the women they work with are reluctant to use mainstream crisis accommodation services because of the lack of 'black faces' there. They said that some Aboriginal women are reluctant to go to a service that does not have Indigenous workers, because they feared being misunderstood and judged.[93]

The workers from Elizabeth Hoffman House also stressed it was vital that Indigenous women's organisations be adequately funded to be able to provide a quality service to Indigenous women. This claim was echoed in all the consultations held. Participants, from both government and community, believed that services where Aboriginal women support each other in culturally appropriate and sensitive ways is critical to healing and reintegration. It was frequently stated in the consultations that if a woman cannot return home, for whatever reason, and there is no appropriate services for the woman to go once they have been released from prison, they will be forced to live in an unsafe living situation, return to a violent partner for example, or live on the streets.

A report on homelessness among Indigenous women in Queensland noted that:

> Indigenous women who are discharged from correctional facilities without support, appropriate transitional accommodation or money also often find their way to inner city parks and public spaces. Many would return home but do not have enough money, and so go to the parks looking for a loan or for company … These women are vulnerable to a range of factors including re-arrest for street/public offence orders.[94]

Consistent with the comments made by the workers at Elizabeth Hoffman House, other Indigenous community workers stated during the consultations that Aboriginal women have experienced discrimination in a range of ways from

93 Elizabeth Hoffman House, Consultation, Melbourne, 29 April 2004.

94 Coleman, A., *Sister, It Happens To Me Everyday: An exploration of the needs of and responses to Indigenous Women in Brisbane's Inner City Spaces*, Brisbane City Council, Department of Families, Department of Aboriginal and Torres Strait Islander Policy and the Department of Premier and Cabinet, Office for Women, 2000, p13.

mainstream support services. Generalist accommodation support agencies, it was claimed, were sometimes reluctant to accommodate Aboriginal women. One Indigenous woman from the Townsville consultations said that while many of these claims could not be substantiated 'an Aboriginal woman knows prejudice when it happens, she can see it in the person's eyes'.[95]

The participants attending the Alice Springs consultation explained the predicament facing Aboriginal women in that region. There is only one women's refuge in Alice Springs, everyone knows where it is, so there is no such thing as a safe house. Some houses have had rooms modified so they are impenetrable, with the women being able to lock herself and her kids in the room, if she is in fear of violence. Private rental is not an option for many Aboriginal women living in Alice Springs, and the public and Aboriginal Housing waiting lists are long.

Many Indigenous women released from prison also have drug related and/or mental health issues which can exacerbate problems in obtaining suitable housing. Ogilvy comments that:

> the special need of prisoners frequently make accessing programs of one sort or another difficult. For example, many domestic violence shelters exclude people with drug problems and many hostels exclude women with children. Given that for women prisoners, coping with drug related issues and motherhood are often critical to their re-integration back into the community, these sorts of exclusions can seriously impede successful re-integration into the general community.[96]

Not only do these concerns hinder a woman's chances of obtaining secure accommodation but it also contribute to the likelihood of re-offending.

Whether or not the woman has a drug and/or mental health problem, post-release homelessness is difficult to separate from pre-incarceration accommodation related problems. Homelessness and housing related stress has also been identified as a concern for many women prior to them offending, only to be exacerbated on their release from prison. A submission received from a peak homelessness agency to the NSW Select Committee on the Increase in Prisoner Population stated:

> There has been an increase in the number of clients with a history of incarceration…[O]ur clients are particularly vulnerable to incarceration. Because they are homeless their activities are more visible to law enforcement and they are more likely to get a custodial sentence. The sorts of offences that they commit tend to be reasonably minor offences but they do tend to be repeat offenders and because of their homeless status, they are less likely to be offered alternatives… Their poverty and homelessness have a direct impact on whether or not they choose to commit crime.[97]

95 Participant, Townsville consultations, 9 June 2003.

96 Ogilvy, E., 'Prisoners Post Release'-release', *Parity – Post Release-release and Homelessness Issue*, Vol.14, Iss.10, November 2001, pp16-17.

97 Power evidence, 28 March 2000, NSW Select Committee on the Increase in Prison Population, Interim Report: Issues Relating to Women, NSW Legislative Council, 2000. p73.

A study of Indigenous women in NSW prisons revealed that prior to their incarceration approximately 55% (of the research participants) had lived in public housing, 18% private rental, 15% said they were homeless or had no fixed address, 7% lived in housing provided by Aboriginal housing services and 5% said they lived in caravan parks. The report continues:

> The need for suitable and permanent housing is a serious concern for Aboriginal women, in particular those who are the usual sole carers of children. This matter will certainly impact on sentencing options, for example, community service orders and home detention heavily depend on a permanent residence of the offender. The need for priority housing and access to residence will also impact on Aboriginal women who are leaving prison. In many situations, Aboriginal women either have lost their homes whilst in custody or did not have a place to live prior to serving a sentence.[98]

Baldry identifies the dilemmas facing some ex-prisoners. She says:

> In a very perverse way, prison is a form of secure, affordable housing for many prisoners who have had insecure, unsuitable or unaffordable housing prior to their incarceration. If prison provides this, what of the housing needs and experiences of such prisoners upon release? In Australia, as in many countries, most prisoners are housed one day and released the next. They have to try and find accommodation, employment and rebuild a social life. For some, family friends, the parole service, or other agencies may have already helped organise this transition. But the experience of prison (an institutionalising one) and earlier life experiences, often of poverty and disadvantage, drug and alcohol abuse, physical or sexual abuse and social alienation do not prepare many ex-prisoners to negotiate these social necessities successfully.[99]

The post-release worker from Yulawirri Nurai, an Aboriginal organisation in NSW providing post-release support to Indigenous women exiting NSW prisons says that the women she works with come from a range of family situations and experiences. However one thing that they do have in common is the feeling of being disempowered. She says that many of the women she works with have come from situations of extreme poverty and that for many of them committing crime was a means to feeding her kids, or just to get through another day. Other Aboriginal women finding themselves in prison have been caught up in the extreme cycle of violence that affects too many Aboriginal people.[100]

Many other Aboriginal workers we spoke with agreed and believed that that difficulties associated with not being able to access appropriate housing and other forms of accommodation is not only a problem for Indigenous ex-prisoners, but a continuation (often aggravated post-release) of poor accommodation options available to Aboriginal people generally.

---

98 Lawrie, R., *Speak Out Speak Strong – Researching the needs of Aboriginal women in custody*, *op.cit.,* p30.

99 Baldry, E., *et.al., Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration for ex-prisoners?, op.cit.,* p1.

100 See: Social Justice Report 2003, *op.cit.,* Chapter 5.

b) Federal and inter-governmental housing programs

There are three main housing programs of relevance to prisoners seeking accommodation upon release which are funded at the inter-governmental level or through the federal government. These are the Commonwealth-State Housing Agreement, Supported Accommodation Assistance Program and Aboriginal Hostels.

• Commonwealth-State Housing Agreement

The main framework for the provision of housing assistance is the Commonwealth-State Housing Agreement (CSHA). The CSHA is an agreement negotiated between the Federal government and State and Territory governments to provide funding for the delivery of housing assistance. The 2003 CSHA provided an estimated $4.75 billion to the states and territories for the provision of mainly public, community, Indigenous and crisis housing. The bulk of the funding is provided in untied capital grants to the States and Territories. The Aboriginal Rental Housing Program, a supplementary housing program, also falls under the funding scope of the CSHA.

The major guiding principles of the CSHA are to:

- maintain a core Social Housing sector to assist people unable to access alternative suitable housing options;
- develop and deliver affordable, appropriate, flexible and diverse housing assistance responses that provide people with choice and are tailored to their needs, local conditions and opportunities;
- provide assistance in a manner that is non-discriminatory and has regard to consumer rights and responsibilities, including consumer participation;
- commit to improving housing outcomes for Indigenous people in urban, rural and remote areas, through specific initiatives that strengthen the Indigenous housing sector and the responsiveness and appropriateness of the full range of mainstream housing options;
- promote innovative approaches to leverage additional resources into Social Housing, through community, private sector and other partnerships; and
- ensure that housing assistance supports access to employment and promotes social and economic participation.[101]

As partners to the CSHA, each State and Territory is responsible for the delivery of public housing programs and other accommodation services. These programs have extensive waiting lists. Depending where the applicant elects to

101 2003 Commonwealth State Hosing Agreement, *Housing Assistance (Form of Agreement) Determination 2003*, Commonwealth of Australia, Special Gazette No.S276, 17 July, 2003, p4.

be housed, the waiting period can be as long as several years. The Australian Council of Social Services have noted that:

> Waiting lists for public housing are an imprecise measure of total demand for public housing. They show the people who are currently waiting to be housed, but do not count those who are in great housing need and do not fit ever-tightening eligibility criteria or have given up in frustration.[102]

The greatest need for housing remains with general public housing. Dwindling mainstream housing stock ensures that the need is an ever increasing one. This is particularly so for Indigenous housing. As the Australian Council of Social Services (ACOSS) have commented:

> The particular housing issues for Indigenous communities remain an ongoing challenge. Community development in these communities is systematically blocked by inadequate housing and infrastructure.[103]

This has been acknowledged by the Housing Ministers' Conference. In May 2001, the Commonwealth, State and Territory ministers agreed on a national commitment to improve Indigenous housing over the next ten years. The agreement identifies a range of key strategies to achieve 'substantial and enduring improvement in Indigenous housing outcomes over the next decade'.[104]

The guiding principles of the agreement are:

- Governments and the Indigenous community will work collaboratively in the policy development, planning, service delivery and evaluation;
- The Indigenous community housing sector is recognised as a vital partner in Indigenous housing provision and will be involved in all aspects of service planning and delivery;
- Best practice will be encouraged in service coordination, housing provision and asset management;
- Adequate resources will be provided to support the vision;
- Policy will promote an environment that builds and strengthens community capacity and involvement and is responsive to local needs and initiatives;
- Responsibility for achieving sustainable housing will be shared by those who provide housing and those who use housing; and
- All stakeholders will be accountable for outcomes and for the proper use of public funds.

102 Australian Council of Social Services, *Public and Community Housing: A rescue package needed,* ACOSS, October 2002.

103 Australian Council of Social Services, *A framework Commonwealth/State Housing Agreement negotiations, and beyond*, ACOSS Info 319, 9 August, 2002, p3.

104 *Building a Better Future: Indigenous Housing to 2010*, Housing Ministers Conference, May 2001, Commonwealth of Australia, 2003.

The agreement aims to meet the following four objectives:

- Identify and address unmet housing needs of Indigenous people;
- Improve the capacity of Indigenous community housing organisations and involve Indigenous people in planning and service delivery;
- Achieve safe, healthy and sustainable housing; and
- Coordinate program administration.

With the exception of Victoria, no state or territory has a specific housing program aimed at alleviating housing stress experience by prisoners upon release. Victoria, as will be discussed shortly, has recently commenced trialling a pilot project with the community sector.

Prisoners can apply for public housing and be placed on waiting lists, just like any other eligible person in the community. Many of the pre-release programs available to prisoners offer housing advice and assistance in filling out housing application forms. However, once a woman has been released it is up to her to check regularly on the status of her application.

During consultations we heard from both housing workers and various Departments of Housing representatives that many people who rely on a series of short-term/emergency accommodation services for shelter post-release, or those who live in parks and squats, find it difficult to keep housing authorities abreast of their current residential address. This often leads to the person being taken off the waiting list. The AIC notes that around one-fifth of all women leaving prison have no address to go to.[105]

Housing authorities have attempted to avoid people being removed from the waiting list by allowing the person to provide as a contact address one of their regularly used accommodation agencies. Despite this, homeless people being removed from waiting lists still occur frequently. Reinstatement can be granted if a reconnection is made with the housing authority. However, this situation illustrates the difficulties that some prisoners face upon release due to their itinerant status.

For some, having a debt owing to a housing provider presents another hurdle in attempting to access public housing. During the consultations we heard that many Indigenous women end up owing money to housing authorities. This can occur as a result of falling behind in rental payment prior to incarceration, other people staying in the house not paying rent or damage to property needing to be paid for. While having a debt to the housing authority does not absolutely exclude someone from applying for housing, an outstanding debt will exclude a person from being offered accommodation. In most cases the person has to pay the debt off before housing can be offered. A CRC Justice Support research project on female prisoner debt revealed that 30% of the research participants reported having a housing related debt.[106]

105 Ogilvie, E., *Post-Release: The current predicament and the potential strategies,* Australian Institute of Criminology, Canberra, 2001, p3.

106 Stringer, A., *Women Inside in Debt: The Prison and Debt Project*, Women in Corrections Conference, Australian Institute of Criminology, 2000.

The combination of debt, waiting lists, being taken off waiting lists, inappropriate housing, as well as parental and cultural responsibilities and the inflexibility of housing authorities can all contribute to the creation of barriers to Indigenous women accessing affordable and appropriate housing for her and her children.

Other housing options such as boarding houses, private rental, caravan parks and hostels are also increasingly difficult to access. Boarding house accommodation, a traditional source of accommodation for many ex-prisoners, is a dwindling resource. Due to increasing value of property markets and a more favoured approach to backpacker style accommodation, boarding house rooms are no longer as cheap or as abundant as they once were.

Private rental is also an unrealistic option for many exiting the prison system. People exiting prison usually do not have the money for bond, and they don't have any recent rental references to provide to the landlord. Indigenous women also find it difficult to access the private rental market at the best of times, and time spent in prison only exacerbates the difficulties.

As noted in a study conducted by the Australian Institute of Criminology:

> The issue of accommodation is central to any genuine attempt to re-integrating newly released prisoners. The cost of four weeks bond, one month's rent up front, plus connecting the electricity and a phone, is more often than not beyond the financial capacity of people immediately leaving prison.[107]

As discussed earlier, Centrelink has a memorandum of understanding regarding financial support, called a 'Crisis Payment' for prisoners post-release with most prisons in Australia.[108] When a prisoner is released, they have the option of receiving:

- one week Centrelink payment, then a fortnight later receive two weeks payment; or
- approximately two weeks payment, then a fortnight later receive approximately one weeks payment.[109]

The payment amount depends on the type of Centrelink benefit the prisoner will be receiving after their release. It should also be noted that the latter option is a combination of a Crisis Payment and an advance of allowance or pension.[110]

Comments raised during the consultations for this chapter suggested that the Centrelink crisis payment is not sufficient to fully assist people upon release. The two week gap in payments during the first month of release makes it very difficult for ex-prisoners to re-establish themselves in the community. The current crisis payment of $190 a week is also not enough to cover the initial costs of setting up house and re-establishing themselves in the community.

---

107 Ogilvie, E., *Post-Release: The current predicament and the potential strategies, op.cit.*

108 Centrelink, *Annual Report 2002-03*, Commonwealth of Australia, Canberra, 2003, Chapter 6.

109 Homersham, J. and Grasevski, S., *Centrelink Income Support for Ex-Prisoners: Barriers and solutions.* Paper presented at the 3rd National Homelessness Conference 'Beyond the Divide' convened by the Australian Federation of Homelessness Organisations, Brisbane, 6-8 April 2003, Attachment A.

110 *ibid*.

Many women and organisations consistently expressed concerns during our consultations about restrictions within various state and territory housing policies relating to an Indigenous woman's application for priority housing once she is incarcerated. The trend of prisoners generally not being able to apply for public housing, and effectively being taken off waiting lists, while in prison has also been identified by the research. The AIC notes that:

> Additional difficulties are also involved in prisoners being cut off waiting lists for public housing, through being incarcerated and hence under 'state care' already and the fact that prisoners currently inside incarceration are often not aware of the exact time they may be released (pending parole etc) and so are unable to apply for public housing while within prison. These service difficulties are compounded for women as a range of additional factors come into play, most particularly in relation to the needs of their children.[111]

An AHURI report for the Commonwealth Office for the Status of Women on women and homelessness found that:

> Successful transitions out of homelessness seem to be associated with services that are appropriately targeted to the real needs of identified segments of the population of homeless women and utilise an effective mix of government, private sector and family/community resources. Lack of success seems to be associated with inappropriate targeting and poor mix of resources.[112]

- **Supported Accommodation Assistance Scheme**

A second major program related to the provision of accommodation services is the Supported Accommodation Assistance Scheme (SAAP). This program allocates funding to the States and Territories for the provision of supported accommodation services to people who are homeless or at risk of becoming so. States and Territories also contribute to the scheme via Crisis Accommodation Program (CAP) funding. SAAP/CAP is distributed by State government agencies to community based organisations which provide supported accommodation services. In the year 2002-03 the total recurrent funding allocated by the States/Territories and the Federal Government was $310.4m with $296.6 allocated to 1,282 agencies nationally.[113]

Although there are no SAAP funded agencies which specifically aim to alleviate accommodation crisis among Indigenous female ex-offenders, many individuals use SAAP services as a post–release accommodation service. Emergency and short term accommodation services funded by SAAP/CAP provide the majority of beds available to those in housing crisis. Many services are directly targeted

111 Ogilvie, E., *Post-Release: The current predicament and the potential strategies, op.cit.,* p3.

112 Adkins, B., Barnett, K., Jerome, K., Heffernan, M. and Minnery, J., *Women, Housing and Transitions out of Homelessness – Final Report*, The Commonwealth Office of the Status of Women, Canberra, February 2003, piii.

113 Australian Institute of Health and Welfare 2003, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2002-03* Australia, Canberra, AIHW cat no HOU91, December 03, (SAAP NDCA report series 8).

to particular groups, such as women escaping domestic violence, youth or homeless men.

According to figures derived from the Australian Institute of Health and Welfare (AIHW) in 2001/2002, those agencies targeting young people (37% of all agencies) received 35% of the total SAAP funding. Agencies providing accommodation support for women (and children) escaping domestic violence (23% of all agencies) received 29% of the total SAAP funding.[114]

Fifty five per cent of all SAAP funded services are to be found in capital cities, with a further 7% located in metropolitan areas. The remainder of SAAP services are located in regional areas (31%) and remote areas (7%).

The AIHW report also observes that the Northern Territory has a disproportionate use of SAAP services. The national average for SAAP use is 56 clients for every 10,000 population, however Northern Territory records indicate 191 people per 10,000 accessing SAAP services.[115]

Also according to SAAP data collection for 2002-03, Indigenous people were overrepresented in the data. Although constituting 2% of the Australian population, Indigenous people formed 17.7% of total SAAP clients.

In 2004 the NSW Ombudsman release a report examining access issues associated with SAAP agencies in NSW. The report found that there were serious concerns regarding the exclusionary practices occurring in some agencies. The report identified that significant groups in the community were affected by exclusions including:

- people who use, are affected by, or dependent on drugs and/or alcohol;
- people who exhibit or who have previously exhibited violence or other challenging behaviour;
- people with mental illness; and
- people with disabilities, including people with physical disabilities, intellectual disabilities and acquired brain injury.[116]

The report acknowledges that gaps in other services areas (such as mental health and drug and alcohol services) exist and that this exacerbates the expectations placed on SAAP agencies. The report emphasised that:

> it is not sufficient for SAAP to consider every person within these groups to be outside its responsibility. It is the role of SAAP, in conjunction with other service systems, to cater to a diversity of individuals who are homeless, including people with mental illness, disabilities and/or substance abuse issues.[117]

114 Australian Institute of Health and Welfare 2003, *Australia's Welfare 2003*, AIHW, Canberra, December 03, Cat No. AUS 41, p404.

115 *ibid.,* p406.

116 NSW Ombudsman, *Assisting homeless people – the need to improve their access to accommodation and support services.* Final report arising from an Inquiry into access to, and exiting from, the Supported Accommodation Assistance Program, NSW Ombudsman, Sydney, 2004, p8.

117 *ibid.,* p12.

Considering that many Indigenous women exiting prison systems around Australia are affected by a mental illness and/or a substance abuse problem, this may go someway to explaining why many people throughout the consultations claimed that Indigenous women newly released from prison were unable to access emergency accommodation. The Ombudsman's report also noted that some agencies have 'poor staff awareness training in relation to Aboriginal and Torres Strait Islander and Non-english speaking background people, leading to reluctance of some agencies to work with these groups'.[118]

In the 2001/02 period, 21.6% of those seeking emergency accommodation were women fleeing domestic violence. A further 21% of SAAP clients in this period said their previous accommodation was either no longer available or they had been evicted. As previously noted however, the SAAP data is not a reliable source for obtaining information about where people go after they leave prison. Only 1.7% of SAAP clients in 2001/02 reported as recently leaving an 'institution' as their main reason for seeking accommodation.

This under-reporting is due probably to a number of reasons, including the person not wanting to disclose their previous prisoner status. It may also reflect that immediately after release people do attempt to return 'home' or seek independent accommodation only to have it fall through. This brief interim period is probably what is declared in the SAAP data collection. Whatever the reasons, and as the consultations revealed, it is generally accepted that SAAP accommodation is accessed by some leaving prison, either immediately or shortly after release. However, there may be another significant group, also facing imminent homelessness, those who face difficulties in accessing SAAP services – namely those with a mental illness or substance abuse issue.

- **Aboriginal Hostels Limited**

A third major source of accommodation for Indigenous people is Aboriginal Hostels. Aboriginal Hostels Limited (AHL) is wholly funded by the Commonwealth government. It provides 3300 beds for Aboriginal and Torres Strait Islander people across the country. AHL provide accommodation for a range of people including those who are transient, those requiring short and medium term accommodation while they receive medical care or while they attend educational courses. AHL also provide aged care facilities and substance abuse rehabilitation facilities.

In 2004, AHL formed a partnership with the South Australian Department of Correctional Services to run Karinga Hostel in Adelaide as a post-release and diversion hostel for Aboriginal women. This is discussed further in the next section. To date this is the only AHL facility available specifically for Indigenous women who are exiting prison.

While Karinga Hostel is the only post-release specific accommodation facility for Indigenous women, most AHL properties are intended to be accessible to all Indigenous people, including Indigenous women exiting prison.

118 *ibid.,* p33.

c) State and Territory government and community housing programs

This section provides an overview of programs at the state and territory level, as well as through the community sector, which provide housing services which are accessible to Indigenous women exiting prison. Some provide general housing services to Indigenous people specifically, while others provide services to both Indigenous and non-Indigenous people. Some provide accommodation, while others provide support programs and referral services only. Others provide support services to ex-offenders, both men and women, while others provide more mainstream forms of support to the general community.

While on the face of it there appears to be a variety of support services available that provide general assistance, there remains a paucity of services aimed at specifically supporting those people exiting Australian prisons. There is a critical lack of services aimed at supporting the needs of Indigenous people, and more specifically Indigenous women, re-entering the community after a period of incarceration. Nationally, there are only two services that specifically focus on supporting Indigenous women post-release. These services are found in New South Wales (Yulawirri Nurai) and South Australia (Karinga Hostel). Both are discussed further below. Elizabeth Hoffman House, in Melbourne, also provides, among other services, pre and post-release support programs to Indigenous women.

In relation to the community housing sector, there is no one community housing provider that caters specifically to post- release housing (for either women or men, Indigenous or non-Indigenous). Despite this, many community housing organisations are amenable to providing post-release accommodation and support to individuals newly released from prison. An example of this is the cooperation of several community housing providers currently participating in the Corrections Housing Pathways Initiative in Victoria (discussed below). This partnership between community housing providers and relevant government departments provides an innovative approach to providing supported housing to people being released from prions who are risk of becoming homeless.

Relevant community sector schemes are discussed below alongside housing programs run by state and territory governments.

- **Queensland**

Queensland has no government programs that specifically aim to address the needs of Indigenous women post-release. Advice received from the Queensland Department of Housing suggested a number of its programs may be available to Indigenous women generally. For example, the Community Rent Scheme funds not-for-profit community-based housing groups to provide short to medium term accommodation to public housing applicants in severe and immediate housing need. Ti Tree Housing is an Indigenous community rent scheme in Brisbane that receives such funding.

Bahloo Women's Youth Shelter Association Inc and Murri Sisters Association also receive funding through the Crisis Accommodation Program (CAP) and may also assist Murri women exiting prisons. These services provide emergency accommodation to Indigenous women, including women exiting prison.

The Department of Housing and Department of Corrective Services are currently trialling a new program in men's prisons. The program is designed to ensure that people who are homeless or at risk of being homeless when released are identified when they enter prison. They are then offered, as part of a larger transitions program, a range of 'learning modules' that may assistance in resolving the barriers to housing. However no assistance is provided post-release. The program is intended to be implemented in women's prisons but at the time of writing had not yet commenced.[119]

Sisters Inside is a community based organisation that provides support programs and advocacy for women affected by the criminal justice system in Queensland. While they do not provide accommodation directly, Sisters Inside are active in attempting to find suitable accommodation for their clients. Sisters Inside receives funding from a variety of sources including the Queensland Department of Communities, Queensland Health, Commonwealth Department of Families and Community Services, and the National Drug Strategy. The Queensland Department of Corrective Services also funds Sisters Inside to provide a Transitions Program to women being released from prison.

Women being released from Townsville prison face particular difficulties in obtaining accommodation. The accommodation resources are scarce in far north Queensland and there are no specific post-release support services available. The consultations held in Cairns and Townsville revealed that while most Indigenous women will return home, those that do not have few accommodation choices. There are one or two refuges, extremely long public and community housing waiting lists and private rental is usually not considered an option due to an inability to afford it and/or racial discrimination.

- **New South Wales**

The Department of Corrective Service (DCS) in NSW funds a number of community organisations to provide post-release support programs including accommodation. By providing case management to some clients these agencies are also considered a key part of the Throughcare program (discussed earlier in the chapter).

While there are no specific post-release accommodation services targeting Indigenous women, the Department does fund Yulawirri Nurai Aboriginal Corporation, to provide post-release support services to Aboriginal women exiting NSW prisons. The funding provides for one post-release worker whose responsibility is to assist Indigenous women with their post-release needs including obtaining suitable housing. Yulawirri Nurai also provides a post-release support service for Aboriginal men which is funded through the federal Attorney General's department, administered by the Indigenous Coordination Centre in Coff's Harbour.

The DCS provides funding to a number of agencies to provide post-release accommodation. Guthrie House an independent community organisation providing accommodation for up to three-months for women post-release as

119 Director-General, Department of Housing, Queensland Government, Correspondence, 10 August 2003.

well as providing assistance with accessing longer term accommodation. In the year to June 2004, Guthrie House accommodated 54 women with an average length of stay being 6.5 weeks. Of the 54 women housed, 15 were Indigenous. It is the only specific post-release accommodation services for women in NSW.[120] The only Indigenous specific accommodation service, funded by DCS is Bundjalung Tribal Society Limited (NSW North Coast) which operates a residential rehabilitation centre for Indigenous men.There are also a number of SAAP funded refuges and Aboriginal Hostels operating in NSW but they are not specifically for women exiting prison.

- **South Australia**

The Department of Correctional Services and Aboriginal Hostels are trialling an Aboriginal women's post-release hostel in Adelaide, Karinga Hostel, to address the limited accommodation options available to Indigenous women post-release in South Australia. The partners in this initiative must be commended for developing such an innovative approach to providing post-release accommodation for Indigenous women. Depending on the outcomes of the initiative, it is hoped that this kind of project could also be developed in regional areas of South Australia, as well as other States and Territories.

Case study: Aboriginal Hostels Limited and the Department of Correctional Services (South Australia) – an innovative approach[121]

In 2004, AHL formed a partnership with the South Australian Department of Correctional Services to run Karinga Hostel as a post-release and diversion hostel for Aboriginal women.The hostel is located in suburban Adelaide and was previously run as an accommodation service for transient people. Referrals to Karinga come from courts, prisons, community corrections and community support organisations such as Aboriginal Prisoner Offender Support Service (APOSS) or Women's Accommodation Support Service (WASS/OARS).The aim of the hostel is to provide stable, transitional accommodation that will support Indigenous women while they are seeking longer term or permanent accommodation.

Residents of Karinga can either be completing a custodial sentence, serving a home-detention or community order or have a case pending before the courts.Women can also be referred to Karinga if they have completed their sentence in full and are in need of post-release accommodation and support.

Karinga can accommodate up to 11 women, including 3 women on home detention. Children may also be accommodated, although it is preferred that children older than toddler age are accommodated in alternative care except in emergency situations. While it is recognised that reunion with children is vital to the woman's reintegration process, it is felt that a woman's stay at Karinga is an opportunity to concentrate on obtaining appropriate housing for her and her kids, as well as focus on other issues which are critical to her reintegration. Karinga is managed just like every other AHL hostel with residents paying a tariff of $20 per night, which includes accommodation and 3 meals a day.

120 Guthrie House *Annual Report 2003-2004*, Guthrie House, Sydney.

121 Project officer, Aboriginal Services Unit, Department of Correctional Services SA, *Karinga Prison Release and Diversion Hostel,* email correspondence received 12 March 04.

The Department of Correctional Services as the initiatives founding partners, provides funding to the program as well as employing a full-time Aboriginal Hostel Liaison Officer to work exclusively with the women prior to and post-release. The Hostel Liaison Officer coordinates culturally appropriate programs and services for women residents, focussing on their counselling needs and basic life skills. The funding stems from the Social Inclusion initiative and the Reducing Homelessness strategy developed by the South Australian government.[122]

The operation of the hostel is overseen by an Advisory Group comprising of representatives from Department of Correctional Services, Aboriginal Hostels Limited, Centrelink, police, community agencies and Aboriginal Housing, which meets monthly to discuss and address matters arising.

This model is the only one of its kind currently operating in Australia and the evaluation of this pilot project will be eagerly awaited.

In 2002, the Department of Human Services released *Supporting Women Exiting Prison and Their Children on the Outside*, a report detailing the issues involved in developing a co-ordinated care approach to women and their children upon release from prison. The report identified accommodation and related support programs as a key concern for women post-release. It states:

> Housing represents the resuming of life in the community and for many women it is inextricably linked with their return to the role of full time carer for their children, while for some it also means an opportunity to complete their sentence on Home Detention.[123]

The report called for an 'integrated accommodation and support system, which has the capacity to respond to individuals women's needs, as they vary over time'.[124] The report also suggests that representatives from the SA Housing Trust (the public housing provider) visit the women's prison regularly to provide inmates with information on housing. Information provided by the Trust revealed that while visiting does not occur on a formal basis, representatives do, from time to time, visit prisoners as required. The Housing Trust works with community sector agencies, such as the Aboriginal Prisoners and Offenders Support Services and Offenders Aid and Rehabilitation Services, who in turn provide information and support to inmates and those newly released from prison.

The Aboriginal Prisoners and Offenders Support Services Inc (APOSS) is an organisation operating in South Australia providing support services to Aboriginal women upon their release from prison. They do not however provide direct accommodation, but will assist in finding accommodation for their clients. The service is also available to Indigenous men. APOSS provides post-release support services by also offering re-socialisation training, advocacy and ongoing case management. This is the only service of its kind in South Australia.

Another prisoner support organisation, Offenders Aid and Rehabilitation Services of SA Inc (OARS SA) is a non-government agency providing counselling, accommodation and support services to prisoners and their families. The

---

122 For more information on the Social Inclusion initiative see http://www.socialinclusion.sa.gov.au

123 Department of Human Services, *Supporting women exiting prison and their children on the outside: Coordinated care and early intervention approaches,* Government of South Australia, Adelaide, 2002, p49.

124 *ibid.,* p52.

Women's Accommodation Support Service (WASS) is one of the services offered by OARS. The WASS, a SAAP funded service, provides information, referral, case management and advocacy for women exiting prison who find themselves at risk of becoming homeless. Approximately 20-30% of WASS clients are Indigenous.[125]

Both APOSS and OARS/WASS work closely with Karinga Hostel and are also represented on Karinga's advisory board.

Centacare (Catholic Family Services) in Adelaide provides a range of programs focusing on people who are homeless or at risk of becoming homeless. One of the programs it provides is a post-release accommodation service for women exiting the prison system. The Women's Supported Housing Program is funded by SAAP and can house up to 10 women in properties leased from the South Australian Housing Trust. Women are referred from workers at the Adelaide Women's Prison as well as other community based agencies. Since the program commenced in January 2002, 23 women, or approximately 20% of the clients have been Indigenous.[126]

- **Western Australia**

The Department of Justice has recently implemented a Transitional Accommodation Service which aims to assist people post-release with finding rental accommodation. The planning and services delivery principles for the service acknowledge the specific needs of Aboriginal women, but remain generalist in nature. The Department has also implemented the Community Re-entry Program for Prisoners (discussed earlier in the chapter) which includes a range of initiatives to 'divert minor offenders from prison, improve the management of prisoners within the system and improve rehabilitation of offenders'.[127] Again there is no specific initiative addressing the needs of Aboriginal women but they are 'included in the core business of the services'.[128]

The 2003/04 – 2006/07 Strategic Plan of the Western Australian Aboriginal Housing and Infrastructure Council highlights people exiting prisons as one of the main groups needing to receive improved attention.[129] Their strategic plan states that it will 'initiate discussions with the Department of Justice, Aboriginal Urban Community Housing Organisations and non-Indigenous Community Housing Associations regarding supported housing models and options for Aboriginal and Torres Strait Islander people exiting prisons.' The strategic plan recognises:

> Currently there are no Indigenous specific housing programs in place to address this issue. A small number of non-Indigenous community housing organisations have established options, but demand inevitably outstrips supply.[130]

125 Email communication, Offenders Aid and Rehabilitation Services of SA, 19 October, 2004.
126 Email communication, Senior Social Worker, Housing Programs, Centacare, Adelaide, 14 October 2004.
127 Minister for Justice, Government of Western Australia, letter dated 4 November, 2003.
128 *ibid.*
129 Western Australian Aboriginal Housing and Infrastructure Council 2000, *Strategic Plan 2003/04-2006/07*, Department of Housing and Works, Government of Western Australia, p47.
130 *ibid.*

· Victoria

Elizabeth Hoffman House is an Aboriginal Women's Accommodation Services in Melbourne providing a range of options to Aboriginal women in need of accommodation. The organisation provides a high security refuge for women escaping family violence (the only Aboriginal women's refuge in Melbourne) as well as 6 transitional properties available to women exiting prison as well as to women needing medium term housing while awaiting public housing allocation. Elizabeth Hoffman House also provides a counselling service for Aboriginal women in prison.

Elizabeth Hoffman House also provides assistance to women applying for public and community housing, as well as providing on-going emotional support, legal assistance, counselling, including children's counselling as well as providing a safe space for women to meet.

Flat Out Inc is state-wide post-release accommodation support service available to women in Victoria. Although not specific to Indigenous women, the service does provide accommodation to Indigenous women (and their children). Funded by SAAP, Flat Out provides case-managed support program to women who are housed in a range of accommodation facilities.

While there are other services available to women in Victoria, that will assist them in locating accommodation such as Melbourne City Mission's Supporting Women Exiting Prisons program, none of them are Indigenous female specific, provide direct accommodation or specifically focus on women post-release.

Case study: Corrections Housing Pathways Initiative (Victoria)

In 2001 the Office for Housing Policy (OHP) and the Department of Justice established as a pilot project the Transitional Housing Manager (THM) – Corrections Housing Pathways Initiative (CHPI). It aims to reduce homelessness among ex-prisoners, both male and female. The project initially targeted prisoners with a history of homelessness by offering them post-release housing with community housing providers. Sixty-one properties were identified by the Office of Housing and allocated to the initiative with community housing providers receiving funding to deliver support services.

Three Victorian prisons are involved in CHPI. Housing Placement Workers which are funded by the Office of Housing (OOH) are based at all three prisons including the women's prison, the Dame Phyllis Frost Centre.[131] These workers assist women who require housing upon release in applying for accommodation through CHPI. Once a woman is released and is placed in CHPI accommodation, she is referred to a community-based agency called an Initiative Support Provider to assist in her re-settlement into the community.[132] Upon being released, the Housing Placement Worker provides the Initiative Support Provider with the relevant information to ensure that the necessary support is provided to the woman.

The Initiative Support Provider is funded through CHPI to support ex-prisoners in negotiating a range of community services related to employment, housing, health, welfare and income security.[133] The Office of

131 Aktepe, B. and Lake, P., *THM – Corrections Housing Pathways Initiative*. Paper presented at the 3rd National Homelessness Conference, Australian Federation of Homelessness, Brisbane, April, 2003, p4.
132 *ibid.,* p5.
133 *ibid.*

the Correctional Commissioner has made funding available for an average of six-months per person post-release to receive post-release support.

13 of the 61 houses within CHPI have been allocated for women in 'recognition of the higher levels of homelessness recorded amongst female ex-prisoners and that women leaving prison are more likely to have responsibility for children'.[134] While none of the properties are specifically allocated to Indigenous women, it was anticipated that Indigenous women would participate in the initiative.

The preliminary findings from an evaluation conducted in 2004 reveals that Indigenous women participated in this initiative at a higher rate than that of Indigenous men (11.5% and 4.9% respectively).[135] The evaluation suggests that this could be because of the efforts of housing placement workers efforts to house Indigenous women.

The evaluation also indicates the initiative's positive impact on reducing re-offending. Participants on average had four previous prison terms. Nine months post-release, only 15% of those housed under the scheme had re-offended, compared with a 50% re-offence rate of a control group who had not received housing. The evaluation states that the initiative has 'significantly reduced their (ex-offenders) rates of re-offending'.[136]

- **Northern Territory**

The Northern Territory has no specific post-release housing programs. Territory Housing does, however, have a Special Housing Program which funds organisations to provide crisis accommodation and community housing services to Indigenous women in crisis and at risk of homelessness.

Territory Housing has also funded the construction of eight safe houses for Indigenous women throughout the Northern Territory. The consultations revealed that authorities often remark on the relatively low proportion of Indigenous women in NT prisons as a reason for not providing dedicated post-release accommodation facilities for Indigenous women.

Women prisoners are incarcerated in Darwin. This is often a vast distance from their homes (for example, in Central Australia). This contributes to an acute need for post-release accommodation in Darwin upon their release. We were told that many women do not want to go back to their communities after release, at least not immediately. However, because of the lack of services that may support them to settle in the Darwin area, they are often forced to return home. Participants said that accommodation concerns arise from the fact that the Aboriginal women's refuge and other emergency accommodation facilities are often full, as well as some Aboriginal women being reluctant to use the *whitefella* accommodation facilities.[137]

---

134 *ibid.,* p4.

135 The evaluation of the THM/CHP Initiative was not published at the time of writing this report. Information provided by the Department of Justice, email communication 27 July 2004.

136 *ibid.*

137 Participant comment, Darwin consultations, 4 May 2004.

• Tasmania

In August 2004, a report was published detailing the housing and support needs of ex-prisoners in Tasmania. The report was funded by SAAP and carried out by the Salvation Army. It provided an outline of the post-release services available in Tasmania to people newly released from prison.[138] This report found that, 'Tasmania lags behind a number of States in the priority given to the housing and support needs of ex-prisoners across both government and non-government agencies'.[139]

Services for prisoners which currently exist that provide a range of support services as well as housing advice and referral include the Salvation Army Prison Support Service (through its XCELL program), InsideOut, Colony 47 and Anglicare. InsideOut has a particular focus on suicide prevention as well as providing housing advice.

While these services are not specifically aimed at the needs of Indigenous people exiting the prison system, they do nevertheless provide services that can assist Indigenous people post-release. Figures from the XCELL program 12 month report show that in the 12 months to September 2004, 12 women sought accommodation assistance from the program.[140]

d) Conclusion – The housing needs of Indigenous women on release from prison and human rights standards

This section has provided an overview of post-release accommodation services available to Indigenous women upon their release from prison. It reveals that there are gaps in the extent and type of services provided in different states and territories, with very few services specifically tailored to the distinct needs of Indigenous women.

The impact of there being a lack of available and appropriate housing for Indigenous women on release from prison is substantial. We have noted that it is likely to have a significant effect on re-offending behaviour. This impacts on the individual woman, her family and community, as well as the broader community as a whole.

The impact of a lack of appropriate housing is, however, much broader than this. Housing assistance by its very nature differs from most community services as it provides shelter which is basic to general health and well-being.[141] The provision of housing is about personal security, privacy, health and safety.[142]

---

138 Hinton, T., *The Housing and Support Needs of Ex-Prisoners – The role of the Supported Accommodation Assistance program*, Department of Family and Community Services, Australian Commonwealth Government, August 2004, Executive Summary.

139 *ibid.,* Executive Summary.

140 Salvation Army, *XCELL The Salvation Army prison Support Service 12 Month Report September 2003 to September 2004*, Salvation Army, Hobart, September 2004, pp15-16.

141 Australian Institute of Health and Welfare 2003, *Australia's Welfare 2003*, AIHW, Canberra, p162.

142 Dias, C. and Leckie, S., *Occasional Paper 21 – Human Development and Shelter: A human rights perspective*, Human Development Report Office, 1996, http://hdr.undp.org/docs/publications/ocational_papers/oc21c.htm.

We have noted that Indigenous women are also vulnerable to intersectional forms of discrimination which can compound the impact of a lack of housing. This is particularly concerning as a lack of appropriate housing (including any accompanying support) can expose a woman to violence, as well as making it difficult for her to address any mental health or substance abuse issues she may have. A lack of, or having to rely on inappropriate housing, also makes it difficult for a women to be reunited with her children.

The failure to provide adequate and appropriate housing for Indigenous women post-release raises issue of human rights concern. International law recognises the right to adequate housing. This applies to everyone. Individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors[143] (such as prison record).

Generally speaking, the right to adequate housing equates to the right to live somewhere in security, peace and dignity[144] as opposed to the narrow definition of the mere provision of shelter. The key convention which deals with the right to adequate housing is the *International Convention on Economic, Social and Cultural Rights* (ICESCR). Article 11(1) states:

> The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right...

Australia is a party to the Covenant. Accordingly, the federal government has upheld to all Australian citizens that all governments will act in conformity with this obligation.

In 1995 the United Nations Special Rapporteur on Housing Rights established a number of guidelines for interpreting the right to adequate housing. In providing this guidance, the Special Rapporteur outlines that the right to housing should *not* be taken to imply that Governments are require to:

- build housing for the entire population;
- provide housing free of charge to all who request it;
- fulfil everyone's right to housing immediately; or
- exclusively entrust either itself or the unregulated market to ensuring this right to all.[145]

It should also not be expected that the right to housing will be met in precisely the same manner in all circumstances and all locations.

---

143 United Nations Committee on Economic, Social and Cultural Rights, *General comment No.4: The right to adequate housing (art.11(1) of the Covenant)*, as contained in HRI/GEN/1/Rev.7, p19, para 6.

144 *ibid.,* para 7.

145 Sachar, R., Special Rapporteur, *The Realisation of Economic, Social and Cultural Rights: The right to adequate housing – Final Report*, United Nations, 12 July 1995, E/CN.4/Sub/2/1995/12, pp4-5.

On the other hand, the Special Rapporteur noted the right to housing must be interpreted as requiring that:

- Once States Parties have formally accepted their obligations, they will endeavour by all appropriate means possible to ensure everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights; and
- A claim or demand can be made upon society for the provision of, or access to, housing resources should a person be homeless, inadequately housed or generally incapable of acquiring the bundle of entitlements implicitly linked with housing rights.[146]

The Committee on Economic, Social and Cultural Rights also notes that for housing to be 'adequate' it must be affordable; culturally adequate; habitable; accessible, especially to marginalised and disadvantaged groups; and located in an area which allows access to employment, health-care, schools, childcare centres and other social facilities.[147]

We have noted in this chapter the substantial backlog of housing infrastructure in Indigenous communities and long waiting lists for public housing. Addressing these issues is a substantial challenge that all governments face in ensuring compliance with the right to housing. Under the *International Covenant on Economic, Social and Cultural Rights*, the government has to demonstrate that it is progressively realising improvements in the right to housing and that it is tackling this issue with the maximum of available resources and within the shortest possible timeframe.

This raises an issue in terms of the priority which governments should attach to the situation of Indigenous women upon release from prison. In light of the severe implications of the lack of appropriate housing options, should governments provide greater priority to addressing this issue? In my view, yes they should. This is primarily due to the context in which this issue arises – namely, the significant over-representation of Indigenous women (and men) in criminal justice systems and the rising rate of this over-representation over the past decade. Government programs should certainly strive to alleviate the worst levels of inequality and disparity as a matter of priority.

Throughout the consultations for this chapter, Indigenous women, ex-prisoners and service providers emphasised the need for there to be a diversity of housing options available, ranging across a continuum from shorter term, supported, transitional accommodation through to longer term, less supported, stable accommodation. Examples of projects such as Karinga Hostel in Adelaide and the Corrections Housing Pathways Initiative in Victoria demonstrate that creative, cost effective approaches can be adopted which are consistent with the right to housing and which overcome the practical difficulty of the relatively small

146 *ibid.,* para 12.

147 United Nations Committee on Economic, Social and Cultural Rights, General comment No.4, *op.cit.,* pp20-22, para 8.

numbers (in absolute terms) of Indigenous women exiting prison at any one time. Such approaches build partnerships between government and the community housing sector.

Healing programs for Indigenous women exiting prison

Throughout the consultations for this chapter, the issue of healing and wellness was raised as an important issue for Indigenous women exiting prison. Processes for healing were seen as having the potential to increase the health and well-being of Indigenous women, with a possible outcome of this being reductions in rates of involvement of Indigenous women in criminal justice processes.

This attention to healing was in part based on emerging evidence from overseas, primarily in Canada and New Zealand, that indicated that addressing the healing needs of individuals and communities has a positive impact on reducing the over-representation of Indigenous peoples in criminal justice processes. Healing has also emerged in these countries as a significant process for empowering Indigenous communities and creating improved partnerships to address the legacy of family violence and abuse (including the legacies of past government processes, such as the residential schools system in Canada).

There are, however, relatively few programs and services for Indigenous women exiting prison that presently focus on healing processes in Australia. The conversion of concepts of healing into actual programs and services is very much in its infancy here. As the case study of the Yula Panaal Cultural and Spiritual Healing Program in New South Wales below demonstrates, they also face difficulty in attracting operational funding.

Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnections between, and effects of, violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous people, families and communities.[148]

Philosophies of healing vary among communities and among individuals. Some common themes to different perspectives on healing include that:

- the journey of healing towards wellness is a spiritual journey;
- revival of culture and ceremony is critical to that journey;
- it is through being responsible for your own healing and sharing your journey with others that a 'healing community' may be re-created for mutual support and after-care outside one's own family; and
- helpers must themselves be well in order to be able to help those in need of healing.[149]

148 *Social Justice Report 2003*, HREOC, *op.cit.,* p158.

149 Middleton-Moz, J., *Will to survive: Affirming the Positive Power of the Human Spirit,* Deerfield Beach: Health Communications, Inc and Wilson, J. and Raphael, B. (eds), *International Handbook of Traumatic Stress Syndromes*, Plenum Press, New York, 1993 as cited in Phillips, G., *Addictions and Healing in Aboriginal Country*, Aboriginal Studies Press, 2003, p142.

Healing can be context-specific – such as, addressing issues of grief and loss – or more general by assisting individuals deal with any trauma they may have experienced. The varying nature of healing demonstrates that it cannot be easily defined, with healing manifesting itself differently in different communities. Examples of healing processes might include women-specific and men-specific groups; story-telling circles; cultural activities;[150] understanding the impacts of issues such as racism, colonisation and identity on Indigenous well-being; the use of mentors and/or elders to provide support to individuals; and retreats or residential-style components where participants spend a period of time going through the healing process, usually on a spiritually significant site, away from their families and communities.

Bringing Them Home identified the importance of addressing Indigenous well-being and healing issues for those who were forcibly removed from their families. It made the following recommendations:

> *Recommendation 33a:* That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.
>
> *Recommendation 33b:* That government funding for Indigenous preventative and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.
>
> *Recommendation 33c*: That all government-run mental health services works towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.[151]

Other reports and strategies have also identified the importance of addressing grief and trauma in Indigenous communities. For example, *Ways Forward* - The National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health – proposes that in order to reduce the effects of grief and loss in Aboriginal communities national mental health strategies should aim to:

> to provide specific mental health services to deal with the particular and extensive effects of trauma and grief on Aboriginal people, including preventative and health promoting approaches, education, assessment, counselling, healing programs and community interventions…[152]

During the consultations for this chapter, a number of common themes emerged regarding healing and what issues an approach to healing should consider. These included that:

---

150 Phillips, G., *Addictions and Healing in Aboriginal Country*, Aboriginal Studies Press, 2003, pp167-168.

151 Human Rights and Equal Opportunity Commission, *Bringing them home – National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Commonwealth of Australia, April 1997, pp658-659.

152 Swan, P. and Raphael, B., *Ways Forward – National Consultancy Report on Aboriginal and Torres Strait Islander Mental Health*. Part 1, Commonwealth of Australia, Canberra, 1995, p41.

- There is a general lack of programs both in and out of prison that are based on Indigenous perspectives on healing and spirituality;
- Such programs are needed to address issues of grief and trauma and its inter-generational effects in Indigenous communities;
- Healing processes must be developed and facilitated by Indigenous people and communities with the role of government being limited to resourcing and supporting healing processes;
- Cultural practices such as arts and crafts, hunting, ceremony and story-telling are important elements of healing;
- Healing is a process or journey that is ongoing, without an end-point, as opposed to a program with a clearly defined outcome; and
- An important form of healing is through one-on-one support, such as mentoring provided by Indigenous Elders for Indigenous women in prison or who have recently been released from prison.

The main issue raised during the consultations is that healing is not a program, rather it is a process.[153] Healing is not something that should only be available at the post-release stage, rather it should be available at any point when a woman is ready – this may be before a woman comes into contact with the criminal justice system, or after they have been in and out of prison over a number of years. Further, healing in the context of criminal justice, attempts to help the individual deal with the reasons why they have offended in the first place. This element of healing is strongly linked to the notion of restorative justice. For this reason, healing has the potential to fit within a restorative justice framework.

Healing processes – some examples

While the consultations for this chapter identified healing as a critical support mechanism for Indigenous women exiting prison, there are only limited programs that currently exist in Australia which are built on a healing model. Existing programs are discussed following an overview of healing processes in Canada and New Zealand.

• Canada – Healing lodges

Healing has formed an important part of alternative approaches for Indigenous involvement in the criminal justice systems of Canada since approximately 1995. Healing has been acknowledged as an important process for addressing offending behaviour with the establishment of 'healing lodges' by the Correctional

153 Consultation with Dr Gregory Phillips, Melbourne, 28 April 2004.

Service of Canada and various provincial governments. Healing lodges are a form of correctional facility, as opposed to forming a response following the release of an Aboriginal offender. They recognise, however, that a continuum of support is necessary from the point of incarceration through to the point of reintegration into the community.

The Correctional Service of Canada has described the healing lodges as follows:

> 'Healing lodges' offer services and programs that reflect Aboriginal culture in a space that incorporates Aboriginal peoples' tradition and beliefs. In the healing lodge, the needs of Aboriginal offenders serving federal sentences are addressed through Aboriginal teachings and ceremonies, contact with Elders and children, and interaction with nature. A holistic philosophy governs the approach, whereby individualized programming is delivered within a context of community interaction, with a focus on preparing for release. In the healing lodges, an emphasis is placed on spiritual leadership and on the value of the life experience of staff members, who act as role models.
>
> Two important considerations prompted the creation of healing lodges. There has been significant concern among members of the Aboriginal community that mainstream prison programs do not work for Aboriginal offenders. Furthermore, there is a dramatic over-representation of Aboriginal peoples in Canada's correctional system…
>
> A recent follow-up study… of Aboriginal offenders who have been admitted to the Okimaw Ohci Healing Lodge, the Pê Sâkâstêw Centre, and the Stan Daniels Healing Centre, revealed a relatively low federal recidivism rate for some Aboriginal healing lodge participants. This is an early indication that this approach is having a positive effect. It also demonstrates that the Correctional Service of Canada is achieving some success in fulfilling its mandate to safely and successfully reintegrate offenders.[154]

The healing lodge concept began with the establishment in 1995 of the Okimaw Ohci Healing Lodge for Aboriginal women. It is one of sixty- five Canadian correctional facilities owned and operated by the Canadian Federal government. It is a 30 bed minimum to maximum security facility situated on 160 acres of the Nakaneet First Nation territory, near Maple Creek, Saskatchewan. It was established as a result of the recommendation of the Task Force on Federally Sentenced Women and in response to proposals by the Native Women's Association and former Indigenous female prisoners.

The centre is available to women inmates who wish to practice a traditional Aboriginal holistic way of life and have been sentenced to a low or medium security facility. Although managed by Correctional Service of Canada, the facility is staffed primarily by Indigenous women. It provides a safe place for Aboriginal women offenders with an emphasis on the unique needs of Aboriginal women including acknowledgment of the discrimination and hardship many aboriginal people experience.

---

154 Correctional Service of Canada (Aboriginal Initiatives Branch), *Healing lodges for Aboriginal federal offenders*, CSC, Ottawa Canada 2004. Online at: www.csc-scc.gc.ca/text/prgrm/correctional/abissues/challenge/11_3.shtml, p1.

The Correctional Service of Canada describes the Okimaw Ohci Healing Lodge as follows:

> Okimaw Ohci Healing Lodge is a 30-bed facility that contains both single and family residential units, as residents may arrange to have their children stay with them. Each unit contains a bedroom, a bathroom, a kitchenette with an eating area, a living room, and, in those units that are built to accommodate children, a playroom.
>
> A personal life plan has been outlined for each of the Iskewak at Okimaw Ohci, which delineates what she needs emotionally, physically, and spiritually to heal. The women also engage in aspects of independent living by cooking, doing laundry, cleaning house, and doing outdoor maintenance chores.
>
> The Okimaw Ohci Healing Lodge programs help the women gain skills and begin the healing process. The aim is to help the Iskewak build the strength they need to make essential changes in their lives. Services include education and vocational training, family programs, on-site programs for mothers and children, on-site day care, outdoor programs, and Aboriginal-specific programs, such as language and teaching studies.
>
> …The building's structure is… circular, complementing both the lodge's organizational character and the surrounding environment. The focal point is the Spiritual Lodge at the centre, where teachings, ceremonies, and workshops with Elders take place.[155]

The role of the Elders is vital to the running of the centre. Local Elders from the Nakaneet community are involved in the day to day running of the programs. Visiting Elders from other communities reside at the centre for three weeks, rotating with other community's Elders. The visiting Elders have their own accommodation facilities at the centre. The Elders, local and visiting, provide cultural teachings, spiritual support, guidance and counselling to the residents.

In 1996 a mother-child program was piloted. Children lived with their mothers at the centre for two weeks out of the month. The other two weeks children lived with foster family close by, usually a family from the Nakaneet. During their two week stay with their mother children attend an on-site day care centre, while the mother attends a range of programs.

Studies conducted by the Correctional Service of Canada claim to have shown that:

> the recidivism rate of offenders who were admitted to Okimaw Ohci Healing Lodge is low. This demonstrates the positive effect the lodge has had on the Iskewak and the success the CSC is encountering with the healing lodge initiative.[156]

As a result of the success of Okimaw Ohci, other healing lodges have been established in partnerships between the federal government, provincial governments and local Indian nations. These include the Pê Sâkâstêw Centre near Hobbema, Alberta; the Prince Albert Grand Council Spiritual Healing Lodge in the Wahpeton Dakota First Nation Community; Stan Daniels Healing Centre

155 *ibid.*
156 *ibid.*

in Alberta; the Elbow Lake Healing Village in British Columbia; Ochichakkosipi Healing Lodge in Crane River; and the Willow Cree Healing Lodge in Saskatchewan. Each of these is focused on healing of Aboriginal men.

The Correctional Service of Canada (CSC) has stated that the healing lodge approach has now 'found its way into the halfway houses that the CSC supports'[157] such as the Waseskun Healing Centre, an hour from Montreal. This Centre provides residential therapy for men and women referred from Aboriginal communities, and from prisons and federal penitentiaries. Programming is informed by a community-based holistic healing philosophy that incorporates both western and traditional therapeutic approaches. It is built on the 'strong belief in the responsibility of Aboriginal communities to participate in the healing journey and reintegration of their members'.[158]

A review conducted by the Correctional Service Canada of three of the Aboriginal healing centres (Okimaw Ohci, Pì Sākāstìw Centre and the Stan Daniels Healing Centre) revealed that they yielded low recidivism rates amongst residents who had completed their sentence and returned to their communities.

The lesson learnt from Okimaw Ohci is that when a culturally sensitive approach to working with offenders is adopted, it has a beneficial impact, to both the prisoner and the community at large. When Indigenous women have the support of their communities they are able to heal and take their place within those communities. Being able to serve their sentence at Okimaw Ohci has meant that Canadian Indigenous women are less likely to re-offend after their release. They are:

> more prone to lead law abiding lives upon completing their residency requirements at the Lodge than was the case years earlier, when the federally sentenced women were far removed from their home territories and their communities were not part of their post-custodial release plans.[159]

The concept of healing has also underpinned approaches in Canada to addressing family violence and abuse in Aboriginal communities.[160]

- **New Zealand – Kia Piki Te Ora O Te Taitamariki, 'Strengthening Youth Wellbeing' and restorative justice approaches**

The New Zealand Ministry of Health in partnership with *Te Puni Kokiri* (the Ministry of Maori Development) and the Ministry of Youth Affairs have adopted a healing model to address Maori youth suicide.[161] A key consideration of the

157 *ibid*.
158 *ibid*.
159 LeClair, D. and Francis, S., *Okimaw Ohci Healing Lodge Alternative Dispute Resolution Creating New Approaches through Institutional Dynamics*. Corrections Canada http://www.csc-scc.gc.ca/text/forum/rjweek/aborig/okimaw_e.shtml.
160 See for example: the *Ontario Aboriginal Healing and Wellness Strategy*: online at www.ahwsontario.ca/ and the programs supported by the Aboriginal Healing Foundation to address the legacy of physical and sexual abuse in the residential school system: information online at: www.ahf.ca/.
161 New Zealand Ministry's of Youth Affairs, Health and Maori Development, *Kia Piki Te Ora O Te Taitamariki – Strengthening Youth Wellbeing*, New Zealand Government, Wellington, 1999.

'Strengthening Youth Wellbeing' strategy is the link between youth suicide and the effects of loss of Maori identity and culture. Consequently, a cornerstone to this strategy is the strengthening of Maori culture through the use of traditional healing practices, acknowledging the impacts of colonisation on Maori culture, the use of Elders and the Maori community in supporting its young people.

This strategy provides a holistic response, incorporating the spiritual, social, mental and emotional and physical[162] to the suicide prevention needs of Maori young people. This style of intervention that incorporates the whole of community in its response is very closely linked to the framework of restorative justice.

Another key component of the youth suicide prevention strategy is 'improving support for 'by Maori for Maori' service providers and programs'.[163] This component recognises the importance of building on and harnessing the capacity of Indigenous people to address issues of suicide prevention.

In a criminal justice specific context, New Zealand has also adopted restorative justice approaches, such as conferencing, diversionary programs and community-based orders to deal with some offences committed by juveniles and adults.[164] Conferencing in particular involves the victim, the offender and their supports. The conference allows the victim and offender to discuss the crime, the effect it had on the victim and the offender openly accepting responsibility for the crime in the presence of the victim. Such models of restorative justice have the potential for healing to take place as a result of the offender understanding their own behaviour and accepting responsibility.

- **South Australia – Sacred Site Within Healing Centre**

In 1993, Rosemary Wanganeen established the Sacred Site Within Healing Centre in Adelaide. Sacred Site provides grief and loss counselling services to Indigenous people, as well as making presentations and conducting training with government departments and community organisations on the effects in Indigenous communities of unresolved grief and trauma.

Sacred Site was established due to concerns that mainstream counselling services were not appropriate in addressing the grief and loss of Indigenous people. This was identified by Rosemary through her involvement in the Royal Commission into Aboriginal Deaths in Custody. An underpinning belief of the Sacred Site program is that Indigenous peoples' unresolved grief is a major contributing factor to the range of social and health issues which exist in Indigenous communities today.

Healing strategies used at Sacred Site seek to:

- Create an awareness about the impact of losses and the unresolved grief that results;
- Create and develop grieving ceremonies;
- Recreate women's business and ceremonies;

162 *ibid.,* p11.
163 *ibid.,* p12.
164 Miers, D., *An International Review of Restorative Justice*, Crime Reduction Research Series Paper 10, Home Office, UK, 2001, p68.

- Recreate men's business and ceremonies; and
- Recreate rites of passage for young people.[165]

Overall, Sacred Site attempts to assist Indigenous people understand their grief and loss in a holistic sense which includes the effects of colonisation. The program also aims to assist people working with Indigenous people to understand issues of grief and loss. To this end, workshops have been run for prison staff working in Adelaide prisons. The program has not yet been provided to Indigenous prisoners.

• Victoria and New South Wales – Marumali Program

The *Marumali Program* in Victoria, is an Indigenous counsellor training program specifically targeted at Aboriginal health workers.[166] *Marumali* is delivered by Aboriginal people for Aboriginal people, and focuses on healing and self harm. The workshops are presented in a culturally appropriate forum enabling participants to discuss issues such as the effects of colonisation, and the grief and loss associated with the Stolen Generations.[167] One workshop was held in 2003 and another is planned for 2004.

The founder of *Marumali*, Ms Lorraine Peeters, describes the program as follows:

> Survivors of removal policies… have existed in an environment of sustained assault on identity and culture, and enduring grief, loss and disempowerment. As survivors of removal policies struggle to heal from these past wrongs, we offer a pathway to recovery, which unites mind, body and spirit.[168]

The strength of the *Marumali Program* is that is based on culturally appropriate ways of dealing with the grief and loss experienced by Indigenous Australians in order to help them to heal.

• New South Wales – Yula Panaal Cultural and Spiritual Healing Program

The Yula Panaal Cultural and Spiritual Healing Program is run by Yulawirri Nurai (as discussed earlier in this chapter). In 2001 the Indigenous Land Corporation (ILC) purchased a 50 acre property, Yula Panaal, at Kywong for Yulawirri Nurai. The property was acquired for the purpose of it becoming an accommodation facility/healing centre for Aboriginal women exiting the NSW prison system. It is also anticipated, the centre, once operating, could be considered an alternative sentencing option for Aboriginal women instead of imprisonment.

Yula Panaal is based on the Indigenous Canadian Okimaw Ohci Healing Centre in Saskatchewan, Canada. While using the Okimaw Ohci model as the basis for Yula-Panaal, it is intended that Australian Indigenous traditions and spirituality will be the focal point of the centre. However unlike Okimaw Ochi, Yula Panaal will provide a haven for women post-release instead of being a correctional

165 Wanganeen, R., *Aboriginal Cultural Awareness Program: Using loss and unresolved grief*, Sacred Site Within Healing Centre, p32.
166 Cornwall, A., *Restoring Identity – Final Report,* Public Interest Advocacy Centre, Sydney, 2002, p30.
167 Correspondence received from Minister for Corrections (Victoria), 31 October 2003.
168 Cornwall, A., *Restoring Identity – Final Report, op.cit*.

facility. As with the Canadian model, Elders will play a central role in the restorative process, teaching residents the importance of their cultural heritage, spirituality and traditions. They will focus on the importance of role of women in their communities.

Since 2001 Yulawirri Nurai has been maintaining the property with a series of grants. However, it has yet to receive funding which will allow them to commence operating as a post-release accommodation option for Indigenous women. They have applied to various State and Commonwealth agencies for funding to be able to commence operations but have been rejected on a range of grounds.

The reasons given by funding bodies for declining Yulawirri Nurai's funding submissions range from 'insufficient information provided by the submission', to not 'fitting the funding program's criteria'. Some rejections stated that there was not sufficient proof of need provided by the submission, with others claiming an overwhelming response to the call for submissions, meaning competition was fierce for funding and those not meeting the funding guidelines exactly were not considered.

While Yulawirri Nurai does not intend for Yula Panaal to be a correctional facility like Okimaw Ohci, they do intend it to be a place of healing for women affected by the criminal justice system. They want to establish a place of healing for Aboriginal women after their release from prison, to restore their spiritual and physical well-being so that the women can take up their place within their families and communities. With the support of Elders, the women will learn the importance of tradition, history, language and ceremony. Yulawirri wants to draw on the positive experiences of the Canadian model, to establish a ground-breaking approach to post-release care in Australia.

Attempts by Yulawirri Nurai to receive funding to trial this initiative continue, with no success at the time of writing. It has now been over three years since the initiative was first proposed and since the land for the centre was purchased. It remains a matter of great concern to my office that funding has not been forthcoming, either through the New South Wales government or co-funded with the federal government. This is particularly so given the potentially ground-breaking nature of this initiative.

Conclusion

The traditional approach to distributing available funding for programs and services is dictated by an economy of scale. This impacts negatively on Indigenous women as it delivers minimum resources to a population within the community that has a high level of need. Given that Indigenous women are manifestly the smallest population in the Australian prison system, it is somewhat understandable that they are the group with the least amount of resources directed towards them. However it is precisely this lack of direct resources that goes someway to maintaining Indigenous women's distinct disadvantage in society.

The research undertaken by the Social Justice Unit was in response to a number of concerns raised in the *Social Justice Report 2002,* namely that there was little being done by governments and the community sector to address the

concerns confronting Indigenous women post-release. Encouragingly, we learnt of some ground-breaking approaches being undertaken by some state governments and the community sector. The examples of good practice and innovative initiatives being developed by government and community sector need to be encouraged and the experiences shared with other jurisdictions. On the downside however, that there were only a handful of initiatives only served to highlight how much more work there is to be done.

In acknowledging the importance of the intra-State relationships between government departments and community organisations, it also follows that there must be a co-ordinated approach at the national level. The Council of Australian Governments (COAG) is perhaps best placed to ensure that national standards and benchmarks for reducing the over-representation of Indigenous women in the criminal justice system specifically and Indigenous people generally are developed and implemented.

Regarding Indigenous women with humanity, dignity and respect is crucial to well-being. One step towards this can be made by ensuring Indigenous women have the freedom of choice to access support services should they choose to, both during imprisonment and post-release; to access accommodation that is appropriate to their requirements; and to provide health and other community support services that meet their needs as Indigenous women.

In order to address these issues, I make the following recommendations.

Recommendation 1

That each State and Territory designates a coordinating agency to develop a whole of government approach to addressing the needs of Indigenous women in corrections. The Department of Justice or Attorney-General's Department would appear to be the most appropriate department for this role. The objective should be to provide a continuity of support for Indigenous women from the pre-release through to the post-release phase.

Recommendation 2

That a National Roundtable be convened to identify best practice examples of coordinating pre and post release support for Indigenous women exiting prison. The roundtable should involve Indigenous women, service providers, relevant research institutes and government. Specific focus should also be given to healing models.

Chapter 3

Implementing new arrangements for the administration of Indigenous affairs

In early 2004, the Federal Government announced that it was introducing significant changes to the way that it delivers services to Indigenous communities and engages with Indigenous peoples. It announced that the Aboriginal and Torres Strait Islander Commission (ATSIC) and its service delivery arm, Aboriginal and Torres Strait Islander Services (ATSIS), would be abolished. Responsibility for the delivery of all Indigenous specific programs would be transferred to mainstream government departments. It further announced that all government departments would be required to coordinate their service delivery to Indigenous peoples through the adoption of whole of government approaches, with a greater emphasis on regional service delivery. This new approach is to be based on a process of negotiating agreements with Indigenous families and communities at the local level, and setting priorities at the regional level. Central to this negotiation process is the concept of mutual obligation or reciprocity for service delivery.

These changes have become known as 'the new arrangements for the administration of Indigenous affairs'. The Government began to implement these changes from 1 July 2004. It will be some time, however, before they are fully in place and operational. At present, the new arrangements relate primarily to the delivery of services at the federal level. However, the new arrangements are closely linked to the commitments of all Australian governments through the Council of Australian Governments (or COAG). Accordingly, it can be anticipated that the new arrangements at the federal level are likely to form the basis of inter-governmental efforts to implement COAG's commitments to Indigenous peoples over the coming years.

This chapter considers the preliminary implications of the new arrangements. Since commencing my term as Social Justice Commissioner, I have indicated to governments and to Indigenous peoples that my office will closely monitor the implementation of the new arrangements. I intend that such monitoring will be ongoing given the scope of change being introduced and the potentially wide ramifications of them to Indigenous peoples.

Given the short timeframe in which the new arrangements have been in place, the purpose of this chapter is to identify the main issues that need to be addressed by the Government in implementing the new arrangements.

Part one of the chapter provides an overview of the new arrangements as well as of the factors that led to them being introduced. This material is supported by Appendix One of the report. Part two of the chapter then makes a number of comments about the theory underpinning the new arrangements and practical issues relating to its implementation to date. It also identifies a number of challenges that must be addressed for the new arrangements to benefit Indigenous peoples and communities.

The chapter makes recommendations where there is a need for clear guidance for the process, and otherwise indicates a range of actions that my office will follow up on in monitoring these arrangements over the coming twelve months and beyond.

In preparing this analysis, my office specifically requested information on issues related to the new arrangements. I wrote to each Federal Government department, State and Territory Government and ATSIC Regional Council as well as to the National Board of ATSIC to seek their views in relation to a number of issues about the new arrangements and to obtain information that is not otherwise readily available publicly. I also conducted consultations across Australia with Indigenous communities, Community Councils and organisations, ATSIC Regional Councils as well as with Ministers, senior bureaucrats at the state, territory and federal level, and with staff within the new regional coordination centres who will be implementing these changes.

Part 1: What are the new arrangements for the administration of Indigenous affairs?

There has been a growing momentum over the past two years to change the way governments interact with, and deliver services to, Indigenous people and communities. This culminated with the introduction of the new arrangements for the administration of Indigenous affairs at the federal level from 1 July 2004. This section provides an overview of key developments over the past two years that have shaped the Government's announced changes and then describes the new arrangements and how they are intended to operate. Appendix One to this report provides extracts from key documents which provide further detail about these developments.

Events leading up to the introduction of new arrangements for the administration of Indigenous affairs, 2002-2004

There are three main, inter-related developments that have influenced the policy direction of the Government and contributed to the introduction of the new arrangements. These are:

- the focus and scrutiny on the role and performance of ATSIC;
- progress in implementing the commitments of COAG, particularly through the whole of government community trials (COAG trials); and

- an emphasis on change in the Australian Public Service to reinvigorate public administration and improve service delivery.

a) The role and performance of ATSIC

Much of the focus on Indigenous issues in 2003 centred on the performance of ATSIC and proposals for reforming its structure and functions.

The Government announced a review of the role and functions of ATSIC in November 2002. In doing so, the Minister for Immigration and Multicultural and Indigenous Affairs (Minister for Indigenous Affairs) stated the commitment of the Government to 'explore the potential for more effective arrangements for ATSIC at the national and regional level' with a 'forward looking assessment which addresses how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programmes to assist them'.[1]

The ATSIC Review Team conducted consultations throughout 2003 and released a discussion paper in June 2003. As noted in Appendix One, the Review Team's Discussion Paper found widespread support for the continuation of a national representative Indigenous body but dissatisfaction with the performance of ATSIC. The Review Team's Discussion Paper canvassed a variety of options for achieving a greater emphasis on regional need and participation of Indigenous people at the local level.

At the same time as the ATSIC Review was taking place, there were ongoing debates between the Government and the ATSIC Board about the corporate governance structures and accountability of ATSIC. While the Government initially sought to address their concerns through the introduction of Directions under the ATSIC Act, they were not satisfied with the responsiveness of ATSIC to this. As a consequence, the Government announced on 17 April 2003 that it had decided to create a new executive agency to manage ATSIC's programs in accordance with the policy directions of the ATSIC Board.[2]

The newly created Aboriginal and Torres Strait Islander Services (ATSIS) commenced operations on 1 July 2003. The Minister noted that its creation was to be an 'interim' measure pending the outcomes of the ATSIC Review.

In November 2003, the ATSIC Review Team released its final report, *In the hands of the regions – a new ATSIC*. The report found that:

> ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and to be an agent for positive change in the development of policy and programs to advance the interests of Aboriginal and Torres Strait Islander Australians.[3]

---

1 Ruddock, P. (Minister for Indigenous Affairs), *ATSIC Review Panel Announced*, Media Release, 12 November 2002.

2 For an overview of the directions see: ATSIC, *Annual Report 2002-03*, ATSIC Canberra 2003, pp10-11, 17-18.

3 Hannaford, J., Huggins, J. and Collins, B., *In the hands of the regions – Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra 2003 (Herein ATSIC Review Report), p24 and Recommendation 2.

They also concluded that ATSIC 'is in urgent need of structural change' and that it:

> needs the ability to evolve, directly shaped by Aboriginal and Torres Strait Islander people at the regional level. This was intended when it was established, but has not happened. ATSIC needs positive leadership that generates greater input from the people it is designed to serve. One of its most significant challenges is to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations are met. ATSIC also has to operate in a fashion that engages the goodwill and support of the broader community.[4]

The Review Team identified the need to improve the connection between ATSIC's regional representative structures and national policy formulation processes:

> As it currently operates, the review panel sees ATSIC as a top down body. Few, if any, of its policy positions are initiated from community or regional levels. The regional operations of ATSIC are very much focused on program management. To fulfil its charter, engage its constituency and strengthen its credibility, ATSIC must go back to the people. The representative structure must allow for full expression of local, regional and State/Territory based views through regional councils and their views should be the pivot of the national voice.[5]

The Report also identified significant challenges for the Government in the delivery of services to Indigenous peoples. The report stated that:

> mainstream Commonwealth and State government agencies from time to time have used the existence of ATSIC to avoid or minimise their responsibilities to overcome the significant disadvantage of Aboriginal and Torres Strait Islander people. Because public blame for perceived failures has largely focused, fairly or unfairly, on the Aboriginal and Torres Strait Islander Commission, those mainstream agencies, their ministers and governments have avoided responsibility for their own shortcomings.[6]

There was significant evidence for this finding contained in the 2001 *Report on Indigenous funding* by the Commonwealth Grants Commission. That report had argued that our federal system of government obscures the responsibilities of different levels of government and has led to cost-shifting between government departments as well as across different governments. When combined with a lack of accessibility of mainstream government programs to Indigenous peoples, they argued that this has placed too much burden on Indigenous specific, supplementary funding mechanisms such as ATSIC. Ultimately, the Commonwealth Grants Commission recommended that the following principles guide service delivery to Indigenous peoples to ensure that programs better aligned funding with need:

4 *ibid.,* p5.
5 *ibid.,* p32.
6 *ibid.,* p30.

- the full and effective participation of Indigenous peoples in decisions affecting funding distribution and service delivery;
- a focus on outcomes;
- ensuring a long term perspective to the design and implementation of programs and services, thus providing a secure context for setting goals;
- ensuring genuine collaborative processes with the involvement of Government and non-Government funders and service deliverers to maximise opportunities for pooling funds, as well as multi-jurisdictional and cross-functional approaches to service delivery;
- recognition of the critical importance of effective access to mainstream programs and services, and clear actions to identify and address barriers to access;
- improving the collection and availability of data to support informed decision-making, monitoring of achievements and program evaluation; and
- recognising the importance of capacity building within Indigenous communities.[7]

The ATSIC Review Team referred to these findings and principles as 'going to the heart of ATSIC's structure and the most appropriate way of delivering government programs and services to Indigenous Australians'.[8]

The ATSIC Review Team made 67 recommendations which broadly address issues of the relationship between ATSIC and Indigenous peoples, the Federal Government, the States and Territories, and between its elected and administrative arms.

b) Implementing the commitments of COAG

While the ATSIC Review progressed, all Australian governments continued to implement the commitments that they have made through COAG. Of particular importance in terms of the new arrangements has been the progress made in 2003 and 2004 in the eight COAG whole of government community trial sites. The structures of the new arrangements and the philosophy that underpins them can be seen to have been directly derived from the COAG trials.

The trials have seen governments working together, alongside Indigenous people and communities in the trial sites, with the goal of improving the coordination and flexibility of programs and service delivery so that they better address the needs and priorities of local communities.[9]

---

7 Commonwealth Grants Commission, *Report on Indigenous funding*, CGC, Canberra 2001,ppxviii-xix.

8 Hannaford, J., Collins, B. and Huggins, J., *Review of the Aboriginal and Torres Strait Islander Commission – Public Discussion Paper*, June 2003, p15.

9 Indigenous Communities Coordination Taskforce, *Imagine What Could Happen If We Worked Together: Shared Responsibility and a Whole of Governments Approach,* Conference Paper – The Native Title Conference, Alice Springs, 3 June 2003, www.aiatsis.gov.au/rsrch/ntru/conf2003/papers/hawgood.pdf, 24 December 2003.

The objectives of the COAG trials are to:

- tailor government action to identified community needs and aspirations;
- coordinate government programmes and services where this will improve service delivery outcomes;
- encourage innovative approaches traversing new territory;
- cut through blockages and red tape to resolve issues quickly;
- work with Indigenous communities to build the capacity of people in those communities to negotiate as genuine partners with government;
- negotiate agreed outcomes, benchmarks for measuring progress and management of responsibilities for achieving those outcomes with the relevant people in Indigenous communities; and
- build the capacity of government employees to be able to meet the challenges of working in this new way with Indigenous communities.[10]

Overall, the broader policy context for the COAG trials has been the Federal Government's emphasis on mutual obligation and the responsibility of all players (government, communities, families and individuals) to address issues of social and economic participation.

The philosophy that underpins the trials is 'shared responsibility - shared future'. This approach 'involves communities negotiating as equal parties with government'[11] and acknowledges that the wellbeing of Indigenous communities is shared by individuals, families, communities and government. All parties must work together and build their capacity to support a different approach for the economic, social and cultural development of Indigenous peoples. This partnership approach is formalised in each trial site through the negotiation of a *Shared Responsibility Agreement* (SRA) between governments and Indigenous peoples.

The *Social Justice Report 2003* provided a detailed overview of progress in the eight trial sites up to December 2003. My predecessor as Social Justice Commissioner commented of the trials:

> I have noticed an air of enthusiasm and optimism among government departments about the potential of the trials. Government departments are embracing the challenge to re-learn how to interact with and deliver services to Indigenous peoples. There are no illusions among government departments that the trials are as much about building the capacity of governments as they are about building the capacity of Indigenous communities.

10 Indigenous Communities Coordination Taskforce, *Trial Objectives*, online at: www.icc.gov.au/communities/objectives/, (29 October 2003).

11 Hawgood, D., *Hansard – House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs*, 13 October 2003, p1294.

> Through the active involvement of Ministers and secretaries of federal departments in the trials, a clear message is being sent through mainstream federal departments that these trials matter and that government is serious about improving outcomes for Indigenous peoples. Even at this preliminary stage, this is a significant achievement for the trials. ATSIC have stated that to date 'there has been clear success through improved relationships across governments at trial sites'.
>
> Governments have not turned up in Indigenous communities with pre-determined priorities and approaches… the initial stages have involved building up trust between governments and Indigenous peoples. This has in turn had an impact on relationships within Indigenous communities in some of the trial sites, with an increased focus from Indigenous communities on organising themselves in ways that facilitate dialogue with governments.[12]

While the COAG trials have been underway since 2002 in some sites, and 2003 in others, there has not been a formal evaluation of them as yet. The Indigenous Communities Coordination Taskforce, the body set up to coordinate Federal Government involvement in the COAG trials, released the Federal Government's evaluation framework for the trials in October 2003.[13] Rather than set out what was in place to monitor the trials, the framework set out the key priorities that should be addressed through such a framework once developed. It noted that the development of a simple tracking system was an urgent priority, and should enable governments to:

- provide data on trial site 'projects' and the ability to analyse and monitor these projects using a cross-government approach;
- document how agreement was reached on priorities with communities and the lessons learnt in that process;
- identify innovative and successful approaches and communicate them across other regions; and
- provide feedback to all other parts of the bureaucracies about the implications of new approaches for Indigenous specific and mainstream programs.[14]

A case study of the COAG trials published in April 2004 also stated that 'evaluation of the trials would be premature at this stage'.[15] It noted however, that a significant learning from the trials was the importance of leadership through the Australian Public Service in embedding the changes achieved and to ensure that working in a whole of government way becomes the norm.[16] Such leadership

12 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, HREOC Sydney 2004, p42.

13 Indigenous Communities Coordination Taskforce, *Shared Responsibility Shared Future – Indigenous whole of government initiative: The Australian government performance monitoring and evaluation framework*, DIMIA Canberra 2003, available online at: www.icc.gov.au.

14 *ibid.,* p6.

15 Management Advisory Committee, *Connecting Government – Whole of government responses to Australia's priority challenges,* Australian Public Service Commission, Canberra 2004, p158.

16 *ibid.,* p162.

and focus has been provided at the federal level through the establishment of a central coordinating agency (the Indigenous Communities Coordination Taskforce), a Ministerial Taskforce to oversee the process and the convening of a Secretaries Group of departmental heads. These processes have been carried over into the new arrangements in a revised form.

Despite the absence of any formal evaluation, the Government has continually stated that the new arrangements are based on the lessons learned from the COAG trials. This issue is discussed further at a later stage of the chapter.

At its meeting of 25 June 2004, COAG also endorsed a *National Framework of Principles for Government Service Delivery to Indigenous Australians*. This framework confirms, at the inter-governmental level, the principles which underpin the new administrative arrangements at the federal level (and which were developed through the COAG trials). The principles are divided into five thematic groups:

- Sharing responsibility;
- Streamlining service delivery;
- Establishing transparency and accountability;
- Developing a learning framework; and
- Focussing on agreed priority issues.[17]

The principles are set out in full in Appendix One to this report. Agreement to these principles suggests that there will be increased activity to coordinate Federal, State and Territory Government programs and service delivery in coming years. It can be anticipated that the new arrangements at the federal level will be a significant influence on the form of any broadly based inter-governmental coordination.

c) Public sector reform – 'connecting government'

The past eighteen months has seen a number of developments across the federal public sector which have placed increased emphasised on the importance of adopting 'whole of government' approaches and ensuring the effective implementation of government policy.

There has been an increased emphasis on improving the performance of the public sector through the adoption of more holistic processes for public administration. This has variously been described as a whole of government approach, 'joined up' government, or 'connecting government'. It seeks a better integration of policy development and service delivery processes, improved engagement with communities, the development of partnerships and a focus on implementation and achieving results.

Recent developments include the creation in 2003 of the Cabinet Implementation Unit in the Department of Prime Minister and Cabinet, which has a role in coordinating whole of government activity, and the announcement in November 2004 of the creation of a new Department of Human Services to integrate all income support programs formerly undertaken by 6 separate agencies.

17 Council of Australian Governments, *Communiqué*, 25 June 2004, Attachment B, available online at: www.coag.gov.au/meetings/250604/index.htm.

The movement towards whole of government approaches across the public service has not received much attention during debates about the introduction of the new arrangements. However, it is important as it places the changes to Indigenous affairs squarely within the broader context of change across the Australian Public Service.

In April 2004, the Management Advisory Committee to the Australian Public Service Commission released a report titled *Connecting government: Whole of government responses to Australia's priority challenges*. The report observes:

> Making whole of government approaches work better for ministers and government is now a key priority for the APS. There is a need to achieve more effective policy coordination and more timely and effective implementation of government policy decisions, in line with the statutory requirement for the APS to be responsive to the elected government. Ministers and government expect the APS to work across organisational boundaries to develop well-informed, comprehensive policy advice and implement government policy in a coordinated way.[18]

Whole of government is defined in this report as:

> [P]ublic service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, program management and service delivery.[19]

In launching the *Connecting Government* report, the Secretary of the Department of Prime Minister and Cabinet stated that 'Whole-of-government is the public administration of the future'. He noted that 'Most of the pressing problems of public policy do not respect organisational boundaries. Nor do most citizens, the subject of public policy'.[20]

In a later speech, he has described the movement towards a whole of government approach as a 'profound' change which could lead to a 'regeneration' of the public service and values which underpin it. He states:

> Regeneration, it seems to me, goes beyond familiar arguments about the need for public administration to embrace a process of continuous change to improve performance; to raise the productivity of the public sector; to increase the innovativeness of policy development; and to lift the efficiency, effectiveness and quality of service delivery. It is also about breathing new life into the values and virtues of public service... Regeneration… involves restructuring the organisational framework of public service and reviving its leadership culture.[21]

The *Connecting Government* report identifies a number of challenges in implementing a whole of government approach. As the Secretary of the

18 Management Advisory Committee, *op.cit.,* p2.
19 *ibid.,* p4.
20 Shergold, P. (Secretary, Department of the Prime Minister and Cabinet) *Connecting Government – Whole of government responses to Australia's priority challenges*, Launch Speech, Canberra, 20 April 2004, p1.
21 Shergold, P. (Secretary, Department of the Prime Minister and Cabinet) *Regeneration: New structures, new leaders, new traditions*, Speech, Institute of Public Administration Australia – National Conference, Canberra, 11 November 2004, p1.

Department of Prime Minister and Cabinet notes:

> A whole-of-government perspective does not just depend upon the development of policy in a 'joined-up' way or the delivery of policy in a 'seamless' manner. More importantly it depends upon the integration of the two. Operational issues matter. The development of policy and the planning of its delivery are two sides of the same coin... Good policy will always be undermined by poor implementation. Bad policy will always result if it is not informed by the operational experience of those who deliver programmes and services at the front desk, in the call centre or by contract management.
>
> A whole-of-government approach also requires knowledge of how a policy is likely to be perceived by those who are to be affected by it…
>
> The report does not believe that effective solutions lie in moving around the deckchairs of bureaucratic endeavour… Structures alone are not enough. While on occasion the re-ordering of administrative arrangements, and establishment of new bureaucracies, can help focus government on new and emerging issues, the solution to functional demarcations rarely lies in the structures of officialdom. Building new agencies may bring together diverse areas with a common interest and purpose but, in doing so, new silos will emerge...
>
> [The Report] reinforces the need to continue to build an APS culture that supports, models, understands and aspires to whole-of-government solutions. Collegiality at the most senior levels of the service is a key part of this culture. Leadership of the 'whole-of-government' agenda is vital. We are all responsible for driving cooperative behaviours and monitoring the success of whole-of-government approaches…
>
> The report also highlights the need for agencies to recruit and develop people with the right skills.[22]

The *Connecting Government* report was launched by the Secretary of the Department of Prime Minister and Cabinet less than a week after the announcement of the abolition of ATSIC and the introduction of the new arrangements. The Secretary acknowledged that the new arrangements for Indigenous affairs constitute 'the biggest test of whether the rhetoric of connectivity can be marshalled into effective action… It is an approach on which my reputation, and many of my colleagues, will hang'.[23]

He described the new arrangements as follows:

> No new bureaucratic edifice is to be built to administer Aboriginal affairs separate from the responsibility of line agencies. 'Mainstreaming', as it is now envisaged, may involve a step backwards – but it equally represents a bold step forward. It is the antithesis of the old departmentalism. It is a different approach, already piloted in a number of trial sites. Selected by the Council of Australian Governments (COAG), eight communities have revealed a glimpse of what can be achieved through collegiate leadership, collaborative government and community partnerships.

22 Shergold, P., *Connecting Government – Whole of government responses to Australia's priority challenges*, *op.cit.,* pp2-3.

23 *ibid.,* p4.

> The vision is of a whole-of-government approach which can inspire innovative national approaches to the delivery of services to indigenous Australians, but which are responsive to the distinctive needs of particular communities. It requires committed implementation. The approach will not overcome the legacy of disadvantage overnight. Indigenous issues are far too complex for that. But it does have the potential to bring about generational change.[24]

d) Summary

This section and Appendix One to the report provide an overview of the main developments in the lead up to the announcement of the introduction of new arrangements for the administration of Indigenous affairs. Eighteen months ago, the focus at the federal level was very much on reforming the role of ATSIC. The creation of ATSIS was intended as an interim measure to enable ATSIC to strengthen its role as the principle source of policy advice to the Government on Indigenous affairs. As the ATSIS CEO notes, however, ATSIS was tasked with progressing two agendas of the Government:

- to administer programs in accordance with the policies and priorities set by ATSIC and to assist ATSIC to develop a more strategic policy capacity in anticipation of a strengthened role for the Commission in the new arrangements that would flow from the ATSIC Review; and
- to advance the Government's own agenda for innovation and 'best practice' reforms, including coordination with other agencies, the provision of funding based on need and outcomes, and the development of new methods of service delivery.[25]

He notes that 'as the year progressed… Government policy developed to a point where the second agenda overtook and displaced the first' and culminated in the decision of 15 April 2004 'to abolish both ATSIC and ATSIS'[26] and to introduce new arrangements for the administration of Indigenous affairs.

This section also reveals the progressive locking into place of the Federal Government's approach to Indigenous affairs through the processes of COAG, the modelling of whole of government service delivery through the COAG trials and the subsequent movement of Indigenous affairs to the forefront of public sector administrative reform. These developments involve a range of commitments to Indigenous people and identify a number of challenges for government, which I will refer to later in the chapter.

---

24 *ibid.*

25 ATSIS CEO's report in Aboriginal and Torres Strait Islander Services, *Annual Report 2003-2004*, ATSIS Canberra 2004, p2.

26 *ibid.*

An overview of the new arrangements

This section provides an overview of the new arrangements announced by the Government on 15 April 2004 and how they have been put into place. It reproduces materials from the Government to provide its explanation of the new approach and their expectations of it. The next section then comments on the new arrangements and sets out a number of challenges relating to the proposed new approach.

On 15 April 2004 the Prime Minister and the Minister for Indigenous Affairs announced that the Government intended to abolish ATSIC and ATSIS and embark upon new arrangements for the administration of Indigenous affairs at the federal governmental level. The Prime Minister announced that as a result of the examination by Cabinet of the ATSIC Review report, as well as an extensive examination of Indigenous affairs policy:

> when Parliament resumes in May (2004), we will introduce legislation to abolish ATSIC… Our goals in relation to Indigenous affairs are to improve the outcomes and opportunities and hopes of Indigenous people in areas of health, education and employment. We believe very strongly that the experiment in separate representation, elected representation, for Indigenous people has been a failure…
>
> we've come to a very firm conclusion that ATSIC should be abolished and that it should not be replaced, and that programmes should be mainstreamed and that we should renew our commitment to the challenges of improving outcomes for Indigenous people in so many of those key areas.[27]

Details about the new arrangements have progressively been released in the months since this announcement.[28] The various elements of the new arrangements are summarised in Table 1 below.

Table 1: Summary of the new arrangements for the administration of Indigenous affairs

On 15 April 2004, the Government announced that it intended to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC). The National Board of Commissioners would be abolished from 30 June 2004 and the Regional Councils from 30 June 2005. ATSIC's administrative agency, Aboriginal and Torres Strait Islander Services (ATSIS), would also be abolished.

In its place, the Government announced that it would introduce new arrangements for the administration of Indigenous affairs. This involves redesigning the machinery of government and creating new structures to operate in a 'whole of government' manner. The new arrangements are intended to consist of the following elements.

27 Howard, J. (Prime Minister) *Transcript, Joint Press Conference with Senator Amanda Vanstone,* Parliament House, Canberra, 15 April 2004, pp1-2.

28 For a detailed overview see: Office of Indigenous Policy Coordination, *New Arrangements in Indigenous Affairs,* Department of Immigration and Multicultural and Indigenous Affairs, Canberra 2004, p4. Online at: www.oipc.gov.au.

- ***The transfer of Indigenous specific programs to mainstream government departments and agencies*** – Programs administered by ATSIS have been transferred to mainstream government departments (with the exception of a few programs that involve the management of ATSIC's assets, which cannot be transferred without the passage of the ATSIC Amendment Act). Funding for these programs is quarantined for Indigenous specific services, which will remain in place.
- ***Improved accountability for mainstream programs and services*** – Mainstream services are also expected to be more accessible to Indigenous peoples. The Government has indicated that 'robust machinery' will be introduced to make departments more accountable for their performance and accept their responsibilities.
- ***The establishment of the Ministerial Taskforce on Indigenous Affairs*** – Chaired by the Minister for Indigenous Affairs and consisting of Ministers with program responsibilities for Indigenous affairs, the Taskforce is intended to provide high-level direction to the Australian Government on Indigenous policy. It will report to Cabinet on priorities and directions for Indigenous policy, as well as report to the Expenditure Review Committee of Cabinet on program performance and the allocation of resources across agencies.
- ***The establishment of the Secretaries Group on Indigenous Affairs***– Composed of all the Australian Government Departmental Heads and chaired by the Secretary of Prime Minister & Cabinet, it will support the Ministerial Taskforce and report annually on the performance of Indigenous programs across government.
- ***The establishment of a National Indigenous Council*** – An appointed council of Indigenous experts to advise the Government on policy, program and service delivery issues, the Council will meet at least four times per year and will directly advise the Ministerial Taskforce. It is not intended to be a representative body, and members have been chosen for their individual expertise.
- ***The creation of an Office of Indigenous Policy Coordination*** **(OIPC)** – Located within the Department of Immigration and Multicultural and Indigenous Affairs, it will coordinate Federal Government policy development and service delivery in Indigenous affairs on a whole of government basis.
- ***Movement to a single budget submission for Indigenous affairs*** – Under the new arrangements, all departments will contribute to a single, coordinated Budget submission for Indigenous-specific funding that supplements the delivery of programs for all Australians.
- ***The creation of regional Indigenous Coordination Centres*** **(ICC's)** – Will be part of the OIPC and will coordinate the service-delivery of all federal Departments at the regional level, as well as negotiate agreements with Indigenous peoples and communities at the regional and local level. ICC's have been described as 'the Australian Government's presence on the ground' offering 'a simple, coordinated and flexible . . . service'.[29]
- ***The negotiation of agreements with Indigenous peoples at a regional and community level*** – The ICC's will negotiate *Regional Participation Agreements* setting out the regional priorities of Indigenous peoples, as well as *Shared Responsibility Agreements* at the community, family or clan level. These agreements will be based on the principle of shared responsibility and involve mutual obligation or reciprocity for service delivery.

29 Senator Vanstone, *Hansard – Senate*, 1 December 2004, p2.

- ***Support for regional Indigenous representative structures*** – The Government has indicated that it will look to support Indigenous representative structures at the regional level in place of ATSIC. Such structures may vary between regions. It is anticipated that ICC Managers would negotiate a *Regional Participation Agreement* outlining the priorities in that region with the representative body.
- ***A focus on implementing the commitments of the Council of Australian Governments (COAG)***) – The commitments of COAG to addressing Indigenous disadvantage will form the framework for the delivery of services and policy development on Indigenous affairs. The new approach also means working constructively with states, territories and local government in achieving a true 'whole of government' approach.
- ***Impact of changes on Torres Strait Islander peoples*** – The Torres Strait Regional Authority, which operates in the Torres Strait Islands region, is unaffected by the new arrangements. The Torres Strait Islander Advisory Board, which advises the Government on issues specific to Torres Strait Islanders on the mainland, will be abolished through the ATSIC Bill. The needs of Torres Strait Islanders living on the mainland are expected to be met through the operation of ICC's.

A detailed overview of the Government's announcements on each of these issues is provided in the chronology of events in Appendix One to this report. In essence, the new structures and approaches to be introduced through these arrangements can be grouped into six main components. They are:

- *The abolition of ATSIC and ATSIS*. The *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004* (Cth) was introduced to the Federal Parliament on 27 May 2004 to achieve this. It passed through the House of Representatives on 2 June 2004 but has not yet been passed by the Senate. Instead, the Bill was referred to an inquiry by the newly created Senate Select Committee on the Administration of Indigenous Affairs. The report of the Committee will be presented in March 2005. Unless and until the Bill is passed by the Senate, ATSIC continues to exist – albeit with few program responsibilities and limited funding. ATSIS continues to exist in a skeleton form to assist ATSIC in the administration of programs that cannot be disbursed until the passage of the ATSIC Bill.
- *The transfer of Indigenous specific programs to mainstream departments.* The Government noted on 30 June 2004 that 'more than $1billion of former ATSIC/ATSIS programs have been transferred to mainstream Australian Government agencies and some 1300 staff commence work in their new Departments as of tomorrow'.[30] The emphasis of this mainstreaming is on better coordination of programs and services within and between agencies, and the development

30 Vanstone, A. (Minister for Indigenous Affairs), *Australian Government changes to Indigenous affairs services commence tomorrow*, Press Release, 30 June 2004, p1.

of a coordinated and flexible approach to resource allocation on Indigenous issues. This is intended to involve developing ways to use funds more flexibly – for example, by pooling funds for cross-agency projects or transferring them between agencies and programs so they better address the needs and priorities of communities. The single budget submission for Indigenous affairs will promote this approach.

- *Leadership and strategic direction from a 'top down' and 'bottom up' process.* The new arrangements are driven from the 'top down' by the Ministerial Taskforce, National Indigenous Council, Secretaries Group and Office of Indigenous Policy Coordination (OIPC). They are also informed by a 'bottom up' approach through the regional ICC's (as managed by the OIPC) and the intended involvement of Indigenous peoples at the community level (through Shared Responsibility Agreements) and on a regional basis (through regional representative structures and Regional Participation Agreements). The Government has stated that 'Leadership, strategy and accountability will be provided at the top of the structure, but these same qualities will be emphasised at the local and regional level in active partnership with Indigenous people'.[31]
- *Coordination at the national and regional levels.* The OIPC is intended to be the national level coordinator while each ICC is intended to be the community and regional level coordinator of all Australian government activity. OIPC will be responsible for coordinating whole of government policy, program and service delivery across the Australian Government; developing new ways of engaging with Indigenous people at the regional and local level; brokering relationships with other levels of government and the private sector; reporting on the performance of government programs and services for Indigenous people to inform policy review and development; managing and providing common services to the ICC network; and advising the Minister and Government on Indigenous issues.[32] The OIPC also has a state office in each State and Territory to coordinate activities at the state level.

  ICCs will coordinate the service-delivery of all federal departments at the regional level. They are intended to provide Indigenous people and communities with a single point of contact with Australian government departments. The Government has described each ICC as a whole of

31 Office of Indigenous Policy Coordination, *New Arrangements in Indigenous Affairs, op.cit.*, p2.
32 *ibid.,* p7.
33 *ibid.*

Australian government office, with staff from multiple agencies, headed by a manager who is the focal point for the engagement with stakeholders and who is responsible for coordinating the efforts of all agencies in their dealings with clients on a whole of government basis.[33]

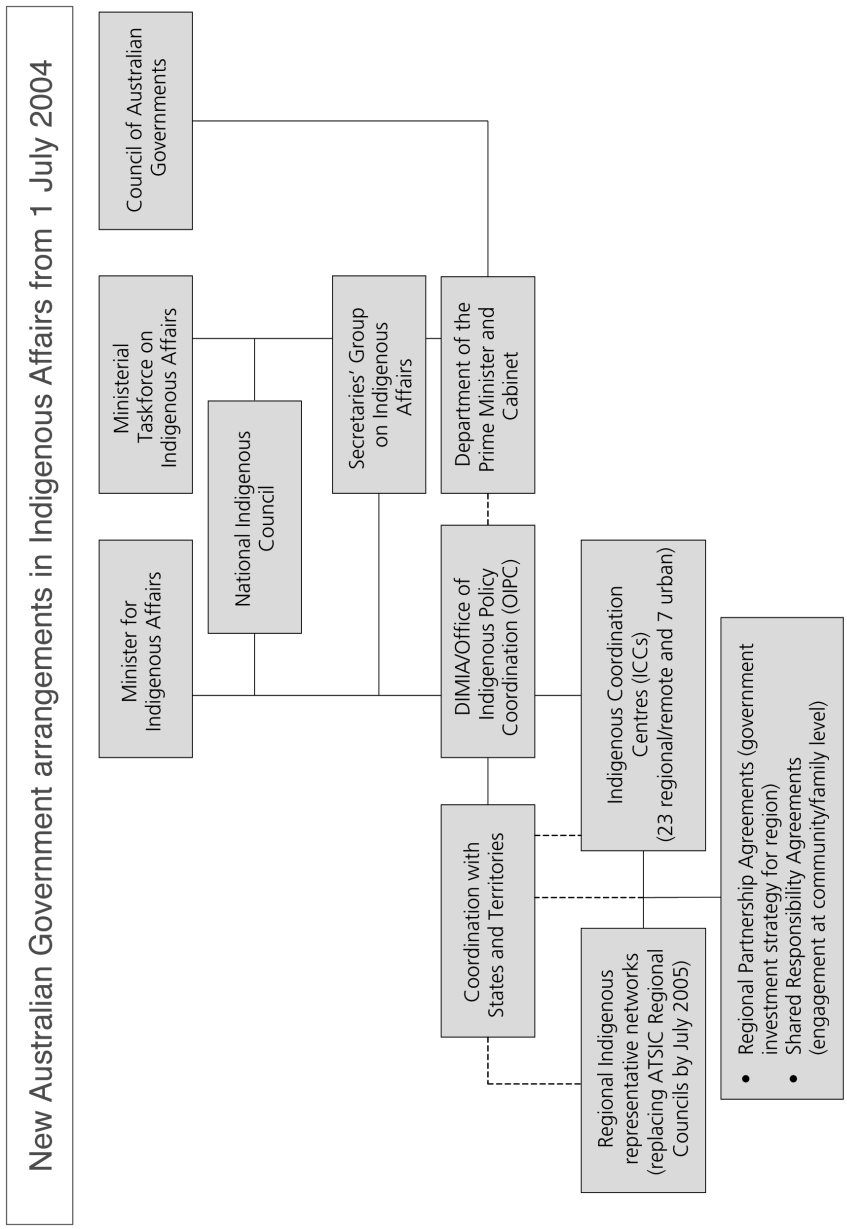
- *Participation and engagement of Indigenous peoples.* The Government states that 'better ways of representing Indigenous interests at the local level are fundamental to the new arrangements'.[34] ATSIC Regional Councils are intended to fulfill this role until their abolition on 30 June 2005. The Government then intends to work collaboratively with regional Indigenous representative structures. They have stated that 'During 2004–05 the Australian Government will consult Indigenous people throughout Australia, as well as State and Territory Governments, about structures for communicating Indigenous views and concerns to government and ensuring services are delivered in accordance with local priorities and preferred delivery methods'.[35] These regional structures will also negotiate with government on Regional Partnership Agreements (RPAs).

  The Government will also negotiate Shared Responsibility Agreements at the local level with Indigenous families, clans or communities. These agreements will 'set out clearly what the family, community and government is responsible for contributing to a particular activity, what outcomes are to be achieved, and the agreed milestones to measure progress. Under the new approach, groups will need to offer commitments and undertake changes that benefit the community in return for government funding'.[36]
- *Working collaboratively with the states and territories.* The Government acknowledges that to achieve a true whole of government approach it will need to work constructively with the States and Territories and local government. The Council of Australian Governments (COAG) and the commitments made through it, will remain the main strategic forum for advancing such collaboration.

34 *ibid.,* p17.
35 *ibid.*
36 *ibid.*

Figure 1 below shows how these components and new structures are intended to fit together.

Figure 1: New Australian Government arrangements in Indigenous affairs from 1 July 2004[37]



37 Diagram reproduced from Aboriginal and Torres Strait Islander Services, *Annual Report 2003-04*, ATSIS Canberra 2004, p14. See also: Office of Indigenous Policy Coordination, *New Arrangements in Indigenous Affairs, op.cit.,* p3.

The new arrangements are also underpinned by five guiding principles. The Government has described these as follows.

Table 2: Principles underpinning the new arrangements for Indigenous affairs[38]

1. Collaboration – All Australian Government agencies are required to work together in a coordinated way. This collaboration will be reflected in a framework of cooperative structures that stretch from top to bottom: from the Ministerial Taskforce and Secretaries' Group in Canberra to a network of regional offices around the nation. The foundation will be negotiated Framework Agreements, through which government and community work as partners to establish their goals and agree their shared responsibilities for their achievement.

Under the direction of the Ministerial Taskforce, agencies will also collaborate on the design of whole-of-government policy initiatives and proposals for the redirection of resources to priority areas and to ways of working that have demonstrated their effectiveness in achieving better outcomes for Indigenous people.

2. Regional need – The new mainstreaming will focus on regional need.

ICCs will work with regional networks of representative Indigenous organisations to ensure that local needs and priorities are understood. ATSIC Regional Councils will be consulted and, over time, ICCs will work in partnership with a cross-section of representative structures that local Indigenous people decide to put in place. Together they will shape Australian Government engagement and strategies in a region including Regional Partnership Agreements (RPAs) and Shared Responsibility Agreements (SRAs) at the community or family level.

Integration with the activities of State/Territory and local governments is also fundamental to achieving local outcomes and this is being pursued through bilateral agreements. In likelihood, there will be different consultative and delivery mechanisms negotiated in different States and Territories.

3. Flexibility – Program guidelines will no longer be treated as rigid rules, inhibiting innovation – though flexibility will not be introduced at the expense of due process.

Over time ways will be developed to allow funds to be moved between agencies and programs, to support good local strategies and whole-of-government objectives. Each year Ministers will bring forward a coordinated Budget submission for Indigenous-specific funding that supplements the delivery of programs for all Australians. The single Budget submission will be informed by experience at the regional and local level, advice from Indigenous networks and the professional expertise represented on the National Indigenous Council.

4. Accountability – Improved accountability, performance monitoring and reporting will be built into the new arrangements.

The Ministerial Taskforce, advised by the National Indigenous Council, will make recommendations to the Australian Government on priorities and funding for Indigenous Affairs. The Secretaries' Group will prepare a public annual report on the performance of Indigenous programs across government. OIPC will have a strong performance monitoring and evaluation role relating to the new whole-of-government arrangements.

38 Material reproduced from Office of Indigenous Policy Coordination, *New Arrangements in Indigenous Affairs, op.cit.,* pp5-6; and Shergold, P., *Connecting Government – Whole of government responses to Australia's priority challenges*, *op.cit.,* pp4-5.

Departmental Secretaries will be accountable to their portfolio Ministers and the Prime Minister for Indigenous-specific program delivery and cooperation with other parts of the Australian Government, State/Territory Governments and Indigenous communities, as part of their performance assessments. Indigenous organisations providing services will be required to deliver on their obligations under reformed funding arrangements that focus on outcomes.

5. Leadership – Strong leadership is required to make the new arrangements work, both within government and from the networks of representative Indigenous organisations, at regional and local levels.

Within the Australian Government, relevant Ministers and departmental heads will take responsibility, individually and collectively, at a national level for working with communities in a whole-of-government manner. ICC Managers will be responsible at the regional level.

The representative networks that Indigenous people decide to establish at the local and regional level will provide leadership and be accountable to local people. Where leadership capacity needs to be strengthened, the Australian Government will provide support.

The next section of the report considers the nature of the commitments that the Government has made through the introduction of these new arrangements and how they are going about implementing their commitments. It also identifies a number of challenges that must be addressed for these new arrangements to benefit Indigenous peoples and communities.

Part II: The implications of the new arrangements for the administration of Indigenous affairs

The new arrangements that have been announced by the Government for the administration of Indigenous affairs are complicated and wide-ranging. The Government began to implement the arrangements from 1 July 2004. It is clear that the various components of the new arrangements were not finalised at that time and have continued to be developed as the arrangements have been introduced. It will be some time before the machinery of government changes required by the Government's announcements are fully in place and it will be longer still until the changes impact at the community level.

Since commencing my term as Social Justice Commissioner, I have indicated to governments and to Indigenous peoples that my office will closely monitor the implementation of the new arrangements. I intend that such monitoring will be ongoing given the scope of change being introduced and the potentially wide ramifications of them to Indigenous peoples.

On this basis, in September 2004 my office specifically requested information on issues related to the new arrangements. I wrote to each Federal Government department, State and Territory Government and ATSIC Regional Council as well as to the National Board of Commissioners of ATSIC to seek their views in

relation to a number of issues about the new arrangements and to obtain information that is not otherwise readily available publicly.[39]

I also conducted consultations across Australia with a variety of Indigenous communities, organisations and community councils, ATSIC Regional Councils and Commissioners, as well as with Ministers and senior bureaucrats at the state, territory and federal level, and with staff within the new regional coordination centres who will be implementing the changes.[40] These consultations were preliminary in nature. From them I intended to gain a sense of what information was available in regions about the new arrangements as well as the initial response and concerns about the new processes.

This section of the chapter reflects on this material and identifies a number of issues and challenges that the new arrangements raise. It makes recommendations where there is a need for clear guidance for the process, and otherwise indicates a range of actions that my office will focus on specifically in monitoring these arrangements over the coming twelve months and beyond.

Before considering the specific challenges that are raised by the new processes which are to be set into place, I have a number of global comments about the implications of the Government's announcements and the implementation of them to date. These comments relate to the theory and objectives that underpin the new arrangements, as well as to practical matters relating to how the new arrangements have been implemented in the first few months.

Comments about the theory underpinning the new arrangements

- *The new arrangements contain a number of significant innovations for the delivery of federal programs and services*

The new arrangements will see the introduction of significant changes to the processes through which the Australian Government develops policy and programs and delivers services to Indigenous people and communities. The

39 I requested information from Federal Government agencies in relation to how departments engage with Indigenous communities and coordinate government activity; the accessibility of mainstream programs and coordination of such programs with Indigenous specific programs within and across departments; performance monitoring and evaluation processes (including how departments are linking their outcomes and outputs to the commitments of the Australian Government under COAG and Ministerial Council Action Plans through COAG); and practices for the recruitment and retention of Indigenous staff in the federal public service, as well as the use of identified criteria in recruiting staff. I requested information from State and Territory Governments about their relationship with ATSIC Regional Councils; how they intend to adopt a whole of government approach and coordinate with the new arrangements at the federal level; and performance monitoring processes, including how they link to the commitments made through COAG. I asked ATSIC Regional Councils about how the Federal Government had engaged with them since the announcement of the new arrangements and about their relationship with State and Territory Governments.

40 Consultations took place on the basis that people could speak openly about what was taking place without risk of being identified. For this reason, comments from particular consultations are referenced without details as to the identity of the person, location or date but rather grouped within the period over which the consultations were conducted. I am grateful to everyone who participated in these consultations and to the Associate Secretary of the Office of Indigenous Policy Coordination (OIPC) for agreeing that I could include staff from the OIPC and Indigenous Coordination centres in the consultations.

scope of this change is perhaps unprecedented in the administration of Indigenous affairs at the federal level. This reality has not been understood by many people to date.

As the Minister for Indigenous Affairs recently stated:

> A quiet revolution has been underway since 1 July 2004 involving a radical new approach... Nothing short of revolutionary reform is required if we are turn around the appalling indicators of Indigenous disadvantage and the sense of hopelessness that many Indigenous people face every day.[41]

The new arrangements contain a number of significant innovations for the delivery of federal programs and services.

First, the new arrangements compel engagement on Indigenous issues at the most senior levels of the government and public service. The main innovations supporting this are the establishment of the Ministerial Taskforce on Indigenous Affairs and the Secretaries Group on Indigenous Affairs to lead the process, as well as the introduction of a single budget submission for Indigenous Affairs.

These mechanisms provide leadership and unambiguous guidance to all public servants that addressing Indigenous disadvantage is no longer somebody else's problem (such as ATSIC), but rather is a routine responsibility of all public servants.

They also provide the potential to 'bust' through bureaucratic tangles where demarcations between programs and departments have in the past hindered results being achieved and innovative solutions being trialed. The Ministerial Taskforce and Secretaries Group have significant leverage in seeking to ensure that administrative barriers do not continue to defeat innovation or the adoption of more holistic responses to the needs of Indigenous people and communities.

Second, the new arrangements provide much potential for improving government coordination. The creation of Indigenous Coordination Centres, bringing together departments responsible for the delivery of mainstream and Indigenous specific programs in regional locations, as well as the creation of the Office of Indigenous Policy Coordination to provide national coordination are significant innovations.

In the past, government simply hasn't had the mechanisms to implement approaches based on regional need. Government programs tend to have been set up on a statewide basis rather than in regions, and many government departments have had limited or no presence outside of capital cities. The main finding of the Commonwealth Grants Commission's landmark Report on Indigenous Funding was the inability of government processes to identify or respond to regional need or to allocate funding on the basis of greatest need.

These inabilities have existed despite ATSIC Regional Councils having developed regional plans which seek to identify regional priorities and the ATSIC National Board and Regional Councils also having had decision making powers to allocate funding regionally. These decision making processes, however, have been limited to Indigenous-specific funds administered by ATSIC and lately by

41 Senator Vanstone, *Hansard - Senate*, *op.cit.,* p1.

ATSIS. Regional plans have also generally not been followed by mainstream departments and State or Territory Governments.

The existence of ICC's in regional areas, staffed by representatives of relevant government departments, provides a very practical step in seeking to overcome the problems that have existed up until now in this regard. The oversight role of the OIPC (and of the ICC Managers, who are OIPC staff) also provides a practical way of seeking to ensure consistency between regions as well as a focal point for sharing best practice and building on the success in individual regions. The interested gaze of the Ministerial Taskforce and the Secretaries Group will also encourage individual departments to work on a collegiate basis within the ICC structure.

The role of the OIPC at a national level is also significant. There has, in the past, been a variety of national offices to provide advice on Indigenous policy (often in conflict with ATSIC). The predecessors of the OIPC have not, however, had a role as wide-ranging as that of the OIPC nor the leverage to promote a more integrated approach to Indigenous service delivery between departments. The leverage of OIPC is drawn from its relationship to the Ministerial Taskforce and Secretaries Group, as well as its coordination role in ICC's.

Third, the new arrangements have the potential to address the longstanding problem of under-performance and inaccessibility of mainstream programs for Indigenous peoples. This is a clear objective of the new arrangements that have been set out by the Government in their announcements. The challenge of achieving this is discussed further below.

Fourth, the new arrangements, once implemented, also have the potential to provide workable solutions to the century old problem of delivering services in a federal system. This will depend, of course, not only on the successful implementation of the new arrangements federally but also their coordination with systems in the states and territories. This challenge is also discussed further below.

It is notable, however, that the principles that underpin the new arrangements at the federal level were recently adopted by *all* Australian Governments at the meeting of the Council of Australian Governments in June 2004. As set out in Appendix One, the *National framework of principles for government service delivery to Indigenous Australians* commit all governments to agree upon appropriate consultation and delivery arrangements between the Commonwealth and each State and Territory.

It is difficult to argue against the objectives that the new arrangements are designed to meet. They contain a number of machinery of government changes that, in theory, are innovative in how they seek to address longstanding difficulties of government service provision to Indigenous people and communities.

- *The new arrangements involve the making of significant commitments to Indigenous peoples*

These changes to the machinery of government are accompanied by significant commitments to Indigenous peoples.

At a general level, in announcing the new arrangements and the abolition of ATSIC the Minister for Indigenous Affairs stated that:

> The Government has been concerned for some time that while there has been progress that it has been too slow and a new approach is essential. The new approach is based on all of us accepting responsibility…
>
> For too long we have hidden behind Indigenous programmes and organisations… It is recognised that existing mainstream programmes need to perform better for Aboriginal people and we will therefore put in place robust machinery to ensure that mainstream agencies accept their responsibilities and are accountable for outcomes…
>
> Our focus will continue to be on better service and better outcomes for Indigenous people.[42]

In re-introducing the ATSIC Amendment Bill to Federal Parliament in December 2004, the Minister also stated that 'the amount of money can no longer be the benchmark – outcomes must be the measure'.[43]

The commitment to be held accountable for improving outcomes in addressing Indigenous disadvantage is supported by two main developments over the past year. First, the Government has identified as its priority tasks those issues that are included in the *National Reporting Framework for Overcoming Indigenous Disadvantage* as developed by the Steering Committee for Government Service Provision. The Government has also agreed to this framework and by doing so has provided a simple mechanism for measuring progress in addressing its commitments over time. Second, the newly constituted Ministerial Taskforce on Indigenous Affairs has adopted a Charter which contains the Government's 20-30 year vision.

This Charter is set out in full in Appendix One to this report. It states, in part, that:

> The Ministerial Taskforce will set the long term agenda, determining the Australian Government's vision for Indigenous affairs, in 20-30 years, and focussing urgently on the strategies that need to be put in place now to achieve improved outcomes, recognising that:
>
> - despite the significant commitment of governments of all persuasions over a long period, progress on key indicators of social and economic well being for Indigenous Australians has only been gradual; and
> - to make better progress there must be inter-generational change.
>
> The following statement encapsulates the Taskforce's long term vision for Indigenous Australians:
>
> > 'Indigenous Australians, wherever they live, have the same opportunities as other Australians to make informed choices about their lives, to realise their full potential in whatever they choose to do and to take responsibility for managing their own affairs'.

42 Vanstone, A. (Minister for Indigenous Affairs), *New service delivery arrangements for Indigenous Affairs*, Press Release, 15 April 2004, p1.

43 Senator Vanstone, *Hansard – Senate*, *op.cit.,* p2.

> The Ministerial Taskforce is determined to create the best possible policy environment in which this can be achieved.
>
> In determining key priorities for urgent action it will be guided by the Productivity Commission's Report on Overcoming Indigenous Disadvantage, commissioned by COAG, in particular it seven Strategic Areas for Action:
>
> - early child development and growth (prenatal to age 3);
> - early school engagement and performance (preschool to year 3);
> - positive childhood and transition to adulthood;
> - substance use and misuse;
> - functional and resilient families and communities;
> - effective environmental health systems;
> - economic participation and development.[44]

The next section of the report identifies the introduction of adequate monitoring and evaluation processes, as well as benchmarking to identify adequate rates of progress, as significant challenges to be faced under the new arrangements. These issues must be treated as fundamental components of the machinery of government if the new arrangements are to result in any practical improvements in the lives of Indigenous peoples.

At this point, however, I wish to acknowledge that sincere commitments have been made by the Government to address Indigenous disadvantage and are based on a frank acknowledgement that a continuation of previous approaches would not result in sufficient rates of change or improvement. Time will tell if these words can be turned into action and results.

- *The new arrangements are a continuation of the Government's approach to Indigenous affairs*

While the new arrangements involve significant and radical change to the processes of government, they remain entirely consistent with the Government's 'practical reconciliation' approach. The *Ministerial Taskforce Charter on Indigenous Affairs* makes this clear. It states:

> In announcing the new Indigenous affairs arrangements on 15 April 2004, the Prime Minister signalled that the Government's goals are 'to improve the outcomes and opportunities and hopes of Indigenous people in areas of health, education and employment.' The Prime Minister had previously committed the Government to addressing Indigenous family violence as a priority.
>
> The Ministerial taskforce will focus on practical measures such as these and other related issues such as economic development, safer communities, law and justice.
>
> However, the taskforce recognises the importance to Indigenous people of other issues such as cultural identity and heritage, language preservation, traditional law, land and 'community' governance.

44 Office of the Indigenous Policy Coordination, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs*, August 2004, pp14-17, paras 1, 2, 7, 8 and 11. Emphasis in original.

- These are issues on which Indigenous people themselves should take the lead, with government supporting them as appropriate.[45]

When asked why he considered ATSIC had failed, the Prime Minister stated that:

> it has become too preoccupied with what might loosely be called symbolic issues and too little concern with delivering real outcomes for Indigenous people… our greatest obligation is to give indigenous people a greater opportunity to share in the wealth and success and the bounty of this country, and plainly the arrangements that have existed in the past do not deliver that.[46]

Previous *Social Justice Reports* have expressed concern at the narrowness of the philosophy that underpins this approach and the distinction it creates between issues that have been termed practical as opposed to those described as symbolic.

I note that through the new arrangements, the Government has made commitments to work in partnership with Indigenous people and communities, including through regional representative structures and at the local level. The Government will also be advised by the National Indigenous Council, the terms of reference of which include alerting the Government to 'current and emerging policy, programme and service delivery issues' and promoting 'constructive dialogue and engagement between government and Aboriginal and Torres Strait Islander people, communities and organisations'.[47]

The relationship with the Government through these processes should not be limited only to those issues to which the Government is committed. They should enable a respectful exchange of views, including the identification of issues and priorities by Indigenous peoples which may differ from those identified by the Government. Time will tell whether the new arrangements operate in such a way, or alternatively whether they will result in a more constrained and limited policy framework.

- ***The new arrangements are based on lessons learned from the COAG trials. These lessons are preliminary and require ongoing consideration.***

The Government has stated that the new arrangements are based on 'the early learnings' from the COAG whole of government community trials as well as the principle findings of the ATSIC Review.[48] Key aspects of the new arrangements – for example, the Ministerial Taskforce; Secretaries Group; establishment of a central coordinating agency; and Shared Responsibility Agreements – have their origins in the COAG trials.

---

45 *ibid.,* paras 2-4.

46 Howard, J. (Prime Minister) *Transcript , Joint Press Conference with Senator Amanda Vanstone, op.cit.,* p2.

47 Gordon, S., *First meeting of the National Indigenous Council: A very good beginning*, Media Statement and Terms of Reference, 9 December 2004.

48 Office of the Indigenous Policy Coordination, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs*, *op.cit.,* p2.

The Office of Indigenous Policy Coordination states:

> The COAG Trials are continuing. However, there are a number of examples of lessons from the first eighteen months of the trials (ie, prior to the announcement of the new Indigenous Affairs arrangements in April 2004), including the need for:
>
> - strong, systemic and demonstrable leadership and commitment from the top of government and the bureaucracy;
>   - from the Australian Government's perspective, this was provided by COAG and the Secretaries Group.
> - more effective coordination arrangements to allow for a whole-of-government approach;
> - improved accountability, performance monitoring and reporting;
> - the development of new ways of engaging directly with indigenous Australians at the regional and local level to promote inclusiveness and avoid 'gate-keeping';
> - the development of government skills in whole-of-government approaches and improved engagement with indigenous Australians – building government capacity to work in a new way; and
> - more flexible and responsive funding arrangements.
>
> Other key lessons include:
>
> - effective implementation of shared responsibility principles is crucial if sustainable change is to be achieved;
> - the importance of building trust between government and community and following through on commitments;
> - the critical importance of building capacity and effective governance in communities;
> - the importance of striking a balance between driving change and allowing change to happen at an appropriate pace that will enable it to be sustainable; and
> - acknowledgement that sustainable change will only occur over the long term and the related need for government to commit to working with communities for the long term.[49]

These lessons are important. As noted above, they have provided guidance as to steps that can be taken to put a whole of government approach into operation.

The lessons are, however, preliminary and at a conceptual level. They indicate the key issues that must be addressed in implementing a whole of government approach. They do not provide solutions or proven approaches that can be applied to Indigenous communities across the country.

At the time that the new arrangements were announced there had not been any formal evaluation of the COAG trials. Indeed as recent as the end of 2003, the mechanisms necessary for such an evaluation process – including through the establishment of an integrated database – were still not in place.

49 Gibbons, W. (Associate Secretary, Office of Indigenous Policy Coordination) 'Re: New Arrangements for the Administration of Indigenous Affairs', *Correspondence to Social Justice Commissioner,* 22 December 2004, p1.

ATSIC expressed significant concern to the Social Justice Commissioner in 2003 about the absence of a monitoring framework for the trials. They stated:

> The Commission is particularly concerned that a comprehensive national evaluation strategy is not in place. This is likely to lead to unclear judgements later on, as the starting point for assessing change has not been clearly established. In addition, the Commission is concerned that there is no commitment to an independent evaluation of the initiative. The reliance on a systems-based internal evaluation strategy might not provide the most objective perspective on the successes and failures of the initiative, and may produce an inadequate basis upon which to make long term policy and program reforms.[50]

The Indigenous Communities Coordination Taskforce, the coordinating agency at the federal government level for the COAG trials, produced a draft document for consideration by the Secretaries Group in early 2004 – titled 'Lessons Learned' – but it was never released publicly. During the consultations for this chapter, we heard concerns that some of the preliminary findings of that document were not sufficiently accounted for in the formulation of the new arrangements.

Concerns have also been expressed about progress in some of the trial sites. For example:

- In April 2004, the Western Australian Coroner expressed concerns about the lack of government coordination in the East Kimberley Trial Site and consequent inaction by governments in addressing problems of petrol sniffing in Balgo.[51]
- The Shadow Attorney-General of South Australia has also expressed concerns about selective consultation by governments with Indigenous people and communities on the Anangu Pitjantjatjara trial site.[52]
- In consultations for this report, staff of Australian government agencies involved in one trial site stated that there was confusion about the 'shared responsibility' approach and the purposes of Shared Responsibility Agreements.
- In another trial site, both staff of the lead Australian government agency and ATSIC Regional Councillors stated that Indigenous people have had very little input into the

50 As quoted in *Social Justice Report 2003*, p47.

51 The Coroner reinforced the submission of the ATSIS Kununurra Regional Office that 'while the Munjurla Scoping Study [for the east Kimberly COAG site] would make clear the stark conditions currently experienced in the region ... conditions will continue to deteriorate as long as the current disjointed state of government activities in the region are allowed to continue'. He further criticised the lack of on-the-ground knowledge by agencies involved in the trial. Hope, A. (WA State Coroner), *Record of Investigation into Death of Owen James Gimme and Mervyn Miller,* Western Australian Coroners Court, Broome 6-9 April 2004, p27.

52 Lawson, R. (South Australian Shadow Attorney-General & Minister for Aboriginal Affairs) *The Tragedy of the Pitjantjatjara Lands*. Paper presented to the Bennelong Society Conference, Sydney, 4 September 2004.

whole of government activity in that trial site to date and that there was a risk that the trial may reinforce existing problems of corporate governance in communities by only consulting with community councils and not the community more broadly.

- In a further trial site, a range of bodies and community members expressed the view that the achievements in the trial site had not been the result of whole of government activity but instead of the focussed implementation of programs of the Commonwealth Government's lead agency for the trial site (resulting in the benefits of coordination through the trial being overstated).
- Concern has been expressed in the Shepparton trial site, in Victoria, about the lack of appropriate engagement of traditional owners of the region in the trial. The Reference Group in Shepparton is composed of representatives of Indigenous service delivery organisations rather than involving the broader Indigenous community.[53] It was stated that this has resulted in the process for engaging with Indigenous peoples in the trial being too focused on engaging with service delivery organisations with the consequence that certain family groups were over-represented whereas other family groups were not represented at all. A number of different groups have stated that this has led to increased tensions within the community.[54] The Commonwealth's lead agency for the COAG site acknowledges that there have been problems in engaging with the community and are taking steps to seek to rectify this situation.
- Concern was also expressed that the consultation mechanisms established in the Shepparton trial site were being used by service delivery agencies to 'bid' for extra funding and to have other funding reallocated to their organisations.

53 DEWR state that the Reference Group is composed of 'members… drawn from key local Indigenous organisations' to form 'a new community governance mechanism'. Carters, G. (Group Working Manager Working Age Policy Group, Department of Employment and Workplace Relations), 'Re: the New Arrangements for the Administration of Indigenous Affairs', *Correspondence to Social Justice Commissioner,* 23 November 2004, p4.

54 Cutcliffe, T., *Take It Or Leave It. How COAG is failing Shepparton's Aboriginal People.* The Eureka Project, Melbourne 2004, p6. The report was put together in coordination with Traditional Owners and other members of the Indigenous Shepparton Community. Similar views were stated by representatives of the Yorta Yorta Traditional Owners in Barmah, and with Chairperson of Binjirru ATSIC Regional Council and Victorian ATSIC Commissioner in Melbourne 25-26 October 2004.

ATSIC also expressed concern to my predecessor in late 2003 about progress in the trial sites. ATSIC stated that:

- There had been limited experimentation of new approaches by Lead Agencies in the trials, as they struggled to balance different priorities with trial partners leading to difficulties in progressing joined-up projects on the ground;
- As a consequence of this, programs that are used more flexibly tend to be Indigenous-specific rather than mainstream;
- There had been a blurring in some instances of Commonwealth and state responsibilities, attracting the possibility of cost shifting between parties compounded by the inexperience of lead agencies and their personnel when engaging with Aboriginal and Torres Strait Islander communities; and
- Initiatives in one trial were not being identified as having potential application in other trials.[55]

In its' submission to the Senate inquiry into the ATSIC Amendment Bill, the Victorian Government has urged caution in basing new arrangements on the preliminary outcomes of the COAG trials:

> Although the COAG trials are progressing well, it is too early to determine whether the trials should form the basis of a new model of service delivery in Victoria or wider Australia… It is premature to build on the COAG trials given they are still in their developmental phase and are based on disparate models of operation across diverse jurisdictions.[56]

By reproducing these materials I do not intend to suggest that it is inappropriate to base the new arrangements on the lessons of the COAG trials. What these comments reveal, however, is that the experiences of governments in the trials remain preliminary and it is not possible to state definitively that the lessons from them can translate into longer term change or even provide transferable solutions.

In light of the practical matters that have arisen as a result of the introduction of the new arrangements, as discussed in the next section, perhaps a more gradual and formal change management strategy should have been utilised in introducing the new arrangements. For example staggering the introduction of the new arrangements (such as by region) may have provided the opportunity to test the transferability of the preliminary lessons of the COAG trials.

Nevertheless, there remains a need for thorough and ongoing evaluation of the outcomes of the COAG trials, as well as rigorous monitoring of the implementation of the new arrangements. This is particularly important so as to address any teething problems that may emerge through the implementation of the new arrangements to ensure that they do not become systemic problems in the future.

---

55 See discussion in *Social Justice Report 2003*, pp48-49.

56 Government of Victoria, *Submission to the* Senate *Select Committee on the Administration of Indigenous Affairs,* Melbourne 2004, p2.

Follow up action by Social Justice Commissioner

1. In light of the importance of the lessons from the COAG whole of government community trials for the implementation of the new arrangements, the Social Justice Commissioner will over the coming twelve months:

- **Consider the adequacy of processes for monitoring and evaluating the COAG trials;**
- **Consult with participants in the COAG trials (including Indigenous peoples) and analyse the outcomes of monitoring and evaluation processes; and**
- **Identify implications from evaluation of the COAG trials for the ongoing implementation of the new arrangements.**

- *The new arrangements are based on administrative procedures, not legislative reform*

A significant feature of the new arrangements is that they have been introduced solely through administrative mechanisms. The only aspect of the new arrangements that will be progressed through legislation at this point in time is the abolition of ATSIC.

Proceeding through administrative procedures provides the Government with great flexibility in how it implements the new arrangements. It also makes the new arrangements less transparent and more difficult to scrutinise. It has the potential, particularly over time, to make it more difficult for the Government to be held accountable for its performance. This is particularly so if monitoring and evaluation processes are not sufficiently rigorous. The issue of performance monitoring is discussed further below as one of the main challenges raised by the new arrangements.

- *The introduction of the new arrangements do not depend on the abolition of ATSIC*

As the Minister for Immigration, Multicultural and Indigenous Affairs has noted, 'the bulk of the Australian Government's reforms to Indigenous affairs are proceeding independently of (the ATSIC Amendment) Bill… The Bill does one thing. It abolishes ATSIC'.[57]

The simple fact is that all aspects of the new arrangements, other than the abolition of ATSIC and the transfer of some functions and assets from ATSIC to mainstream departments, have been achieved with ATSIC still in place. While addressing the goals of ensuring better whole of government coordination and improving accountability and accessibility of mainstream programs is long overdue, it is arguable that this too could have been achieved at any stage in the past without abolishing ATSIC.

57 Minister for Immigration, Multicultural and Indigenous Affairs, 2nd reading speech, *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004, op.cit.,* p1.

ATSIC has been administratively de-funded and it is a reality that it will be abolished at some time in the coming months. The point to note here is that the implementation of the new arrangements does not depend on the passage of the ATSIC amendments.

The next section of this report discusses the challenge for the new arrangements of engaging with Indigenous communities and ensuring the participation of Indigenous peoples in decision making and program design. The new arrangements are built on a process of negotiating regional priorities with Indigenous representative bodies as well as negotiating shared responsibility agreements with local communities or groups. To date, there has been very little progress in advancing the creation of alternative regional representative Indigenous structures to ATSIC and it is difficult to see how such structures will come into existence by 1 July 2005. From regional consultations, it was also my strong impression that there has also been very little engagement of ATSIC Regional Councils since the new arrangements were introduced, due primarily to their upcoming demise.

While the challenges that this creates is discussed further below, I note that the existence of regional Indigenous representative structures over the next eighteen months will be vital to the success of the new arrangements. On this basis, continuation of ATSIC Regional Councils for at least a further twelve months than is currently envisaged may facilitate better frameworks for the implementation of the new arrangements. This possibility is discussed further in the section below. Other aspects of the new arrangements would remain unaffected by such a decision.

Practical matters relating to the introduction of the new arrangements

- *There is a lack of information about the new arrangements in Indigenous communities. This contributes to an ongoing sense of uncertainty and upheaval*

A practical issue that continually arose throughout my consultations (up to November 2004) for this report was the lack of information Indigenous people and communities had about the new arrangements. The further one moved away from Canberra, the less information and understanding was possessed by people about the new arrangements. In my view, this has caused great upheaval and uncertainty among Indigenous people and communities, and even among the bureaucracy tasked with implementing the changes.

Any change as wide-ranging as the new arrangements, and which is introduced so rapidly, will naturally cause significant upheaval and consternation. The challenge to government is to ensure that this upheaval is as minimal as possible and short term in its impact, and does not result in Indigenous people feeling further disempowered by government.

The Minister for Indigenous Affairs wrote to Indigenous organisations to explain the new arrangements soon after the Government's announcement in April 2004. This was before the practical details of how the arrangements would be implemented had been finalised. There has been no such communication since.

The lack of information provided to communities has been compounded by the fact that the only aspect of the new arrangements that many Indigenous people are aware of in any detail is the abolition of ATSIC. This has also engendered some mistrust towards the mainstreaming of Indigenous service delivery.

The initial focus of government in introducing the new arrangements has been on informing public servants, particularly those based in Indigenous Coordination Centres, about their new roles. The OIPC have advised me that:

> There has been a continuing information strategy in place since ICCs were established. An information kit, including powerpoint presentations and other material, was developed explaining the new arrangements in Indigenous affairs. This was distributed widely to ICC staff and others, and used for presentations to ICC Managers, staff and other staff in the participating agencies.
>
> An information package titled 'New arrangements in Indigenous Affairs' was placed on the OIPC website and was circulated in electronic form to ICCs and to contact staff in other participating agencies. These products provided the basis for common key messages in communicating to Indigenous communities. The Minister also wrote to all Indigenous organizations about the new arrangements.
>
> Senior managers in OIPC regularly address forums of Australian Government agency staff at various levels (national, state and regional), DIMIA staff, ICC Manager workshops and ICC staff about the new arrangements to ensure a consistent understanding of the issues.
>
> A weekly ICC Staff Bulletin is providing a common source of information for all ICC staff, irrespective of their department or agency.
>
> A series of 1-day training workshops was held with staff from ICCs and programme agencies to inform them of the new Indigenous affairs arrangements. The workshops were held between July and September 2004 in all capital cities and many major regional centres. ICC Managers meet regularly as a national network – representatives from other agencies attend these meetings.
>
> Two communications experts have recently been engaged to work with OIPC to ensure the consistency and reach of messages about the new arrangements and SRAs in particular.[58]

Feedback during my consultations revealed that the majority of public servants consulted did not feel that they had been provided with adequate information about *how* the new processes would work. On occasion, this has led to confusion with Indigenous communities as public servants have not been able to answer questions put to them by Indigenous people.

This was confirmed by a number of ATSIC Regional Councils. In response to my letter requesting information from Regional Councils, one Council noted that 'the Government has provided regular information… regarding the new approach…. to the extent the information is available'.[59] Another Council stated that:

58 Gibbons, W., *op.cit.,* p5.

59 Correspondence between an ATSIC Regional Council and Social Justice Commissioner, received November 2004.

> Council felt that the information provided has been very limited and hasn't been satisfactory as it was not clear and transparent. The ICC has only been able to provide limited information as it comes to hand. As representatives of the government, the ICC has not provided sufficient information to disseminate to the community.
>
> Council did note however that the ICC Manager had met with Regional Council… to outline the changes and had recently submitted some written information on the Governments New Arrangements in Indigenous Affairs...
>
> Council also expressed concern that (the) OIPC Assistant Secretary … had given a commitment to meet with all Regional Councils and this has not happened.[60]

It also stated that 'not enough information is being provided to community people. The community did not know what the new process was and were confused with whom they should be dealing'.[61]

Several Community Councils mentioned they had been 'trickle-fed' information and expressed concern that when they made inquiries themselves, departments responded that 'the information is accessible on the internet'. The internet remains an inaccessible medium for many Indigenous community members, and also presumes that people have high English literacy levels. Even if the information were easily accessible to communities via the internet, it is written in bureaucratic language and is not readily understandable to in communities. The point was made by some ICC staff that if they, as public servants, are struggling to understand the new processes and the new language, how are communities meant to understand it?

I also heard from staff in ICC's that they did not feel sufficiently informed about the new processes that they were to implement. In particular, there was confusion about the scope and role of Shared Responsibility Agreements, with people looking to guidance from the national level.

Over the coming year I will conduct further consultations about the new arrangements. I expect that the lack of information at the government level will prove to have been a teething problem. I have, however, expressed concern to senior members of the bureaucracy about the lack of appropriate information that has been communicated to Indigenous people and communities about the new arrangements in the first four to five months of their operation.

There remains a need for a comprehensive information campaign about the new arrangements directed towards Indigenous people and communities. The provision of information on a website and printed materials is not sufficient. While ICC's will play a vital role in informing communities about the changes, this too is insufficient. Basic materials explaining the changes need to be developed in a variety of mediums for use nationally, to ensure a consistent message is delivered to communities. It is also surprising that ATSIC Regional Councils have not been engaged more actively to lead the process of disseminating information to Indigenous communities.

---

60 Correspondence between an ATSIC Regional Council and Social Justice Commissioner, 17 November 2004.

61 *ibid.*

It is difficult to see how the new arrangements can succeed without a broadly based campaign to inform Indigenous peoples of the changes as well as of their role in the new processes, such as through Shared Responsibility Agreements. Addressing this concern remains a major priority for the new arrangements.

Recommendation 3

That the Office of Indigenous Policy Coordination conduct a comprehensive information campaign for Indigenous people and communities explaining the structures established by the new arrangements and the processes for engaging with Indigenous people. This information must be disseminated in forms that have regard to literacy levels among Indigenous people and English as a second language.

- *The transition to the new arrangements may have created financial difficulties for some communities*

With the transition to the new arrangements, funding for Indigenous service delivery organisations was to continue as agreed in the previous year for 2004-05. The Government described this as 'business as usual' with no organisations or communities to be disadvantaged by the new arrangements.

Despite this concerns were expressed to me in at least three States during regional consultations about problems relating to the maintenance of funding levels in the transition to the new arrangements. Several Indigenous Community Councils and organisations stated that they were still waiting for their quarterly funds at the end of the first quarter. These bodies have been accruing debts while waiting for their funding.

For example, the Palm Island Community Council stated that it had only received half the budget it was due from the Australian Government as it approached the end of the September 2004 quarter. Consequently, the Council had difficulty paying its outgoings, including wages. The Council was already facing financial difficulties with a budget deficit from the previous year which had resulted in the appointment of an administrator and the redundancy of a number of skilled community-members (such as trades-people). In Victoria, it was claimed that some community organisations were advised by ICC staff to take out an overdraft facility while waiting for the funds to arrive, without any provision for paying the fees or interest for this. Consultations in other parts of Australia revealed concerns from various organisations and councils about delays in receiving funding for CDEP and other programs.

I have raised these issues with senior bureaucrats.

2. The Social Justice Commissioner will, over the coming twelve months, seek to establish whether any Indigenous communities or organisations have experienced any ongoing financial difficulties or disadvantage as a result of the transition of grant management processes from ATSIS to mainstream departments and if so, will draw these to the attention of the Government so they can rectify them.

- *The new arrangements have consequences for existing planning processes which involve Indigenous representation through ATSIC*

A consequence of the proposed abolition of ATSIC is that there are challenges raised for existing framework agreements and structures which rely on the ATSIC structure to ensure Indigenous participation and representation. This is noticeable in relation to health and housing issues.

The *National Strategic Framework for Aboriginal and Torres Strait Islander Health* (National Strategic Framework), sets the policy direction in Indigenous health until 2013.[62] It is a guide for local, regional and state/territory planning by health sector planning forums established under the *Framework Agreements for Aboriginal and Torres Strait Islander Health* in each state and territory. The planning forum partners are the Commonwealth (the Office of Aboriginal and Torres Strait Islander Health - OATSIH), the state/territory (the relevant Department of Health), the state/territory affiliate of the National Aboriginal Community Controlled Health Organisation (NAACHO)[63] and ATSIC.

NACCHO has expressed concern that the abolition of ATSIC 'removes an Aboriginal representative voice from the… [planning] forums… with potentially significant consequences'.[64] These include the undermining of the forums partnership processes by virtue of Aboriginal representative bodies suddenly assuming a minority position. This is critical because this balance allowed for accountability in the forums. As NACCHO note: '[t]he buck passing between Commonwealth and States has always been a major impediment to reform in Aboriginal health… the Framework Agreements are intended to address this area'.[65]

62 National Aboriginal and Torres Strait Islander Health Council, *National Strategic Framework for Aboriginal and Torres Strait Islander Health 2003-2013*, Commonwealth of Australia, 2004, p10.

63 Ensuring Aboriginal and Torres Strait Islander peoples' access to primary health care is considered a key to reducing the gross and long standing health and life expectation inequality between them and the non-Indigenous population. Aboriginal Community Controlled Health Services (ACCHS) are universally acknowledged as the best ways to deliver primary health care to Aboriginal and Torres Strait Islander peoples. ACCHS are represented nationally by the National Aboriginal Community Controlled Health Organisation (NAACHO), with state and territory affiliates.

64 NACCHO, *Submission to the Senate Select Committee on the Administration of Indigenous* Affairs, August 2004, p9. http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub179.pdf (Accessed, December 1, 2004)

65 *ibid.*

Other issues arise in relation to the participation of Indigenous peoples in the planning forums:

- While regional planning was not based on ATSIC regions, ATSIC regional councils played a role in planning and identifying need in the forums. They will continue to be involved until they are abolished in June 2005. Whether the ICCs will be able to effectively assume this mantle is not clear: they have not been involved to date in planning.[66]
- In relation to the national implementation of the National Strategic Framework, the OIPC will have an opportunity to provide input and comment on it, in place of ATSIC.[67] However, there is at present no formal mechanism for ensuring Aboriginal and Torres Strait Islander participation at a national level. NACCHO have recommended that a National Health Partnership Agreement be completed to establish a national planning forum including Indigenous representation.[68]

Similar concerns regarding participation exist in relation to the Indigenous Housing Authorities (IHAs) established under the bilateral 5-yearly Indigenous Housing Agreements between the Commonwealth (represented by ATSIC and the Department of Family and Community Services) and the states and territories (with the exception of Tasmania). Upon the abolition of ATSIC, the Commonwealth put interim arrangements into place for 2004/2005. These essentially maintain the status quo, with ATSIC regional representation to continue within the IHAs until July 2005. The interim agreements contain a commitment to finalising a new round of Indigenous Housing Agreements by July 2005. Although there is an in-principle commitment to ongoing Indigenous representation within the IHAs, it is not yet clear how this will occur.

Follow up action by Social Justice Commissioner

3. The Social Justice Commissioner will, over the coming twelve months, establish what mechanisms have been put into place in framework agreements between the Commonwealth and the states and territories, including in relation to health and housing, to ensure appropriate participation of Indigenous peoples.

Challenges in implementing the new arrangements for the administration of Indigenous affairs

This section identifies a number of challenges that need to be addressed by the new arrangements, including into the long term, for them to meet the objectives and commitments set by the Government and to ensure that they benefit Indigenous people and communities.

66 Correspondence between the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Office of Aboriginal and Torres Strait Islander Health (OATSIH), 9 December 2004.

67 *ibid*.

68 NACCHO, *op.cit.*

- *The effective participation of Indigenous peoples in decision making processes*

A clear challenge for the new arrangements is to ensure that Indigenous peoples can effectively participate in decision making processes that affect their daily lives. This participation needs to be at a national level, in order to influence the setting of priorities, as well as at the state, regional and local levels. Indigenous representation participation is not an either/or choice between national, regional and local level processes.

In announcing that it intended to abolish ATSIC at the national and regional level, the Government has also stated that it intends to address the issue of Indigenous participation through the new arrangements by:

- Appointing a National Indigenous Council of Indigenous experts to advise the Government in their individual capacities and not in a representative capacity;
- Indicating that it will support the creation of a network of regional representative Indigenous bodies by 1 July 2005 to interact with the Government and utilising existing ATSIC Regional Council structures until then;
- Negotiating agreements at the regional level with the representative Indigenous body and at the local level with Indigenous communities.

The question is whether this combination of mechanisms is adequate to ensure the effective participation of Indigenous peoples in decision making processes.

At this stage, these proposed new mechanisms are either not in place or have not been in place for long enough to allow an understanding as to how they will actually operate and interact with the Government and with Indigenous communities. Accordingly, my comments here are preliminary in nature and will need to be revisited in twelve months time when all aspects of the new arrangements are in place.

The ability of Indigenous peoples to effectively participate in decision making processes at the national level is likely to be considered internationally in March 2005. Australia will appear before the United Nations Committee on the Elimination of Racial Discrimination on 1-2 March 2005. This is for consideration of Australia's 13th and 14th periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination.

Under this Convention, Australia has undertaken to provide equality before the law and not to discriminate on the basis of race. The Government is required to present a report every two years on how it is achieving this, and other commitments under the Convention, and to appear before the Committee for this report to be considered.

The Committee on the Elimination of Racial Discrimination has noted that indigenous peoples across the world have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and that as a consequence, the preservation of their culture and their

historical identity has been and still is jeopardized. To address this, the Committee has called upon States parties to the Convention to:

> ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent'.[69]

When Australia most recently appeared before this Committee in March 2000, the Committee expressed concern at the inequality experienced by Indigenous people in Australia and recommended that the Government not institute 'any action that might reduce the capacity of ATSIC to address the full range of issues regarding the indigenous community'.[70]

In his submission to the Senate inquiry into the ATSIC Amendment Bill, my predecessor as Social Justice Commissioner stated that the replacement of ATSIC with a non-elected, appointed advisory council might raise concerns of lack of compliance with Australia's international human rights obligations.[71] This does not mean that the Government should not be advised by a specialist advisory body such as the National Indigenous Council. It does mean, however, that reliance *solely* on such a mechanism will not be considered sufficient to ensure the effective participation of Indigenous peoples in decision making and hence to meet Australia's international obligations.

As noted above, however, the new arrangements do not rely on the establishment of the National Indigenous Council as the sole mechanism for the participation of Indigenous peoples. It is intended to be accompanied by support for regional representative structures and the engagement of Indigenous peoples through agreement making at the regional and local level. These provide the potential for appropriate types of participation of Indigenous peoples at the local and regional levels, depending on how they are implemented.

I am concerned, however, that there are not clear linkages between the processes for engagement of Indigenous peoples and communities at the local and regional levels to a process for engagement at the national level.

As outlined in Appendix One to this report, one of the principle findings of the ATSIC Review was the lack of connection between ATSIC's national representative structure (the Board of Commissioners) and regional representative structures (Regional Councils) and local communities. It considered a number of options for creating a continuum of representation

69 Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII – Indigenous people*, 18 August 1997, UN Doc: A/52/18, annex V, para 4(d).

70 Committee on the Elimination of Racial Discrimination, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc: CERD/C/304/Add.101, 19/04/2000, para 11. As a matter of process, the Committee begins its consideration of a country's latest periodic report by examining how they have responded to the concluding observations issued to the country when they previously appeared before the committee. Hence, the likelihood that the demise of ATSIC will be a significant issue for consideration by the Committee.

71 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Select Committee on the Administration of Indigenous Affairs Inquiry into the ATSIC Bill and the administration of Indigenous programs and services by mainstream departments*, 7 July 2004, pp7-8.

between these levels. The Review Team stated that the 'representative structure must allow for full expression of local, regional and State/Territory based views through regional councils and their views should be the pivot of the national voice'.[72]

The new arrangements do not address this issue. They maintain a demarcation between processes for setting policy at the national level with processes for implementing policy and delivering services at the regional and local levels. While the new arrangements are based on a 'top down' and 'bottom up' approach, this is in terms of government coordination and not in terms of Indigenous participation. The model sees Indigenous participation as coming from the 'bottom up' through the local and regional mechanisms. It does not then provide mechanisms for directly linking these processes to the national level so that they might influence directions and priorities at the highest level.

The Government has also stated that the National Indigenous Council is not intended to be a representative body, and accordingly its terms of reference do not require it to consult with Indigenous organisations or regional representative structures. They do, however, task the Council with promoting 'constructive dialogue and engagement between government and Aboriginal and Torres Strait Islander people, communities and organisations'.[73]

It is difficult to see how this function can be performed however, if the Council only convenes four times a year. The Council is not paid to undertake such dialogue or engagement outside of its meeting times and each member of the Council has their own occupation, to which membership of the Council is ancillary. Without any mechanism supporting the Council's ability to undertake independent research and consultation, there is little avenue for any form of constructive dialogue and engagement, with either government or Indigenous people, because each requires substantial time.

A secretariat to the Council would ideally assist in this regard. The OIPC is intended to fulfil this role, however the scope of OIPC's secretariat function does not provide any interface between the Council and Indigenous people. For example, if an Indigenous person, group or organisation wished to communicate with the Council, there is no structure through which this can occur. There may be cost-effective ways of enabling this, for example by establishing a two or three person full time secretariat, independent to OIPC, to undertake consultation and research in the interim between Council meetings, and facilitating outside Indigenous input by virtue of a toll free telephone number and e-mail address.

This demarcation between the national and regional and local levels is problematic given that the new arrangements are premised on the basis of partnerships and genuine engagement of Indigenous people and communities. It is difficult to see how this engagement can take place if the relationship is limited to those issues that have been identified and imposed through a 'top down' approach. It pre-empts the outcomes of such engagement and

72 ATSIC Review Report, *op.cit.,* p32.

73 Gordon, S., *First meeting of the National Indigenous Council: A very good beginning*, Media Statement and Terms of Reference, 9 December 2004.

negotiation. It also has the potential to undermine a sense of ownership and responsibility at the community and individual level.

There needs to be consideration as to how to create a linkage between the proposed regional representative structures and the national level. Given that these regional structures are not yet in place, it is difficult to comment on what might be the most appropriate mechanism for creating such a link. Some options that might ultimately be suitable, however, are as follows:

- *The convening of a National Congress of Indigenous represent-ative organisations*. Such a Congress could be comprised of each of the regional Indigenous representative structures established in accordance with the new arrangements. The Congress would provide the opportunity to compare best practice and the experiences in each region relating to the implementation of the new arrangements and service delivery to Indigenous people and communities. From this, it could seek to develop common principles and recommendations to guide government decision making processes at the federal, state and territory levels. Such advice and recommendations could be directed to the National Indigenous Council, Ministerial Taskforce on Indigenous Affairs and Council of Australian Governments, among others. The Congress could meet annually.

  Such an approach has some similarities with the recommendations of the final report of the ATSIC Review. It had recommended the replacement of the ATSIC Board of Commissioners with a national body comprised of regional representatives and a smaller national executive drawn from this body. The national body in this model would develop a national plan based on regional priorities.[74]

  The convening of a National Congress of this type could also include other Indigenous advocacy bodies as appropriate (for example, national secretariats for Torres Strait Islander organisations, Indigenous women, health organisations or legal services, Aboriginal Justice Advisory Committees, Sorry Day or Stolen Generations representative organisations and so on). Such bodies could participate either in a decision making capacity or in a purely advisory role, as appropriate and decided by Indigenous peoples.

- *The convening of an annual conference on service delivery to Indigenous communities*. Such a conference would comple-ment the National Congress. It could be run along similar lines to the National Native Title Conference coordinated by the Australian Institute of Aboriginal and Torres Strait Islander Studies. It would provide an opportunity

74 *ibid.,* pp7-8, 14-15.

for communities, regional representative Indigenous organisations, Indigenous Coordination Centres and State and Territory Governments to share best practice examples in the formulation of regional agreements, local level agreements and in improving whole of government coordination between all levels of government on an annual basis. This could also be conducted on a state by state basis.

- *Establishment of a national Indigenous non-government organisation peak body.* A further option is that Indigenous peoples could establish a national representative Indigenous body as a Non-Government Organisation. This could be along the lines of the Federation of Ethnic Communities Council or the Australian Council of Social Services. Discussions with some senior bureaucrats have indicated that the Government might not have an objection to providing funding assistance for such a national representative Indigenous body. Instead, its objection is more likely to such a body being an instrument of the Government over which it exercises control. The challenge for such a representative body would be to establish a relationship with the Government so that it might exert some influence over policy making processes. This may be difficult where the representative body seeks to raise issues with the Government that do not match with its policy agenda. It is clear that this was one of the problems, even if not the predominant one, that the Government had with ATSIC.

Since the announcement of the new arrangements, many Indigenous organisations have indicated that they want a national Indigenous representative structure. There has been consideration as to appropriate structures that could be introduced at the national level. For example, the National Indigenous Leaders Conference was held from 11-14 June 2004 in Adelaide. The Conference outcomes, set out in full in the appendix, state that:

- We the Indigenous People of Australia and we alone have the right to determine who represents us locally, regionally, nationally and internationally;
- We are determined to establish a sustainable independent National Indigenous Representative Body (NIRB) that reflects the aspirations and values of our peoples;
- The NIRB needs to gain its legitimacy from our people.[75]

There has, however, been limited progress in advancing the establishment of such a representative body to date.

75 Conference participants. *Draft text of key principles and values for a National Indigenous Representative Body and a national inclusive process*, National Indigenous Leaders Conference, Adelaide, 14 June 2004, unpublished.

4. The Social Justice Commissioner will, over the coming twelve months, consider the adequacy of processes for the participation of Indigenous peoples in decision making. This will include considering the adequacy of processes to link local and regional representative structures to providing advice at the national level.

- *Effective participation of Torres Strait Islanders on the mainland*

A further issue relating to the effective participation of Indigenous peoples in decision making processes is ensuring adequate processes for the participation of Torres Strait Islanders. The Office of Indigenous Policy Coordination has advised me that:

> Arrangements with the Torres Strait Regional Authority continue as before for people in the Torres Strait region. Torres Strait Islanders on the mainland will be covered by the new arrangements and have the opportunity to participate in SRAs and other initiatives with other Indigenous people in their region. In addition, OIPC continues to provide funding to the National Secretariat of Torres Strait Islander Organisations Limited to represent mainland Torres Strait Islanders in dealings with the community, government departments, statutory corporations and the Aboriginal community.[76]

The Office of Indigenous Policy Coordination also advised the Senate inquiry into the ATSIC Amendment Bill that the Torres Strait Islander Advisory Board (TSIAB) retains its roles and functions as outlined in the ATSIC Act until the Act is changed. It will then be abolished as 'one of its primary functions was to act as an advocate for Torres Strait Island concerns within the ATSIC structure'.[77] The Office of Torres Strait Islander Affairs, which provides secretariat support to the TSIAB, has been absorbed within the OIPC.

The Torres Strait Islander Advisory Board has expressed concern to the Minister about the changes to representation of Torres Strait Islanders on the mainland. The Minister stated in response to these concerns that 'the National Indigenous Council would in future provide her with advice on programmes and policies affecting Aboriginal and Torres Strait Islander people' and the Minister 'invited TSIAB to suggest individuals who would be suitable for nomination to the Council'.[78]

In response to a question on how Torres Strait Islanders would be represented on the mainland under the new arrangements, OIPC also indicated to the Senate inquiry into the ATSIC Bill that 'it is intended that there will be at least one Torres Strait Islander on the National Indigenous Council' and that it 'is of course open to Torres Strait Islanders to establish their own representative bodies which

76 Gibbons, W., *op.cit.,* p4.

77 Office of the Indigenous Policy Coordination, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs*, Attachment B – Answers to questions on notice, p2.

78 *ibid.*

could advocate their views to government'.[79] This first answer is unsatisfactory as the Government has clearly stated that members of the National Indigenous Council are not appointed in a representative capacity.

The issues facing mainland resident Torres Strait Islanders differ from those of Aboriginal people and of Torres Strait Islanders who continue to live in the Torres Strait region.

In the review of ATSIC boundaries and electoral systems, TSIAB noted the low level of representation of Torres Strait Islander people on ATSIC Regional Councils and the lack of Torres Strait Islander perspectives in the development and delivery of programs, policies and services.[80] This remains a challenge in the new arrangements, particularly if Torres Strait Islander perspectives are to be accounted through the ordinary operation of ICC's and through Shared Responsibility Agreements.

It remains important that a voice representing their needs to government is maintained. Mr George Mye of the Veteran Island Councillors Elders Group, and inaugural ATSIC Commissioner for the Torres Strait region, stated recently that:

> Mainland is mainland and Torres Strait is Torres Strait… We cannot help it of our brothers on the mainland choose to live down there. I think the government should go slowly on that… Ask them what they want down there… Our people complained when I went around on my visit as the inaugural ATSIC Commissioner for the Torres Strait. There were tears on my shoulder, north, south, east and west – across the country. They need something of their own because they are always last in the queue for anything down on the mainland.[81]

As the new arrangements are implemented, I will seek to establish the extent to which Torres Strait Islander people on the mainland are able to participate and the adequacy of their representation through the new processes.

Follow up action by Social Justice Commissioner

5. The Social Justice Commissioner will, over the coming twelve months, consult with Torres Strait Islanders living on the mainland and their organisations to establish whether the new arrangements enable their effective participation in decision making.

- *Engaging with Indigenous people and communities at the regional level*

The new arrangements are based on engaging with regional representative Indigenous structures and local Indigenous communities through the negotiation of *Regional Participation Agreements* and *Shared Responsibility Agreements*. Setting into place appropriate processes for such engagement is central to the success of the new arrangements (as well as to ensuring the effective participation of Indigenous people, as discussed above).

79 *ibid*.
80 As discussed in ATSIS, *Annual Report 2003-04*, *op.cit.,* p92.
81 Mye, G., *Hansard – Senate* 26 August 2004, p37.

I have a number of comments about developments relating to processes for engaging with Indigenous peoples in the first five months of the new arrangements.

First, there are concerns about the interaction with ATSIC Regional Councils since the new arrangements were introduced. It has been stated that ATSIC Regional Councils will continue to play an important role in the new arrangements until 30 June 2005. OIPC have advised me that Regional Councils will be consulted in the introduction of the new arrangements and will:

- perform an advisory role with government agencies while new arrangements are being put in place;
- assist the government to make the new arrangements work; and
- contribute, along with others, to the formulation of new representative arrangements at the regional level.[82]

Feedback from Regional Councils has suggested that this has not been the case. A number of Councils have indicated that they have been provided with limited information about the new arrangements (as discussed previously) and that they 'have just been told what is going to happen without any real negotiation or consultation'.[83]

One Regional Council noted that although the ICC Manager had 'given the Regional Council an opportunity to be part of the Regional Strategy to implement the New Arrangements', it has 'had no say as to how it will be implemented'.[84] Another Regional Council stated that 'to date, we have not been informed of any formal processes to ensure that the newly established ICCs consult or negotiate with the Regional Council'.[85]

The impression I received from community consultations and discussions with various ATSIC Regional Councils is that across government Regional Councils are being treated as if they no longer exist.

One Regional Council expressed concern that the lack of involvement of the Regional Council in the introduction of the new arrangements has affected the relationship of the Council with communities:

> The Councillors are concerned that the lack of information (that has been provided by the government) is not consistent with the commitments made prior to 1 July 2004. They are also concerned that the level of consultation between themselves and the communities they represent have led to a loss of face and trust in the Council's ability to deliver proper guidance and information to the communities.
>
> We understand that the ICC Manager and staff are making a very good effort in addressing this situation, however, we understood that there would be an ongoing role for Regional Councillors to participate equitably in this transitional process. This would need information and resources to ensure that a continuing partnership exists until the end of July 2005.[86]

82 Gibbons, W., *op.cit.,* p4.
83 Correspondence between an ATSIC Regional Council and Social Justice Commissioner, November 2004.
84 *ibid.*
85 *ibid.*
86 *ibid.*

Consultations with Regional Councils also revealed that limited use has been made of the latest Regional Plans developed by the Councils. One Council was advised by the relevant ICC that 'the Regional Council's Regional Plan is only one of the tools to be used and that Regional Council is only one of many stakeholders'.[87] Other Regional Councils have indicated that they have received positive responses to their Regional Plans, especially at the state level in the Northern Territory, South Australia, Western Australia and Victoria.

It is regrettable that Regional Councils, with their ability to communicate widely with Indigenous people and communities and their experience engaging with service deliverers at the regional level, have not been more integrally involved in the introduction of the new arrangements.

Second, I am concerned that there has not been sufficient priority attached by the Government to working with Indigenous communities to progress the establishment of regional representative structures. The Government has stated that:

> During 2004-05 the Australian Government will consult Indigenous people throughout Australia, as well as State and Territory governments, about structures for communicating Indigenous views and concerns to government and ensuring services are delivered in accordance with local priorities and preferred delivery methods.[88]

Consultations for this report suggested that there has been no such consultation to date. This lack of progress is exacerbated by the lack of engagement with ATSIC Regional Councils in the process and also by the insufficient information provided to Indigenous people and communities about the new arrangements in general. This hinders the ability for informed debate within Indigenous communities of possible new structures.

This focus from government is critical. In explaining the operation of the new arrangements, the Government describes the *Regional Participation Agreement* process as setting the priorities for each region. It is anticipated that this will involve assessing Indigenous need (including by mapping it against demographic factors such as projected growth of the population and mobility within regions) and mapping government expenditure as well as identifying the capital within the region. Logically, *Shared Responsibility Agreements* would flow from the identification of these matters and the agreement of protocols and appropriate processes for engagement. Engagement through a credible representative structure at the regional level would also facilitate relationships at the local, community level and hence the ability to progress *Shared Responsibility Agreements*.

The experiences of the COAG trials, which have involved a mix of discrete communities and larger regions, show that even if a community has highly developed plans for establishing a representative structure, it still requires significant support and resources (including financial) from government for this to be realised. The timeframe for the establishment of representative structures through the new arrangements is extremely tight. In fact, unless there are existing

87 *ibid.*

88 Office of Indigenous Policy Coordination, *New arrangements in Indigenous Affairs, op.cit.,* p17.

processes in place which can be built upon it is difficult to see how credible structures could be operating within the timeframe currently envisaged.

Where there are no such developed plans in place, there is a need for broad based consultation among Indigenous peoples to ensure that any proposed representative structure is culturally legitimate. The creation of structures that do not enjoy the support of Indigenous people will ultimately fail and will not encourage a sense of partnership with Indigenous communities (and consequently a sense of commitment to the process).

I note that there are preliminary discussions taking place at the state level about appropriate models for Indigenous representation. From my discussions with State and Territory Governments, I see reluctance from them to advance these issues due to concerns about who will resource the new regional structures and in order to wait and see what the Commonwealth is doing.

Both the Western Australian and New South Wales Governments have convened forums and embarked upon consultations with Indigenous peoples to identify options for representative bodies. The South Australian Government is currently exploring the possibility of an Indigenous Advisory Board to include Regional Council membership. The Northern Territory Government is contemplating a model of Regional Authorities under its *Building Stronger Regions – Stronger Futures Strategy*[89] policy. The Yilli Rreung ATSIC Regional Council is, however, concerned at the NT Government's model on the basis that they consider it will not adequately meet the needs of Indigenous people. They have sought funding to conduct consultations about governance models for the NT.

There are also a number of models for regional representation currently being developed. One of the most advanced is the proposal for a three-tiered model of regional governance and over-arching Council in the Kimberley region of Western Australia.[90]

This model involves retention of the three ATSIC Regional Councils in the Kimberley region, on the basis that they 'have existing recognition, authority, track record and a legitimacy worth preserving and building on'.[91] These Councils would take on a proactive planning role, as well as identifying opportunities for regional initiatives with business and community groups and working collaboratively with government in setting strategic goals. There would also be a peak body which integrates the activities of the three Regional Councils and can represent the whole region; and a third tier of community working parties which would 'provide accessible opportunities for participation and capacity building at grass-roots level'.[92]

89 NT Department of Community Development, Sport and Cultural Affairs, *Building Stronger Regions – Stronger Futures*, NT Government, Darwin, 14 May 2003. Online at http://www.dcdsca.nt.gov.au/dcdsca/intranet.nsf/pages/BuildingStrongerRegions.

90 For details of the model see: ATSIC Wunan Regional Council, *Submission to the Select Committee on the Administration of Indigenous Affairs.* Available online at: http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub107.pdf.

91 *ibid.,* Attachment A, p2.

92 *ibid.*

The Wunan ATSIC Regional Council notes that:

> (the 3) tiers will establish a structure of representation that can respond to the diversity and geographical vastness of the Kimberley, but, at the same time, provide a process for the integration of the varied needs and interests of its communities into a single Kimberley plan… it should be noted that it could easily be adapted with a further tier to establish a State-wide model of Aboriginal representation and governance.[93]

This model has broad Indigenous community support in the Kimberley having been endorsed by the ATSIC Kimberley Zone Executive in June 2004 as well as at community meetings convened by the Kimberley Land Council (through the Wuggubun statement). It provides a strategic approach for integrating the development of a *Regional Participation Agreement* with *Shared Responsibility Agreements* at the community level. The responsive of the Australian Government (along with the Western Australian Government) to this proposal will be a true test of their commitment to seek community led innovative structures for Indigenous representation.

Follow up action by Social Justice Commissioner

6. The Social Justice Commissioner will, over the coming twelve months, consult with governments, ATSIC Regional Councils and Indigenous communities and organisations about:

- **engagement by governments with ATSIC Regional Councils and the use of their Regional Plans;**
- **progress in developing regional representative Indigenous structures, and mechanisms for integrating such structures with community level agreement making processes.**

- *Engaging with Indigenous people and communities at the local level*

The new arrangements are based on direct engagement and negotiation with Indigenous people and communities at the local level through Shared Responsibility Agreements (SRAs). SRAs are intended to operate at a family or community level and to 'set out clearly what the family, community and government is responsible for contributing to a particular activity, what outcomes are to be achieved, and the agreed milestones to measure progress'.[94]

The Department of Family and Community Services, which is the Commonwealth's Lead Agency in the COAG trial in Wadeye in the Northern Territory, describe the SRA process as:

> (defining) the working relationship between governments and the community… The SRA in Wadeye provides a means to assist all parties to understand what benefits a partnership will bring and assist in making informed decisions. It also brings with it significant responsibilities and

93 *ibid.*
94 Office of Indigenous Policy Coordination, *New Arrangements in Indigenous Affairs op.cit.,* p8.

all parties need to fully understand these responsibilities and their obligations.[95]

Departments engaged in the COAG trials have identified the following challenges for the SRA process to date:

- *Sound, culturally appropriate community governance is crucial to facilitate community engagement.* For SRAs to work, the community and its governing body must have the authority to enter into agreements with government; have the capacity to develop a strategic vision for the future; and have the capacity to engage with and secure commitment from community residents.[96]

  The Department of Health and Ageing, which is the Commonwealth's Lead Agency on the Anangu Pitjantjatjara lands in South Australia, notes that:

  > The COAG trial experience has shown that representation of the local or regional Indigenous communities in the COAG trial partnership is not a simple issue. Identifying a group with the authority of the "community" to enter agreements on behalf of the community is challenging and has taken in excess of 12 months in some cases. It can be problematic to rely on one representative organization as this is seen as endorsement of one organization and can promote gate keeping and regional tension between community organisations. A suggestion that is drawn from… a couple of COAG trial sites is a coalition of Indigenous organizations… in order that the range of Indigenous interest groups' views in any given area are represented.[97]

- *Corporate governance capacity must be assessed through the SRA process.* In order for governing bodies to be able to manage and progress day-to-day business, as well as deal with any new work or responsibilities, the cultural needs of community governance must be matched by effective management systems and experienced personnel. It is important that careful attention be given to assessing the capacities of the management and administrative structures at the local community level to carry out their responsibilities under the proposed SRA.[98]

95 Harmer, J. (Secretary, Department of Family and Community Services), *Re: the New Arrangements for the Administration of Indigenous Affairs,* Correspondence with Social Justice Commissioner, 6 December 2004, p2.

96 *ibid.,* p2.

97 Office of the Indigenous Policy Coordination, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs*, *op.cit.,* Annex A, p73.

98 Harmer, J., *op.cit.,* p3.

- *The pace of negotiations should not be forced.* The Department of Family and Community Services note that an 'important lesson learnt when developing the agreement at Wadeye was that local people wanted time to input into the Agreement and wanted time by themselves to discuss the Agreement and workshop its content'.[99] The Department of Transport and Regional Services also note, in relation to the Kimberley trial site in Western Australian, that it has 'taken longer than anticipated to gain the trust of the communities and establish structures and methods for working together'.[100]

The OIPC has acknowledged the importance of these issues, and has noted that:

> There is a need to build capacity on both sides – government people need to learn how to work in this new way, as do Indigenous communities. The Government will provide support for, and invest in, strengthening community capacity, leadership and governance to assist Indigenous people to engage as partners with government. We will be providing this type of support in a number of forms such as:
>
> - governance and leadership training, including the new Indigenous Women's Development Programme;
> - skills transfer through government and private sector volunteers and secondees;
> - tailored community development initiatives; and
> - engagement of community development facilitators.[101]

These challenges make it clear that a true partnership approach can only result if government and Indigenous communities have sufficient capacity to engage with each other. From the Indigenous community perspective, this requires being able to make decisions from an informed basis, achieve a legitimate community consensus about priorities and ways forward, being committed to meeting obligations that are jointly agreed and having the tools (or capital) to achieve this.

These factors have implications for how Indigenous Coordination Centres go about the process of negotiating SRAs with communities. This is particularly the case given that:

- in consultations for this chapter, senior bureaucrats indicated that the Government does not require SRAs to be formed with a community 'as one', and will be prepared to enter into agreements with discrete elements of it; and

99 *ibid.*

100 Varova, S. (First Assistant Secretary, Department of Transport and Regional Services), *Re: the New Arrangements for the Administration of Indigenous Affairs.* Correspondence with Social Justice Commissioner, 28 October 2004, p3.

101 Gibbons, W., *op.cit.,* p3.

- in late 2004, the Secretary of the Department of Prime Minister and Cabinet set a target of 50 – 80 Shared Responsibility Agreements to be in place by 30 June 2005. He emphasised that SRAs should be an evolving process and the initial SRAs should not be sidetracked by complex governance problems.

The negotiation of agreements at a sub-community level has the potential to reinforce significant governance problems within communities, by not negotiating with culturally sound or 'legitimate' structures. The setting of a deadline for the negotiation of SRAs also has the potential to undermine informed engagement by Indigenous communities and is arbitrary if the purpose of the agreements is to define the working relationship between governments and the community.

Both of these factors also have the potential to result in uneven outcomes between Indigenous communities, with those that have less capacity (and who are less savvy about negotiating with government) being left behind. This prospect was identified as a potential problem in the *Social Justice Report 2003* which asked:

> how do we avoid the situation where governments focus their attention on improved coordination of service delivery to those communities that are relatively organised? Even in the (COAG) trial sites, where there has been a great deal of activity by communities to address these issues, it has taken a long time to develop the capacity of the communities to the point where they can determine what the priorities of the community are and the approaches that should be adopted. It is critical that in the longer term other communities do not get left behind because they do not have such capacity.[102]

However, these potential outcomes could also be avoided if the SRA process is truly an evolving one, as urged by the Secretary of the Department of Prime Minster and Cabinet.

The Department of Family and Community Services has suggested that the SRA process should focus on the following issues in order 'to engender commitment to the partnership':

- roles and responsibilities of each party;
- processes and strategies to maximize community engagement in the trial process;
- community consultation protocols;
- structures to facilitate dialogue between community residents, leaders and government agencies; and
- resources required for facilitating community dialogue.[103]

Addressing these matters could form the basis of the initial engagement of the ICCs with communities on SRAs. The focus in the initial stages would be on establishing relationships, a commitment to work together and identifying what structures are in place or need to be in place for engagement.

---

102 *Social Justice Report 2003*, *op.cit.,* p50.
103 Harmer, J., *op.cit.,* pp2-3.

As has occurred in some of the COAG trial sites, this initial stage could also involve agreement to conduct a simple activity that the community identifies as a high priority. Examples proposed by the Indigenous Communities Coordination Taskforce for the COAG trials included recreational activities such as installing trampolines or lights for a basketball court. The SRA would then advance the development of relationships and structures through the introduction of the chosen activity/ies.

Subsequent SRAs could then evolve into more complex processes and arrangements, as the capacity of both government and the community increases. This might involve assessing the needs of the community (through consultative processes within the community, and quantitative and qualitative research), and then negotiating strategies and priorities for addressing identified needs. It might be appropriate at this stage to negotiate SRAs at different levels of the community, such as with distinct families, clans and so forth.

This staggered approach to the development of SRAs is also consistent with the coordination of these agreements within the broader framework of the negotiation of Regional Participation Agreements with regional representative Indigenous structures (as discussed in the previous section).

The new arrangements may also pose some difficulties for the engagement of Indigenous peoples in urban areas. Much of the focus of the new arrangements to date is on engaging with discrete Indigenous communities. This relies on the existence of an identifiable, cohesive Indigenous 'community' in the relevant location. While there are discrete Indigenous communities in some metropolitan areas, Indigenous people are also spread more disparately across large areas which are densely populated. Engaging with such disparate groups creates specific challenges for the new arrangements, which includes some requisite knowledge on the part of APS staff, as to the Indigenous people with whom to consult in these areas. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs have stated that:

> It is particularly challenging to identify the discrete needs of urban communities – in fact, more so than for discrete remote area communities. The first difficulty in urban areas is to determine who is part of or speaks for 'the community' and in fact what is the community.[104]

The loss of a representative structure in these areas, such as ATSIC Regional Councils, will make this task more difficult.

Challenges also surface in relation to the accessibility of mainstream services. Again, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs acknowledged that:

> [t]he evidence suggests that indigenous people in urban areas tend not to use mainstream services and choose instead to use Indigenous community organisations as either intermediaries with mainstream agencies or as replacement service providers, or not to use any services at all.[105]

---

104 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *"We Can Do It!" The Report of inquiry into the Needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples,* Commonwealth of Australia, Canberra, 2001 at 3.19

105 *ibid* at 3.3.

Clearly a number of structural/systemic barriers must be addressed. As previously acknowledged, the new arrangements are still in the early stages of implementation and it is yet to be seen how this challenge will be addressed.

- *'Mutual obligation' as the basis of Shared Responsibility Agreements*

With the announcement of the new arrangements, there has been a noticeable shift in emphasis on the role of SRAs. The focus is now much more explicitly on the responsibilities of Indigenous people in meeting mutual obligation principles. The OIPC state that the SRA process is intended to:

> build genuine partnerships with Indigenous people at the local level based on the notion of reciprocity or mutual responsibility. An SRA is a two way street where communities identify priorities and longer term objectives for themselves, government listens and they work together to achieve agreed objectives – nothing can progress unless the lead comes from the community.[106]

This presents the acceptance of mutual obligation as voluntary. However, the OIPC have also stated that 'Under the new approach, groups will need to offer commitments in return for government funding'.[107] During consultations for this report senior bureaucrats have confirmed that the intention is that communities that do not wish to accept mutual obligation will be provided with basic services, but might not receive additional funding or support.

Due to the preliminary status of the new arrangements, it will not be until mid-2005 at the earliest that there will be sufficient information to express a view about the *actual* approach being adopted by the Government to reflecting mutual obligation requirements in SRAs.

The first indication of what may be required was provided in late 2004, when the details of an SRA with the Mulan community were released. It required that the community ensure that children shower every day, and wash their face twice a day; ensure petrol sold through the store is not used for petrol sniffing; ensure children get to school, crèche and the clinic when they should; that the CDEP program ensure that rubbish bins are at every house and emptied twice a week; that household pest control happens four times a year; that the rubbish tip is managed properly; and ensure that all household rents are paid so that the community council can afford pest control, repairs and cost of rubbish removal.[108] In return, the Australian Government will 'contribute $172,260 for the provision and installation of fuel bowsers'.[109] One of the stated objectives of the agreement is to reduce the incidence of trachoma in the community.

Consultations for this report have revealed widespread concerns about the potential scope and dominance of mutual obligation requirements. There is concern that SRAs will become less of a community development and capacity building model and more of a punitive funding agreement model which seeks

106 Gibbons, W., *op.cit.,* p3.
107 Office of Indigenous Policy Coordination, *New Arrangements in Indigenous Affairs op.cit.,* p8.
108 Australian Government, *Draft Shared Responsibility Agreement – Provision of fuel bowsers to Mulan Aboriginal Community* (undated).
109 *ibid*.

behavioural change. This is particularly so when, as in the Mulan agreement, there is very little connection between the outcome sought by the Government (in this example reducing the incidence of trachoma) and the input provided by the Government (a petrol bowser). There is also widespread concern that the linking of delivery of services to behavioural change through SRAs would be discriminatory.

During public debate about the appropriateness of the Mulan agreement I stated that:

> As acting Race Discrimination Commissioner I would be deeply concerned if conditions were introduced which place restrictions on access to services for one sector of the Australian community defined by their race that did not apply more generally to the rest of the Australian community. It would be unacceptable for Indigenous peoples to be denied basic citizenship services that all other Australians take for granted.
>
> Any proposals for reform must comply fully with the *Racial Discrimination Act* and the principle of non-discrimination more generally. Proposals which fail to do so should be rejected outright as morally repugnant and not fit for modern Australian society.
>
> This debate should be firmly focused on creating sustainable improvements in the circumstances of Indigenous peoples and on building the capacity of Indigenous individuals and communities to freely determine their own destiny.
>
> The proposed introduction of coercive measures to achieve this will not work and may well have the opposite effect of exacerbating the extent of poverty, marginalisation and powerlessness of Indigenous people. It would also be inconsistent with Australia's international obligations, such as under Article 6 of the International Covenant on Economic, Social and Cultural Rights, that emphasizes the obligation of governments to support an individual's right to work in equitable and non-coercive terms…
>
> Ultimately, moving from a passive welfare approach requires a multiplicity of responses and substantial change from the way government does business at present. Knee-jerk reactions to the substantial challenge that this presents need to be avoided, particularly where they may create discriminatory standards of treatment by government(s) or be counter-productive.[110]

In light of the potentially serious consequences of this issue, my office will continue to consult with the OIPC about the guidance it provides to ICCs for addressing mutual obligation requirements in the negotiation of SRAs. I will also scrutinise Shared Responsibility Agreements over the coming eighteen months to determine whether they raise issues of non-compliance with human rights standards.

---

110 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Statement on proposals for welfare reform for Indigenous Australians,* Media Release, 11 November 2004, www.humanrights.gov.au/media_releases/2004/60_04.htm.

To this end, I note that the *Racial Discrimination Act 1975* (Cth) (RDA) makes it unlawful to discriminate on the basis of race and that the Act applies to Shared Responsibility Agreements. It is not possible to determine in the abstract, or on the basis of the information currently available, whether SRAs breach the RDA. The determination of whether a particular SRA is in breach of the RDA will depend upon the facts and circumstances of the agreement. Appendix Two of this report, however, sets out the elements that would have to be proven to establish that an agreement is racially discriminatory and unlawful under the RDA.

Follow up action by Social Justice Commissioner

7. The Social Justice Commissioner will, over the coming twelve months, consult with governments, Indigenous communities and organisations and monitor:

- **processes for forming Shared Responsibility Agreements; and**
- **the compliance of Shared Responsibility Agreements with human rights standards, and in particular with the *Racial Discrimination Act 1975* (Cth).**

· *Ensuring that appropriate recruitment and retention practices are maintained within the Australian Public Service under the new arrangements*

The new arrangements pivot on the ability of government to engage with Indigenous people and communities. This requires public servants to have particular skills in communicating and engaging with Indigenous peoples.

The Australian Public Service has a number of longstanding practices for the recruitment, training and retention of Indigenous staff as well as the development and recognition of skills and abilities of staff in roles where they engage directly with Indigenous peoples in delivering programs or determining policy that affects Indigenous peoples. Consultations for this report, however, have revealed some disturbing trends in relation to these practices and the valuing of these skills and abilities since the introduction of the new arrangements. In particular, I have identified:

1. A lack of commitment to using *identified criteria* by the central coordinating agency for the new arrangements (OIPC), meaning that skills relating to communicating with Indigenous peoples and understanding Indigenous cultures are not considered mandatory skills for some key positions in the new arrangements;
2. A lack of *cultural awareness training* for staff entering the OIPC or regional service delivery roles through ICCs; and
3. A *decline in the employment and retention of Indigenous people in the Australian Public Service*, particularly at the executive and senior executive levels, since the introduction of the new arrangements.

First, I am concerned about the processes used for recruiting staff in the OIPC and the lack of use of identified criteria.

The Australian Public Service Commission notes that 'some jobs within the APS need an understanding of the culture and issues faced by Indigenous Australians and an ability to deal effectively and sensitively with these'.[111] Possessing such understanding and abilities is recognised as an important skills set for potential public servants to be able to fulfil the duties of positions. This is particularly so for positions 'where part or all of the duties involve the development of policy or programs relating to Indigenous Australians, and/or involve interaction with Indigenous Australian communities, including service delivery'.[112]

Public service agencies are encouraged to utilise what are called 'identified criteria' in selection processes to require that applicants can demonstrate that they possess relevant skills. The common wording for these criteria that has been used to date in the public service is as follows:

> 1. Demonstrated knowledge and understanding of contemporary Aboriginal and Torres Strait Islander cultures and the diversity of circumstances of Aboriginal and Torres Strait Islander people; and
>
> 2. Demonstrated ability to communicate sensitively and effectively, including proper negotiation and consultation, with Aboriginal and Torres Strait Islander people on matters relevant to delivery of Government Aboriginal and Torres Strait Islander policies.

These criteria are not mandatory, but have been identified as strategies that assist agencies to meet their obligations under the *Public Service Act 1999* (Cth) to promote workplace diversity. They have been used as a strategy to recruit Indigenous people into the public service, although 'recruitment is on the basis of merit and therefore not confined to Indigenous applicants'.[113]

These were identified as mandatory criteria used in all recruitment processes at ATSIC. The Australian Public Service Commission's *State of the Service 2003/04* report notes that 19 federal departments or agencies utilise identified criteria, and a further 4 are developing strategies for their use.[114] In correspondence with my office about the new arrangements, the following departments indicated that their policies require the use of Identified Criteria where the position involves service delivery to Indigenous people or communities:

- Department of Employment and Workplace Relations (DEWR);
- Department of Education, Science and Training;
- Department of Family and Community Services;
- Department of Environment and Heritage;

---

111 Australian Public Service Commission, *Recruitment of Indigenous Australians in the Australian Public Service* online at http://www.apsc.gov.au/publications01/indigenousrecruitment.htm (accessed 31 October 2004), p4.

112 *ibid.*

113 *ibid.*

114 Australian Public Service Commission, *State of the Service 2003/04,* APSC, Canberra 2004, Table 8.2.

- Department of Agriculture, Forestry and Fisheries;
- Department of Foreign Affairs and Trade; and
- Attorney-General's Department.

DEWR, for example, states in its guide on the use of identified positions and identified criteria that such criteria is 'designed to assist in the selection of the most suitable people to undertake the effective development and delivery of policies and programmes affecting the department's Indigenous Australian clients'.[115]

These criteria have not, however, been utilised for all positions in the new arrangements by the Office of Indigenous Policy Coordination. This is despite OIPC being the central coordinating agency for the new arrangements.

For example, these criteria were not utilised in recruiting for the critical roles of Managers of Indigenous Coordination Centres. The OIPC has described these managers as:

> senior people who are effectively freed up from day to day programme administration and staff management. This allows them to focus on strategic whole of Australian Government leadership both across the office and with Indigenous communities in their regions… The ICC Managers lead the work with communities to develop Shared Responsibility Agreements (SRAs). This is their primary role. It requires them to be able to listen to the needs and priorities being identified by local communities, agree a set of objectives that both partners can work towards together and then work out what the government can do to support these objectives – by way of resources or other means.[116]

In the letter sent to potential applicants for these positions, the OIPC noted that:

> To make ICCs work, we need to tap into skills and qualities additional to those normally required of program or office managers. In particular, ICC Team Leaders must be able to sensitively and appropriately communicate with Indigenous people.

While the Commonwealth Public Sector Union (CPSU) petitioned the OIPC to include the two identified criteria in selection documents for the positions of ICC Managers,[117] they ultimately included one criterion which merged these identified criteria. They were also placed in the selection criteria as '*Additional* Selection Criterion' rather than as essential skills.

Similarly, none of the Senior Executive Service (SES) positions in the national office of OIPC carried any identified criteria or requirements related to knowledge of Indigenous peoples and cultures.

In answer to the question, 'Does the Department utilise identified selection criteria in recruiting staff for its mainstream or Indigenous specific programs?' the OIPC have advised me that:

115 Carters, G., *op.cit.,* p10.
116 Gibbons, W., *op.cit.,* p2.
117 Discussions with CPSU Indigenous Representative, Sydney, 7 September 2004.

> In relation to OIPC, it is a matter for each Manager to determine the most appropriate selection criteria for each position. The inclusion of identified criteria will depend on the duties and responsibilities of the position in question.[118]

I have indicated to senior bureaucrats[119] that I consider that the lack of use of identified criteria for all SES positions in OIPC, and regionally in ICCs, is unacceptable. Identified criteria reflect essential skills for public servants to engage with Indigenous people and communities or determine policy that directly affects Indigenous peoples.

At this stage, the majority of staff in mainstream departments who are located in ICCs have been mapped across from their previous positions in ATSIS or ATSIC. They will have been recruited using identified criteria. However, should they leave it is uncertain as to whether they will be replaced by someone who has been recruited on a similar basis. There needs to be consistency between agencies involved in ICCs as to the use of identified criteria.

In discussions about my concerns with the Australian Public Service Commission and the Indigenous Australian Public Service Employment Network, it was noted that some agencies do not understand the merit basis of using identified criteria. An example of this misunderstanding was provided by one government department which responded to my request for information that it 'does not utilise any identified selection criteria in general recruitment, as all positions are filled by merit-based selection processes'. Given that some agencies have now had Indigenous specific programs transferred to them where they did not previously have such programs, I consider it important for there to be a renewed effort to explain the merit basis of the use of identified criteria among public service agencies.

Recommendation 4

That the two identified criteria (namely, a demonstrated knowledge and understanding of Indigenous cultures; and an ability to communicate effectively with Indigenous peoples) be mandatory for all recruitment processes in the Australian Public Service relating to the new arrangements and in particular for positions in the Office of Indigenous Policy Coordination and Indigenous Coordination Centres.

Second, I am concerned about the lack of cultural awareness training for staff entering the OIPC or regional service delivery roles through ICCs. In discussions with the Australian Public Service Commission, cultural awareness training across the public service was described as 'poor'.[120] Given that mainstream departments now have new responsibilities to Indigenous peoples and will be required to engage with Indigenous peoples in ways that they previously have

118 Gibbons, W., *op.cit.,* p6.

119 Including senior managers in OIPC as well as to the Secretary of the Department of Prime Minister and Cabinet, and the Public Service Commissioner.

120 Discussion with APS Commissioner, Canberra, 23 August 2004.

not done so, there is a greater need for appropriate cultural awareness training service-wide.

As a practical example of this, the Department of Family and Community Services have noted that their role as Lead Agency in the Wadeye COAG trial has:

> taught us the importance of ensuring that the local people fully understand what the needs of government agencies are. Equally, it has demonstrated the importance of governments understanding community concerns… so that program and other services can be better targeted and delivered more effectively.[121]

Consequently, they state:

> one way of better equipping staff for their engagement with Indigenous people, is through more specific, focussed training. Given the new arrangements… there is a need for agencies to institute training programs, particularly to those that have a direct role in servicing Indigenous clients or manage programs with a significant Indigenous component/focus, which include some form of cross-cultural training, an Indigenous historical component to understand how to assist in building community capacity.[122]

They note that while 'generic cross-cultural courses form a good starting point', through the COAG trial at Wadeye 'there has been an acknowledgement that there are many experts at Wadeye who can provide Government agency staff with a localised cross-cultural training program'.[123] Supporting local people to provide cross-cultural training, FACS suggests, 'will allow local residents to build capacity and it will also provide them with an economic opportunity'.[124]

Despite this, the Indigenous Australian Public Service Employment Network was informed that OIPC are not prepared to conduct any cultural-training for its staff.[125] OIPC have stated, however, that 'other Australian Government agencies are… developing culturally appropriate training and development modules for delivery in ICCs throughout Australia'.[126] Programs such as the Department of Family and Community Services' *Cultural perspectives program* might also be able to be adapted for this purpose.

The new arrangements pivot on the success of community-engagement by APS staff. Therefore beyond cultural training, skill-development in the area of community development is crucial to performing the consultation and activities required. To date, it does not appear that community development training is being undertaken or provided to staff employed to implement the new arrangements. The skills required for this are quite different to those traditionally required of APS staff. The Indigenous Communities Coordination Taskforce has recommended that SRAs require broad strategies be adopted to 'build the

121 Harmer, J., *op.cit.,* p4.
122 *ibid.*
123 *ibid.*
124 *ibid.*
125 Discussions with Chairperson of IAPSEN, Canberra 2 September 2004.
126 Gibbons, W., *op.cit.,* p7.

capacity of government employees to meet the challenges of working in this new way with Indigenous communities'.[127]

Third, I am concerned about a decline in the employment and retention of Indigenous people in the Australian Public Service, particularly at the executive and senior executive levels since the new arrangements were introduced.

The *State of the Service Report 2003-04*, an annual report on employment trends in the Australian Public Service (APS) prepared by the Australian Public Service Commissioner, noted that in 2004 ongoing Indigenous representation in the APS fell to 2.3 per cent. This compares to 2.4 per cent for 2003 and 2.7 per cent in 1998 and 1999.[128] It has also been noted publicly that in the new arrangements, only one out of 20 senior management positions in the OIPC is filled by an Indigenous person, with a further seven ICC Managers being Indigenous (out of a total of 30). [129]

The APS Commissioner noted the combination of the reduction in ongoing engagements at the entry-level and a sharp increase in separations, were the main factors contributing to the reduced Indigenous representation in the APS.[130] The Commissioner stated:

> The APS Commission has identified this area [Indigenous retention] as a priority and, through its Indigenous Employment Strategy, is continuing to work with agencies to redress the declining representation of Indigenous Australians in the APS. Priority areas for 2004-05 include supporting the transition of Indigenous employees from ATSIS to APS line agencies, and developing training approaches to support the new Indigenous Coordination Centres which have replaced existing ATSIS regional offices. The impact of these changed administrative arrangements on Indigenous employment will be monitored closely in future State of the Service reports.[131]

The reduction in entry-level positions, also known as base-grade recruitment, narrows the method by which many Indigenous Australians enter the APS. ATSIC and ATSIS had conducted large-scale Indigenous cadetship and trainee programs that was an important contributor to proportionate Indigenous employment throughout the ranks of the APS. Some Departments, such as the Department of Agriculture, Forestry and Fisheries maintain this program,[132]

---

127 Indigenous Communities Coordination Taskforce, *Shared Responsibility Shared Future – Indigenous whole of government initiative: The Australian government performance monitoring and evaluation framework*, DIMIA Canberra 2003. Available online at: www.icc.gov.au. at "2.5"

128 Podger, A. (Australian Public Service Commissioner), *State of the Service Report 2003-04: State of the service series 2003-04*, Commonwealth of Australia, Canberra, November 2004, p144, Table 8.2.

129 Graham, C., Giles, T. and Johnstone, B., *APS Bosses: from this… to this in just 2 years,* National Indigenous Times, 20 January 2005, pp4-5.

130 Indigenous separations from the APS rose from 4.1 per cent in 2002-03 to 4.9 per cent in 2003-04. For further detail see Podger, A., *op.cit.,* p152, table 8.8.

131 Podger, A., *op.cit.,* p191.

132 Hicks, J. (General Manager People and Planning), Department of Agriculture, Fisheries and Forestry *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner on the New Arrangements for the Administration of Indigenous Affairs,* 3 November 2004, pp5-6.

however many Agencies have not continued ATSIC or ATSIS cadetships and appear to have no process in place to commence such a program.[133]

The Australian Public Service Commission stated in late August 2004 that the number of Indigenous staff within the APS was in danger of continuing to decline significantly as the new arrangements began to be implemented.[134] Many of the departures have been at the middle-management level. IAPSEN have also noted a steady decline in Indigenous staff at the Executive Level.[135]

Since the announcement of the new arrangements, the Australian Public Service Commission has requested that agencies that have received staff from ATSIC or ATSIS report any changes in their status at the end of each month. This provides a crude guide to changes in Indigenous retention in these agencies. Comprehensive data will not be available until the Australian Public Service Employee Database is uploaded at the end of the financial year. I intend to maintain regular dialogue with the APSC over the coming years about trends in retention rates and strategies being put into place to address the consequences of these.

Follow up action by Social Justice Commissioner

8. The Social Justice Commissioner will, over the coming twelve months, consult with the Australian Public Service Commission about:

- **recruitment strategies relating to positions in the Australian Public Service involving Indigenous service delivery, program and policy design, and in particular, promoting understanding and use of identified criteria;**
- **the use of cultural awareness training by agencies involved in the new arrangements;**
- **trends in the retention of Indigenous staff across the Australian Public Service; and**
- **the assistance that the Commission is providing to agencies involved in the new arrangements with developing or revising Indigenous recruitment and retention policies.**

- *Coordinating programs across government departments and with the states and territories*

In its *Report on Indigenous Funding 2001,* the Commonwealth Grants Commission found that 'mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous people'.[136] Consequently, it identified the following principles to underpin service delivery:

- the full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery;

133 See Australian Public Service Commission, *State of the Service 2003/04,* Table 8.9: Agency strategies to recruit Indigenous Australians, Agency survey, Online at: www.apsc.gov.au/stateoftheservice/0404/chapter8f.htm.

134 Discussion with then APSC Commissioner, Canberra, 23 August 2004.

135 Discussions with Chairperson of IAPSEN, Canberra, 2 September 2004.

136 Commonwealth Grants Commission, *op.cit.,* p43.

- ensuring genuine collaborative processes with the involvement of government and non-government funders and service deliverers to maximise opportunities for pooling of funds, as well as multi-jurisdictional and cross-functional approaches to service delivery; and
- recognition of the critical importance of effective access to mainstream programs and services, and clear actions to identify and address barriers to access.[137]

To ensure the equitable access to mainstream services by Indigenous people, the CGC also recommended governments implement actions to:

- ensure all spheres of government recognise their responsibilities through mainstream programs, and the appropriate relationship between mainstream and Indigenous-specific programs;
- review all aspects of mainstream service delivery to ensure they are sensitive to the special needs and requirements of Indigenous people; and
- involve Indigenous people in the design and delivery of mainstream services.[138]

One of the consequences of the adoption of a whole of government approach to service delivery through the new arrangements is that mainstream government services and programs at the federal level will now sit alongside Indigenous specific programs in Indigenous Coordination Centres. *This is a significant opportunity to improve the accessibility of mainstream programs for Indigenous people and communities so as to better meet their needs.*

It also creates the following challenges for the new arrangements, and specifically how ICCs operate.

First, there is much potential to match up the activities of ICCs with programs which already have a regional focus. The Department of Transport and Regional Services states that:

> The major vehicle for DOTARS interaction with the ICCs is through the network of 56 (Area Consultative Committees) ACCs that the Department auspices… They are made up of local stakeholders and are vital players in their regions. The ACC's primary roles are:
>
> - To be a key facilitator of change and development in their region;
> - To be the link between government, business and the community; and
> - To facilitate whole of government responses to opportunities in their communities.
>
> The ACCs potentially offer an opportunity for ICCs to strengthen their ability to service Indigenous communities through drawing together unique industry networks, as well as significant expertise, knowledge

137 *ibid.,* pp101-102. The full list of service delivery principles is reproduced in part 1 of this chapter.
138 *ibid.,* p102.

> and information on various non-Indigenous Australian Government programmes (particularly those relating to industry development and employment). ACCs have a responsibility to promote all government programmes in their work… ICCs in return, would potentially offer ACCs a better understanding of, and access to, Indigenous communities and their issues.[139]

The Department of Education, Science and Training has stated that it has commenced aligning its Indigenous Education Network with ICC's:

> DEST is playing a key role in participating in the Indigenous Coordination Centres and in supporting the development of Shared Responsibility Agreements… To support this interaction we are integrating our Indigenous Education network with the new ICCs.
>
> Our network staff are progressively developing effective working relationships with their counterparts in the 22 rural and remote ICCs. In each State and the Northern territory, there are 15 locations where there is a former ATSIC office and a DEST regional or district office. In these 15 ICC locations, ie where a DEST office already exists, we have established a 'virtual' presence in the ICC until the physical co-location of our staff can be achieved.
>
> In seven ICC locations where DEST currently has no regional office, DEST sought expressions of interest from staff to work on a temporary basis to help establish the Department's presence… Over time, DEST's regional network will be joined physically or affiliated 'virtually' with the ICC regional footprint. Our staff have access to the ICC IT network to ensure that information is shared and that effective communication occurs.[140]

The Department of Employment and Workplace Relations also see significant potential for improving the links between Indigenous specific employment programs, including CDEP, and mainstream employment programs.

Second, concern has been expressed regularly throughout the consultations for this report that some departments have adopted a more rigid approach to implementing these new program responsibilities. It has been suggested that it is a case of Indigenous specific programs being required to fit with existing mainstream approaches, rather than the other way around.

A particular concern that has been expressed continually is the more rigid approach adopted to the Community Development Employment Projects Scheme, including in defining what constitutes an activity under the program. A related concern that has been expressed is increased pressure being placed on Indigenous people to accept mutual obligation requirements, opening up the possibility that punitive measures accompanying this could result in Indigenous people moving from programs such as CDEP which have reciprocity requirements to other forms of income support, such as Disability Support Pension, which do not.

---

139 Varova, S., *op.cit.,* pp1,5.

140 Paul, L. (Secretary, Department of Education, Science and Training), *Re: the New Arrangements for the Administration of Indigenous Affairs,* Correspondence to Social Justice Commissioner, 11 November 2004, p3.

Third, not all federal departments have a record of delivering services in regional areas. At least two departments have indicated that, prior to being transferred program responsibilities from ATSIS, they had only a limited or no regional presence. The Attorney-General's Department notes:

> The AGD was not a participant in the COAG trials. Before the transfer of ATSIS staff to the Department, AGD had no staff outside Canberra (apart from some staff of Emergency Management Australia…)… Thirty-three of the staff who transferred from ATSIS to AGD are based in 19 different locations outside Canberra. As the Department has no regional offices, those 33 staff are accommodated in ICCs…
>
> The Department is developing arrangements with ICC management, and with other departments, to ensure continuity of programme delivery from those ICCs where AGD has no staff.[141]

The Department of Communications, Information Technology and the Arts have also stated:

> Until 1 July 2004, DCITA was a relatively small Canberra-based policy department without a regional presence… As a result of the new arrangements, DCITA has now assumed responsibility for programme budgets amounting to approximately $42 million per annum and is integrating approximately 100 new staff into the Department. Most of these staff will be located in regional areas, and… will work in newly established Indigenous Coordination Centres.
>
> This will be a challenge, particularly given the lack of an existing department state or regional network and the relatively junior profile of the staff mapped to DCITA.[142]

Consultations for this report confirmed the concern expressed above regarding the relatively junior profile of staff mapped into regional offices. We were provided with numerous examples of staff in regional offices at extremely junior levels having significant program responsibilities with their direct line management being in Canberra. This related to programs run by more than one department.

The Department of Environment and Heritage have noted that they are currently reviewing mechanisms for delivering the Indigenous Heritage and Environment Programme. Under ATSIS the program was devolved to regional offices. The Department notes:

> It is likely that stronger centralized management and administration of the Programme could be a more effective means for management, delivery and oversight of the Programme at the national level. The devolved regional administration would therefore be changed… There will still be a component of regional administration and management, particularly with community based projects… the support from staff from other Departments in the ICCs will be sought on a fee for service basis to assist in some of the management requirements for grants approved in their areas.[143]

---

141 Office of the Indigenous Policy Coordination, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs, op.cit.*, Annex A, p26.

142 *ibid.,* p28.

143 *ibid.,* p56.

Structures are being established within these departments, and across government, to address the challenges that are created by the regional basis of service delivery in the new arrangements.

Fourth, there are practical issues raised by attempting coordination through ICCs. The ICC Manager does not have responsibilities for managing staff or administering programs. Such responsibility remains within the relevant department. The line of accountability for staff placed within ICCs goes back to their parent agency, often to a supervisor in a State capital or in some instances back to Canberra. Consultations for this report have identified a number of teething problems that this line management structure has created for ICCs. Staff have indicated that:

- they feel that they have two separate lines of accountability for their work – one back to their own agencies' central office and the other to the ICC, and it has been confusing to identify how to balance this;
- there have sometimes been delays in progressing issues as their supervisors in central office often require additional information and briefings about contextual issues before being able to make decisions;
- there is less understanding of the needs of working with Indigenous communities, particularly in remote areas – for example, staff in ICCs have stated that management in central agencies often does not understand the need for staff to visit communities on a regular basis in order to develop a rapport for effective communication with them and in order to progress issues; and
- at least one agency has provided very little discretion for its staff in ICCs to respond flexibly to issues, with the central office imposing a more rigid, centrally determined approach.

Some of these issues are no doubt teething problems as departments come to terms with their new regional responsibilities and directly engage with Indigenous communities. Overall, however, coordinating the operations within ICCs is the responsibility of the OIPC.

The OIPC have noted that, at the local level, addressing issues such as these is a responsibility of the ICC manager. They note that:

> MOUs will be developed between the ICC Manager and agencies within the ICC to agree the roles and involvement of agency staff in SRA development. In addition, several agencies are planning to place senior level solution brokers in the ICCs to work with the ICC Manager to ensure collaborative whole of government leadership for the work of the ICC.[144]

At a national level, the OIPC is also monitoring this issue and has set up an ICC Management Forum involving senior managers from all agencies participating in ICCs. This Forum 'meets regularly to address, in a collaborative way, issues which arise in relation to SRAs, other government investment in regions and the operation of ICCs more generally'.[145] The Secretaries Group and the Australian

144 Gibbons, W., *op.cit.,* pp3-4.
145 *ibid.,* p3.

Government Agency Heads Forum (State Managers) in each State and Territory also provide mechanisms for addressing these issues. A training program is also being developed 'to be delivered regularly to staff ICC by ICC – this will be targeted to the business of supporting SRA development and will focus on working in teams to achieve better outcomes for Indigenous people in the region'.[146]

The *Connecting government* report identifies the development of appropriate procedures to support local decision making as a key challenge of whole of government activity, such as through ICCs.[147]

Fifth, a particular issue that has emerged through the preliminary operation of ICCs has been that former ATSIC and ATSIS staff have noted that whereas they previously worked across different programs they are now more focused on the individual responsibilities of their new agency, with the result that there are new barriers or 'silos' emerging within the ICC.

Experience from some of the COAG trial sites has suggested that a potential solution to this is for a single person to be identified within an ICC to be the contact for a particular community and to coordinate the input of all agencies and programs. The Department of Employment and Workplace Relations have instituted such an approach in the Shepparton COAG Trial and note that without such a person providing 'a clear point of responsibility and accountability, progress is often slow and confusion occurs'.[148]

Sixth, a further challenge for ICCs is coordinating activity between levels of government, not just within the Federal Government.

In its *Report on Indigenous funding 2001,* the Commonwealth Grants Commission (CGC) found that generally, the Commonwealth has 'limited influence on the extent to which the distribution of mainstream programs reflects the relative needs of Indigenous people in different regions'.[149] The lack of Commonwealth influence on resource allocation was also found to be the case once Special Purpose Payments were handed over to the state and territories.[150] The CGC also expressed concern that complex funding arrangements and differing service delivery responsibilities across levels of government can result in 'some responsibility and cost shifting' between layers of government and between government agencies.[151]

Consultations for this report have identified a lack of discussion to date with the States and Territories to seek to join up their processes with those of the Commonwealth in order to address these issues. Indeed, many States have indicated that they have been provided with little information at all about the operation of ICCs. It is likely that this is a teething issue, as the focus is on establishing the systems at the federal level.

---

146 *ibid.,* p4.
147 Management Advisory Committee, *Connecting Government: Whole of government responses to Australia's priority challenges, op.cit.,* p6.
148 Carters, G., *op.cit.,* p1.
149 Commonwealth Grants Commission, *op.cit.,* p70.
150 *ibid.,* p71.
151 *ibid.,* p57.

It is feasible that at some stage in the future state government employees could also reside in ICCs. Alternatively, there may be the creation of parallel state structures, such as the whole of government unit that exists as part of the Cape York COAG trial. As noted in Appendix One to this report, COAG agreed a *National Framework of Principles for Government Service Delivery to Indigenous Australians* in June 2004. It includes a commitment to 'adopt cooperative approaches on policy and service delivery between agencies, at all levels of government and maintaining and strengthening government effort to address indigenous disadvantage'. It also foreshadows that this will be achieved through the negotiation of bilateral agreements to establish 'appropriate consultation and delivery arrangements… between the Commonwealth and individual States and Territories'.[152]

Follow up action by Social Justice Commissioner

9. The Social Justice Commissioner will, over the coming twelve months, consult with governments, Indigenous organisations and communities about:

- **whether there has been a reduction in the flexibility in interpreting program guidelines since the transfer of programs from ATSIS to mainstream departments;**
- **best practice arrangements for coordinating the interface with Indigenous communities through the operation of ICCs; and**
- **arrangements to coordinate federal government processes with those of the states and territories on a regional basis.**

- *Ensuring adequate monitoring and evaluation processes*

It is essential that adequate monitoring and evaluation processes are put into place as part of the new arrangements. As noted earlier, the new arrangements have been introduced administratively which has the potential to make the processes involved less transparent. While a coordinated whole of government approach is intended to simplify and streamline service delivery, it also has the potential to blur the responsibilities and performance of individual agencies and programs. Issues of coordination with the States and Territories also raise the potential for cost-shifting between jurisdictions.

The Government has committed to ensuring 'robust machinery' is introduced for monitoring and evaluation, particularly to ensure that mainstream programs are accessible to Indigenous people and communities.

The monitoring processes that have been established, or which are proposed for the new arrangements, include the following.

1. *The Office of Evaluation and Audit (Indigenous Programmes)* – Commencing on 1 July 2004, the Office of Evaluation and Audit (Indigenous Programmes) was transferred from ATSIS

152 Council of Australian Governments' Meeting, Canberra, 25 June 2004, Attachment B, http://www.coag.gov.au/meetings/250604/index.htm.

to the Department of Finance and Administration. The Department advises that:

> The OEP(IP) will have responsibility for the evaluation and audit of Indigenous programmes and operations… (It) will play a central role in measuring the performance of the Australian Government's Indigenous programmes.
>
> It is expected that legislation specifying the OEA(IP)'s functions and powers shall be introduced into Parliament in due course. Under this legislation, it is proposed that the OEA(IP) will evaluate and audit all Indigenous programmes across the whole of the Australian Government, and the operations of bodies and individuals who receive money or other property under those programmes.
>
> Whilst awaiting the introduction of this legislation, Finance is arranging to enter into Memoranda of Understanding with a number of departments responsible for the delivery of Indigenous programmes… to allow OEA(IP) to (begin such evaluations and audits).[153]
>
> It is proposed that the OEA (IP) evaluation and audit work program 'will incorporate a rolling cycle of audits of ICCs which will consider the operations of ICCs as well as Shared Responsibility Agreements and Regional Participation Agreements in order to provide an opinion as to whether outcomes are being achieved' and will also consider 'the accessibility of (sic.) Indigenous communities and people to (sic.) mainstream programmes' with recommendations directed towards Commonwealth departments, individual and funded organisations, or both as appropriate.[154]

2. *Public report by Secretaries Group* – The Office of Indigenous Policy Coordination has advised me that:

> The Ministerial Taskforce on Indigenous Affairs, advised by the National Indigenous Council, will make recommendations to the Australian Government on priorities and funding for Indigenous Affairs. This will be supported by a public annual report on the performance of Indigenous programs across government… will be prepared by the Secretaries' Group on Indigenous Affairs. In turn, this report will be underpinned by a performance monitoring and evaluation framework involving all participating Australian government agencies.[155]

153 Watt, I. (Secretary Department of Finance and Administration), *Re: the New Arrangements for the Administration of Indigenous Affairs,* Correspondence to Social Justice Commissioner, 22 October 2004, pp1-2.

154 *ibid.,* Attachment A, p2.

155 Gibbons, W., *op.cit.,* p6.

3. *Role of the Office of Indigenous Policy Coordination* – A key function of the OIPC is 'reporting on the performance of government programs and services for Indigenous people to inform policy review and development'. A Performance Evaluation Unit has been established within OIPC for this purpose. OIPC informs me that it will be undertaking this task in conjunction with the Productivity Commission, in addition to contracting the services of Universities.[156] They also stated:

   OIPC will have a strong coordination role relating to the new whole of government arrangements, including through the development of an indigenous information system containing whole of government Indigenous programme performance information. This will enable reporting against key priorities such as those agreed by the Ministerial Taskforce on Indigenous Affairs and COAG. The requirements are currently being scoped with a view to implementation in 2005-06.[157]

4. *COAG frameworks and commitments* – In its' *National Framework of Principles for Delivering Services to Indigenous Australians,* COAG commits to strengthening the accountability of governments for the effectiveness of their programs and services through regular performance review, evaluation and reporting. In June 2004, COAG also resolved that 'senior officials would report annually on the progress of practical reconciliation against the action priority areas of: investment in community leadership initiatives; reviewing and re-engineering government programs and services to ensure they deliver practical support to Indigenous Australians; and the forging of closer links between the business sector and Indigenous communities to help promote economic independence' and that they would task 'the Productivity Commission to continue to measure the effect of the COAG commitment through the jointly-agreed set of indicators' in the National Reporting Framework for Overcoming Indigenous Disadvantage.[158]

5. *Agreement making processes* – It is intended that performance indicators will also be agreed with Indigenous communities and represent-ative bodies through *Shared Responsibility Agreements* and *Regional Participation Agreements*.

Monitoring and evaluation processes for the new arrangements need to be directed to both the efficiency and operation of Commonwealth programs and

156 Discussion with Head of OIPC (Associate Secretary DIMIA), 23 August 2004.
157 Gibbons, W., *op.cit.,* p6.
158 Council of Australian Governments' Meeting, Canberra, 25 June 2004, Attachment B, http://www.coag.gov.au/meetings/250604/index.htm.

service delivery; but also more broadly to the systemic issues of how the mechanisms that make up the new arrangements fit together. It is too early to tell whether the mechanisms, as set out above, are sufficiently broad to address both of these perspectives.

In this regard, I welcome the continuation of the role of the OEA. It is important that it have the mandate and the functional ability (though adequate resourcing) to evaluate both the performance of programs across the Federal Government as well as to audit ICCs and the agreements struck with Indigenous peoples by them. As noted above, however, the Government has set a target of 80 SRAs to be finalised by ICCs by 30 June 2005. This indicates the expected volume of agreements that will be struck over the coming years.

It is not clear that the OEA will be able to provide a system-wide evaluative mechanism for these agreements, as opposed to a more nitty-gritty evaluative role which focuses on how individual agreements are implemented. It can be expected that the OIPC's Performance Evaluation Unit will also have an important role to play in this regard. Again, however, it is too early to know whether this will prove to be the case. It is also not known whether the role of the OIPC will be public and transparent.

In light of the issues raised in this and previous sections, and the magnitude of the changes introduced, I consider it important that there be a clear evaluative process which covers all areas of the new arrangements and their interaction. I note that when the Government announced the changes, it stated that in order to ensure improved outcomes and better coordination the 'Commonwealth Grants Commission will have an important role to play'.[159]

The CGC is ideally placed to provide such a systems-wide evaluative mechanism, given its ongoing role in developing weightings of regional need for the allocation of grants from the Commonwealth to State and Territory Governments as well as to local government, and its experience in conducting the review of Indigenous funding in 2000-01.

Recommendation 5

3. That the Government refer to the Commonwealth Grants Commission an inquiry on arrangements for Indigenous funding. The review should revisit the findings of the 2001 Report on Indigenous funding in light of the new arrangements, and specifically focus on:

- **the role and operation of regional Indigenous Coordination Centres in targeting regional need and implementing a whole of government approach;**
- **processes for establishing regional need (including the adequacy of baseline data and collection processes) and allocating funding on the basis of such need through a single budget submission process;**
- **the integration of regional and local level need through the *Regional Participation Agreement* and *Shared Responsibility Agreement* processes; and**
- **the role of regional representative Indigenous structures in these processes.**

159 Vanstone, A. (Minister for Indigenous Affairs), *New service delivery arrangements for Indigenous affairs,* Press Release, 15 April 2004, p1.

A further challenge raised by these processes is establishing clear links between monitoring processes and the commitments of the Government through COAG. My predecessor has expressed concern at the lack of progress at the COAG level in introducing systems to implement the commitments made through COAG's communiqués. In particular, chapter 2 of the *Social Justice Report 2003* noted the lack of progress in developing Ministerial Council Action Plans for this purpose, despite the commitment to develop such plans dating back to 2000. Responses received by my office to questions about how governments and departments will link performance monitoring to the COAG commitments have been ambiguous, particularly in relation to the role of Ministerial Council Action Plans. The South Australian Government has noted, however, that:

> COAG recently determined that Ministerial Councils are no longer required to report against Reconciliation Action Plans. MCATSIA [the Ministerial Council on Aboriginal and Torres Strait Islander Affairs] is therefore no longer required to monitor and evaluate these plans … However, MCATSIA will continue to work strategically with other Ministerial Councils through promoting and implementing the Overcoming Indigenous Disadvantage Framework, and support its use in the development of policy and service delivery and how it can be linked to existing Action Plans.[160]

In correspondence about the new arrangements, many government departments have also stated that are still determining how best they can link performance monitoring and evaluation processes to the COAG commitments, particularly the National Reporting Framework on Indigenous Disadvantage. The Department of Family and Community Services have acknowledged that:

> Although some progress has been made in linking performance monitoring processes for programs to the commitments of the Australian Government under COAG, progress has not been swift due to the complexity of the task… Clearly, the current reporting systems are not designed for this type of reporting and in many cases, staff are not familiar with nor skilled in, these new reporting requirements.[161]

Follow up action by Social Justice Commissioner

10. The Social Justice Commissioner will, over the coming twelve months, consult with governments and representative Indigenous structures about the adequacy of performance monitoring and evaluation processes to link government programs and service delivery to the commitments made through COAG, particularly the National Reporting Framework on Indigenous Disadvantage.

160 Roberts, T. (Minister for Aboriginal Affairs and Reconciliation, Government of South Australia), *Re: the New Arrangements in the Administration of Indigenous Affairs,* Correspondence to Social Justice Commissioner, 14 December 2004, p6.

161 Consultation with officials within FACS, 11 November 2004.

The new arrangements for the administration of Indigenous Affairs were announced on 15 April 2004. That announcement has precipitated a radical change to service delivery arrangements to Indigenous people at the federal level.

Less than three months after the announcement, over $1 billion worth of programs and 1300 staff were transferred from ATSIS and ATSIC to mainstream departments. Some departments found that not only did they now run Indigenous specific programs, but they also had staff located in regions and not in Canberra. These programs, along with all other relevant services, are required to be coordinated on a whole of government basis and through a regional approach. Service delivery approaches will also be set through agreement making processes negotiated with Indigenous representative structures that at the time of the announcement did not exist. The entire process would be monitored through processes that were also not finalised at this time.

This description indicates the enormity of the task being undertaken. It will take several years for the new arrangements to be fully implemented.

As Social Justice Commissioner, my role is to monitor the impact of government activity on the enjoyment of human rights by Indigenous peoples. The new arrangements have the potential to impact significantly on the enjoyment of rights by either leading to improved performance and outcomes by government, as well as improved engagement with Indigenous peoples, or by undermining the enjoyment of human rights by Indigenous peoples. This is possible if Indigenous peoples are not able to effectively participate in the new arrangements by having a voice at the national level, the ability to influence developments on a regional basis through the operation of culturally legitimate representative structures, or if local level engagement is selective or based on coercive measures. It is also possible if the new arrangements are not transparent in their operation and rigorously monitored, and if there is a systemic problem with government not placing enough emphasis on the skills necessary to engage effectively with Indigenous communities (through the establishment of appropriate recruitment, retention and training approaches across the public service and provision of adequate support for Indigenous people and communities to have in place appropriate governance arrangements).

Throughout the chapter I have identified a range of issues that my office will continue to monitor over the next eighteen months to ensure that a breach of Indigenous peoples' human rights does not result in the longer term. I have also made some preliminary recommendations about the new arrangements. These are reproduced here. My intention is to maintain a focus on the implementation of these new arrangements to ensure that essential components of the new arrangements are not forgotten or cast aside due to the complexity and scope of the changes being implemented.

Recommendations

3. That the Office of Indigenous Policy Coordination conduct a comprehensive information campaign for Indigenous people and communities explaining the structures established by the new arrangements and the processes for engaging with Indigenous people. This information must be disseminated in forms that have regard to literacy levels among Indigenous people and English as a second language.

4. That the two identified criteria (namely, a demonstrated knowledge and understanding of Indigenous cultures; and an ability to communicate effectively with Indigenous peoples) be mandatory for all recruitment processes in the Australian Public Service relating to the new arrangements and in particular for positions in the Office of Indigenous Policy Coordination and Indigenous Coordination Centres.

5. That the Government refer to the Commonwealth Grants Commission an inquiry on arrangements for Indigenous funding. The review should revisit the findings of the 2001 Report on Indigenous funding in light of the new arrangements, and specifically focus on:

- **the role and operation of regional Indigenous Coordination Centres in targeting regional need and implementing a whole of government approach;**
- **processes for establishing regional need (including the adequacy of baseline data and collection processes) and allocating funding on the basis of such need through a single budget submission process;**
- **the integration of regional and local level need through the *Regional Participation Agreement* and *Shared Responsibility Agreement* processes; and**
- **the role of regional representative Indigenous structures in these processes.**

Follow up actions by Social Justice Commissioner

1. In light of the importance of the lessons from the COAG whole of government community trials for the implementation of the new arrangements, the Social Justice Commissioner will over the coming twelve months:

- **Consider the adequacy of processes for monitoring and evaluating the COAG trials;**
- **Consult with participants in the COAG trials (including Indigenous peoples) and analyse the outcomes of monitoring and evaluation processes; and**
- **Identify implications from evaluation of the COAG trials for the ongoing implementation of the new arrangements.**

2. The Social Justice Commissioner will, over the coming twelve months, seek to establish whether any Indigenous communities or organisations have experienced any ongoing financial difficulties or disadvantage as a result of the transition of grant management processes from ATSIS to mainstream departments and if so, will draw these to the attention of the Government so they can rectify them.

3. The Social Justice Commissioner will, over the coming twelve months, establish what mechanisms have been put into place in framework agreements between the Commonwealth

and the states and territories, including in relation to health and housing, to ensure appropriate participation of Indigenous peoples.

4. The Social Justice Commissioner will, over the coming twelve months, consider the adequacy of processes for the participation of Indigenous peoples in decision making. This will include considering the adequacy of processes to link local and regional representative structures to providing advice at the national level.

5. The Social Justice Commissioner will, over the coming twelve months, consult with Torres Strait Islanders living on the mainland and their organisations to establish whether the new arrangements enable their effective participation in decision making.

6. The Social Justice Commissioner will, over the coming twelve months, consult with governments, ATSIC Regional Councils and Indigenous communities and organisations about:

- **engagement by governments with ATSIC Regional Councils and the use of their Regional Plans;**
- **progress in developing regional representative Indigenous structures, and mechanisms for integrating such structures with community level agreement making processes.**

7. The Social Justice Commissioner will, over the coming twelve months, consult with governments, Indigenous communities and organisations and monitor:

- **processes for forming Shared Responsibility Agreements; and**
- **the compliance of Shared Responsibility Agreements with human rights standards, and in particular with the *Racial Discrimination Act 1975* (Cth).**

8. The Social Justice Commissioner will, over the coming twelve months, consult with the Australian Public Service Commission about:

- **recruitment strategies relating to positions in the Australian Public Service involving Indigenous service delivery, program and policy design, and in particular, promoting understanding and use of identified criteria;**
- **the use of cultural awareness training by agencies involved in the new arrangements;**
- **trends in the retention of Indigenous staff across the Australian Public Service; and**
- **the assistance that the Commission is providing to agencies involved in the new arrangements with developing or revising Indigenous recruitment and retention policies.**

9. The Social Justice Commissioner will, over the coming twelve months, consult with governments, Indigenous organisations and communities about:

- **whether there has been a reduction in the flexibility in interpreting program guidelines since the transfer of programs from ATSIS to mainstream departments;**
- **best practice arrangements for coordinating the interface with Indigenous communities through the operation of ICCs; and**
- **arrangements to coordinate federal government processes with those of the states and territories on a regional basis.**

10. The Social Justice Commissioner will, over the coming twelve months, consult with governments and representative Indigenous structures about the adequacy of performance monitoring and evaluation processes to link government programs and service delivery to the commitments made through COAG, particularly the National Reporting Framework on Indigenous Disadvantage.

Appendices

Appendix 1

Chronology of events relating to the introduction of new arrangements for the administration of Indigenous affairs, 2002-2004

This appendix provides an overview of the main events leading up to the introduction of the new arrangements for the administration of Indigenous affairs on 1 July 2004, as well as the key events which have occurred since that time to implement the new arrangements.

It commences with a table which summarises the main events. This is followed by more information on each event.

Summary – Chronology of events relating to the introduction of new arrangements for the administration of Indigenous affairs, 2002-2004

5 April 2002 — **COAG Commitments**

The Council of Australian Governments (COAG) agrees to trial a whole of government cooperative approach in up to ten communities or regions across Australia. Eight trial sites are subsequently agreed upon.

COAG also agrees to commission the Steering Committee for Government Service Provision to develop a reporting framework on key indicators of Indigenous disadvantage.

These decisions follow from the agreement of a reconciliation framework by COAG in November 2000. The framework commits governments to work in partnership to improve the economic and social wellbeing of Indigenous people.

12 November 2002 — **ATSIC Review announced**

The Government announces a three-member panel will review the role and functions of the Aboriginal and Torres Strait Islander Commission (ATSIC). The terms of reference require that the review examine and make recommendations to government on:

- How Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programmes to assist them;

- The current roles and functions of ATSIC; and
- The appropriate role of Regional Councils in ensuring the delivery of appropriate government programmes and services to Indigenous people.

24 December 2002 **Conflict of interest directions issued for ATSIC**

The Minister for Immigration, Multicultural and Indigenous Affairs issues general directions to ATSIC to address potential conflicts of interest by preventing ATSIC from funding organisations of which full-time ATSIC officeholders are directors or in which they have a controlling interest.

The ATSIC Board provided its support for the directions on 24 January 2003.

17 April 2003 **ATSIS created to address ongoing concerns about potential conflicts of interest in ATSIC**

The Minister for Immigration, Multicultural and Indigenous Affairs announces that a new Executive Agency, Aboriginal and Torres Strait Islander Services (ATSIS), will be established under the *Public Service Act* to manage ATSIC's programmes and to make individual funding decisions. This removes the powers of ATSIC's National Board to make such decisions.

The Minister states that this action follows from continuing concerns about ATSIC's operations leading the Government to the conclusion that further action was needed. The creation of ATSIS is announced as an interim measure, pending the outcomes of the ATSIC Review.

13 June 2003 **ATSIC Review Discussion Paper released**

The ATSIC Review team release a discussion paper outlining the main themes from their consultations to date and setting out a number of proposals for a revised ATSIC. The Review states that there continues to be 'overwhelming support' for a national body to represent the interests of Indigenous peoples, 'but very little support for ATSIC's current performance' with the ATSIC Board not having 'discharged its advocacy and representation functions effectively'. Accordingly, they stated that 'ATSIC has reached a crisis point in respect of its public credibility and with its Indigenous constituency'.

1 July 2003 **ATSIS commences operations**

ATSIS commences operations. The Minister for Immigration, Multicultural and Indigenous Affairs issues directions to ATSIS' Chief Executive Officer requiring it to:

- Conform to the policies and strategies set by ATSIC and also have regard to Government policy;
- Focus on addressing relative need between regions in implementing programs;
- Ensure best practice in engaging service providers, including through competitive tendering and performance- based contracts; and
- Comply with the conflict of interest directions for ATSIC.

22 August 2003

National reporting framework for Indigenous disadvantage is endorsed by COAG

The Prime Minister writes to the Steering Committee for Government Service Provision on behalf of COAG and endorses the proposed national reporting framework for Indigenous disadvantage.

The framework seeks to present statistics on Indigenous disadvantage strategically by measuring progress against indicators in the short, medium and long term. It acknowledges the inter-relationship between different factors in contributing to Indigenous disadvantage, and that holistic solutions are required, involving whole of government activity, to achieve lasting improvements.

13 November 2003

First report to COAG on Indigenous disadvantage is released

The first report against the National Reporting Framework for Overcoming Indigenous Disadvantage is released by the Steering Committee for Government Service Provision. It confirms that Indigenous disadvantage is broadly based, with major disparities between Indigenous people and other Australians in most areas. The report also identifies gaps in data collection which need to be addressed to improve the quality of the information contained in the report.

It is subsequently agreed that the report will be published every two years rather than annually, as originally intended.

28 November 2003

ATSIC Review Panel releases final report

The ATSIC Review Panel releases its final report, *In the hands of the regions*.

The report recommends that ATSIC should be the 'primary vehicle to represent Aboriginal and Torres Strait Islander peoples' and that its role and functions should be strengthened. In strengthening ATSIC, the report proposes a range of reforms and principles to create, and underpin, a 'new ATSIC'.

15 January 2004

Reform of the Aboriginal Councils and Associations Act announced

The Government announces that it intends to reform the *Aboriginal Councils and Associations Act*. The proposed reforms are intended to improve corporate governance standards for Indigenous organisations.

The amendments are not presented to Parliament in 2004. They are anticipated to be introduced in mid-2005.

4 March 2004

Government announces Aboriginal and Torres Strait Islander Legal Services to move from grant to tender process

The Government announces that from 1 July 2005, funding of Aboriginal and Torres Strait Islander Legal Services (ATSILS) will begin to shift from a grant funding process to a competitive tender process. Successful tenderers will be engaged by the Government under contract for a three-year funding period.

The Government also releases an Exposure Draft of the proposed purchasing arrangements and calls for public feedback on the proposed tendering process.

The Minister for Indigenous Affairs announces on 30 June 2004 that following public comment on the proposed tendering process the government has amended the criteria for funding.

On 31 August 2004, the Attorney General announces that requests for tenders in Victoria and Western Australia will be released in November 2004, with other states and territories to follow progressively over the following eighteen months. The successful tenderers are expected to start delivering services on 1 July 2005.

30 March 2004 **Federal Opposition announces will abolish ATSIC if wins federal election**

The Australian Labor Party announces that if elected at the forthcoming federal election it will put into place a new framework for Indigenous self-governance and program delivery. This would involve abolishing ATSIC and replacing it with a new Indigenous representative structure.

15 April 2004 **Government announces that ATSIC to be abolished and new arrangements introduced from 1 July 2004**

The Government announces that ATSIC and ATSIS are to be abolished and that new arrangements for the administration of Indigenous affairs will be introduced from 1 July 2004.

Changes to be introduced include:

- Introduction of legislation to abolish ATSIC;
- The appointment of a National Indigenous Council;
- Devolution of Indigenous-specific programmes to mainstream departments;
- Establishment of a Ministerial Taskforce on Indigenous Affairs;
- Establishment of a Secretaries Group on Indigenous Affairs;
- Creation of a new Office of Indigenous Policy Coordination (OIPC);
- Movement to a single budget submission for Indigenous affairs;
- Creation of Indigenous Coordinating Centres (ICC's); and
- Adoption of Shared Responsibility Agreement (SRA) and Regional Partnership Agreement (RPA) approaches.

20 April 2004 **Connecting Government report outlines whole of government challenge for public service**

The Management Advisory Committee to the Australian Public Service Commission releases its report, *Connecting Government: Whole of government Response to Australia's Priority Challenges*. The report outlines the challenges in implementing a whole of government approach to the public service. The Secretary of the Department of Prime Minister and Cabinet launches the report and describes the new arrangements for Indigenous affairs as 'the biggest test of whether the rhetoric of connectivity can be marshalled into effective action… It is an approach on which my reputation, and many of my colleagues, will hang'.

27 May 2004 **ATSIC Amendment Bill 2004 introduced to Parliament**

The *ATSIC Amendment Bill 2004* is introduced to Parliament. The Bill proposes the abolition of ATSIC in two stages – the National Board of Commissioners to be abolished from 30 June 2004 and the Regional Councils from 30 June 2005.

The House of Representatives passed the Bill on 2 June 2004.

28 May 2004 **Ministerial Taskforce on Indigenous Affairs is created**

The Government announces the creation of the Ministerial Taskforce on Indigenous Affairs. The Taskforce will provide high-level direction on Indigenous policy development.

The Taskforce is chaired by the Minister for Immigration, Multicultural and Indigenous Affairs and comprised of Ministers from portfolios relevant to improving outcomes for Indigenous Australians.

11-14 June 2004 **National Indigenous Leaders Conference calls for national representative body**

The National Indigenous Leaders Conference is held in Adelaide. Participants call for a new national representative structure for Indigenous peoples and propose a range of principles for such a body.

16 June 2004 **Senate Inquiry into ATSIC Bill established**

The Senate establishes the Select Committee for the Administration of Indigenous Affairs and refers the *ATSIC Amendment Bill 2004* to it for inquiry.

16 June 2004 **Ministerial Taskforce Charter adopted**

The Ministerial Taskforce adopts a Charter which outlines the Australian Government's 20-30 year vision for Indigenous affairs. It aims to ensure Indigenous Australians 'make informed choices', 'realise their full potential' and 'take responsibility for managing their own affairs'. The Charter also identifies early childhood intervention, safer communities, and reducing welfare dependency as the priority areas for attention in Indigenous affairs.

21 June 2004 **Report into Capacity Building and Service Delivery in Indigenous communities released**

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs releases *Many Ways Forward, Report of the inquiry into capacity building and service delivery in Indigenous communities.*

The Report finds that there is an urgent need for a new approach to be adopted by the government sector as well as the need to build the capacity of Indigenous communities and organisations.

The Report presents a series of recommendations that aim to ensure:

- basic data collection is nationally consistent and comparable, and focussed on outcomes;
- the Government institute a coordinated annual report to parliament on its progress in achieving agreed outcomes and benchmarks;
- a comprehensive evaluation is made of the COAG Trials, and a regular report on progress is made to Parliament;
- improved integration, coordination and cooperation within and between levels of government in consultation with Indigenous Australians occurs;
- a strong commitment is made to improving the capacity of government agencies; and

- the development of partnerships between the private/corporate/philanthropic sectors and Indigenous organisations is encouraged and supported.

25 June 2004 **COAG principles for new arrangements in Indigenous affairs endorsed**

COAG endorses a *National framework of principles for government service delivery to Indigenous Australians* as well as confirming its commitment to the whole of government trials and practical reconciliation. The National Principles will inform the Taskforce and Secretaries Group when developing and monitoring strategies to address Indigenous disadvantage.

The National Principles relate to six issues:

- Sharing responsibility;
- Harnessing the mainstream;
- Streamlining service delivery;
- Establishing transparency and accountability;
- Developing a learning framework; and
- Focussing on priority areas.

1 July 2004 **New arrangements in Indigenous affairs commence**

Under the new arrangements, 'more than $1 billion of former ATSIC-ATSIS programs was transferred to mainstream departments'. These departments will be required to 'accept responsibility for Indigenous services' and be 'held accountable for outcomes'. The transfer of Indigenous service to mainstream departments aims to ensure that departments will 'work in a coordinated way' and 'to make sure that local families and communities have a real say in how money is spent'.

31 August 2004 **Senate inquiry interim report and dissenting reports released**

The Senate Select Committee on the Administration of Indigenous Affairs releases its interim report and Government Senators release a dissenting report. The Committee report lists the number of public hearings held and submissions received by the Committee and states that due to the federal election it will be unable to complete its inquiry.

The dissenting interim report notes 'little support [was] expressed for ATSIC' in submissions received.

The Senate Committee was reconvened on 17 November 2004 and is due to report in March 2005.

6 November 2004 **The National Indigenous Council is appointed**

The Minister for Immigration, Multicultural and Indigenous Affairs announces the membership of the Government-appointed advisory body, the National Indigenous Council (NIC). The NIC is not intended to be a representative body or to replace ATSIC. Members of the NIC are appointed based on their 'expertise and experience in particular policy areas'.

Mrs Sue Gordon is appointed as the Chairperson of the NIC. The NIC will meet four times per year and advise the Ministerial Taskforce on Indigenous Affairs.

8-9 December 2004 **NIC conducts inaugural meeting**

The National Indigenous Council holds its' inaugural meeting. The Terms of Reference for the NIC are agreed with the Government. The NIC agrees that the priority policy areas for Indigenous affairs are:

- early childhood intervention;
- safer communities; and
- reducing passive welfare.

Further information about events relating to the introduction of new arrangements for the administration of Indigenous affairs, 2002-2004

5 April 2002 **Summary of issue:**

COAG commitments to reconciliation

The Council of Australian Governments (COAG) agrees to trial a whole of government cooperative approach in up to ten communities or regions across Australia. Eight trial sites are subsequently agreed upon.

COAG also agrees to commission the Steering Committee for Government Service Provision to develop a reporting framework on key indicators of Indigenous disadvantage.

These decisions follow from the agreement of a Reconciliation Framework by COAG in November 2000. The framework commits all governments to work in partnership to improve the economic and social wellbeing of Indigenous people.

In its' Communiqué of 3 November 2000, the Council of Australian Governments (COAG) agreed on a reconciliation framework through which all governments committed to an approach based on partnerships and shared responsibilities with indigenous communities, programme flexibility and coordination between government agencies, with a focus on local communities and outcomes.

The Reconciliation Framework establishes three priority areas for government action:

- Investing in community leadership initiatives;
- Reviewing and re-engineering programs and services to ensure that they deliver practical measures that support families, children and young people. In particular, governments agreed to look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction; and

- Forging greater links between the business sector and Indigenous communities to promote great economic independence.[1]

In its' Communiqué of 5 April 2002, COAG reaffirmed its commitment to this framework and agreed further to:

- Trial a whole of government cooperative approach in up to ten communities or regions across Australia; and
- Commission the Steering Committee for Government Service Provision to develop a reporting framework on key indicators of Indigenous disadvantage.

The aim of the whole of government community trials is to:

> improve the way governments interact with each other and with communities to deliver more effective responses to the needs of indigenous Australians. The lessons learnt from these cooperative approaches will be able to be applied more broadly. This approach will be flexible in order to reflect the needs of specific communities, build on existing work and improve the compatibility of different State, Territory and Commonwealth approaches to achieve better outcomes.[2]

It was subsequently agreed to conduct the trials in eight different Indigenous communities and regions. The trial sites are located as follows:

- Murdi Paaki Region (New South Wales);
- Wadeye (Northern Territory);
- Shepparton (Victoria);
- Cape York (Queensland);
- Anangu Pitjantjatjara Lands (South Australia);
- East Kimberley region (Western Australia);
- Northern Tasmania; and
- Australian Capital Territory.[3]

COAG also agreed to commission the Steering Committee for the Review of Government Service Provision to produce a regular report against key indicators of indigenous disadvantage. This report is to 'help to measure the impact of changes to policy settings and service delivery and provide a concrete way to measure the effect of the Council's commitment to reconciliation through a jointly agreed set of indicators'.[4]

---

1 Council of Australian Governments, *Communiqué,* 3 November 2000, http://www.coag.gov.au/meetings/031100/index.htm, (4 December 2004).

2 Council of Australian Governments, *Communiqué,* 5 April 2002, www.dpmc.gov.au/docs/coag050402.cfm, (4 December 2003). See also: Ruddock, P (Minister for Indigenous, Affairs), *Pilot Communities Plan to Build on Success Stories*, media release, 12 July 2002.

3 See: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, HREOC, Sydney, 2004, Appendix Two.

4 Council of Australian Governments, *Communiqué,* 3 November 2000, *op.cit.*

12 November 2002	**ATSIC Review announced** The Government announces a three-member panel will review the role and functions of the Aboriginal and Torres Strait Islander Commission (ATSIC). The terms of reference require that the review examine and make recommendations to Government on: • How Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programmes to assist them; • The current roles and functions of ATSIC; and • The appropriate role of Regional Councils in ensuring the delivery of appropriate government programmes and services to Indigenous people.

The Government announces a three-member panel will review the role and functions of the Aboriginal and Torres Strait Islander Commission (ATSIC). The Review Team is comprised of the Hon John Hannaford, Ms Jackie Huggins AM and the Hon Bob Collins.

The Terms of reference for the review are as follows.

> The reassessment will examine and make recommendations to government on how Aboriginal and Torres Strait Islander people can in the future be best represented in the process of the development of Commonwealth policies and programmes to assist them. In doing so the reassessment will consider the current roles and functions of ATSIC including its roles in providing:
>
> a. Advocacy and representation of the views of Aboriginal and Torres Strait Islander people;
> b. Programmes and services to Aboriginal and Torres Strait Islander people; and
> c. Advice on implementation of legislation.
>
> In particular the reassessment will consider the appropriate role for Regional Councils in ensuring the delivery of appropriate government programmes and services to Indigenous people.
>
> The reassessment will also consider and report on any potential financial implications.[5]

On 23 February 2003, the Minister for Immigration, Multicultural and Indigenous Affairs also asked the Review Team:

> to give particular attention to the structure of the relationship between the government and the Commission. This should include the adequacy of the Minister's powers and the merits of a possible Ministerial veto in relation to specific ATSIC decisions.[6]

5 Ruddock, P (Minister for Indigenous Affairs), *Reassessment of Indigenous Participation in the Development of Commonwealth Policies and Programmes*, Attachment to media release *ATSIC Review Panel Announced*, 12 November 2002.

6 Hannaford, J, Collins, B and Huggins, J, *Review of the Aboriginal and Torres Strait Islander Commission – June 2003*, Commonwealth of Australia, Canberra, 2003, p11.

24 December 2002	**Conflict of interest directions issued for ATSIC** The Minister for Immigration, Multicultural and Indigenous Affairs issues general directions to ATSIC to address potential conflicts of interest by preventing ATSIC from funding organisations of which full-time ATSIC officeholders are directors or in which they have a controlling interest. The ATSIC Board provided its support for the directions on 24 January 2003.

On 24 December 2002, the Minister for Immigration, Multicultural and Indigenous Affairs issues general directions to ATSIC to address potential conflicts of interest by preventing ATSIC from funding organisations of which full-time ATSIC officeholders are directors or in which they have a controlling interest.[7] The directions were made under section 12 of the *ATSIC Act* which allows the Minister to issue general directions to ATSIC about the performance of its functions and the exercise of its powers.

The Minister stated that:

> The directions will help minimise perceptions of conflicts of interest which arise when ATSIC officeholders are also members of bodies which ATSIC funds. It will allow ATSIC elected officials to focus on their duties and not be distracted by criticisms about possible conflicts of interests.
>
> The directions will also assist ATSIC to distinguish more clearly between its representative functions and its role in providing services. In particular, it will clearly separate those making funding decisions and the recipients of funding under the ATSIC Act.[8]

The ATSIC Board of Commissioners indicates their support for the conflict of interest directions on 24 January 2003.

17 April 2003	**ATSIS created to address ongoing concerns about potential conflicts of interest in ATSIC** The Minister for Immigration, Multicultural and Indigenous Affairs announces that a new Executive Agency, Aboriginal and Torres Strait Islander Services (ATSIS), will be established under the Public Service Act to manage ATSIC's programmes and to make individual funding decisions. This removes the powers of ATSIC's national Board to make such decisions. The Minister states that this action follows from continuing concerns about ATSIC's operations and potential conflicts of interest. The creation of ATSIS is announced as an interim measure, pending the outcomes of the ATSIC Review.

7 Ruddock, P. (Minister for Indigenous Affairs), *Directions to ATSIC Concerning Conflicts of Interests*, Media Release, 24 December 2002.

8 *ibid*.

On 10 April 2003, the Minister for Immigration, Multicultural and Indigenous Affairs foreshadows that the Government 'would be taking action in the forthcoming Budget to separate the roles undertaken within ATSIC'.[9]

On 17 April 2003, the Minister announces that an Executive Agency, to be called Aboriginal and Torres Strait Islander Services (ATSIS), will be established under the Public Service Act to manage ATSIC's programmes and to make individual funding decisions. This removes the powers of ATSIC's national Board to make such decisions. This is described as an interim measure, pending the outcomes of the ATSIC Review.[10]

The Minister stated that:

> From 1 July 2003, all individual funding decisions concerning programmes delivered by ATSIC will be made by officers of the administrative arm… ATSIC Commissioners and Regional Councillors will continue to determine policies and priorities for the spending of the money, in line with the original intention behind the establishment of ATSIC...
>
> This interim measure will promote good governance and accountability by removing the potential for conflicts of interest in decision making over funding.
>
> In the Westminster system of government, Ministers normally decide policy and officials implement it. ATSIC is unique in that it effectively exercises Ministerial policy powers. However, there has been no separation between this role and decisions to enter contracts or allocate funds to particular organisations or individuals, resulting in the potential for perceived or actual conflict of interest.
>
> This is contrary to good governance. The micro-management focus on ATSIC's own spending has also distracted the elected arm from more significant policy issues. While I took steps late last year to reduce conflicts of interest within ATSIC, continuing concerns about ATSIC's operations have led the Government to the conclusion that further action was needed...
>
> I recently asked the ATSIC Board to advise me what action it would take to address this issue. Its final position was supportive in principle but entailed too many qualifications and no guarantees. That is why the Government has decided to act now, rather than wait another year until the next budget or any changes to the ATSIC Act following the current Review.[11]

The agency, Aboriginal and Torres Strait Islander Services (ATSIS), will be headed by the ATSIC CEO and will be required to operate in conformity with policies and priorities established by the ATSIC Board and Regional Councils and to report on performance to the ATSIC elected arm. The Minister noted that:

9 Ruddock, P. (Minister for Indigenous Affairs), *Separation of Powers*, media release, 10 April 2003, p1.

10 Ruddock, P. (Minister for Indigenous Affairs), *Good Governance and Conflicts of Interest in ATSIC*, media release, 17 April 2003, p1.

11 *ibid*.

> (This) decision did not entail 'mainstreaming' ATSIC's programmes, nor their transfer to a department, as happened with ATSIC's health programme under the previous government. The new Executive Agency will be independent and required to operate in conformity with the Board's policies and priorities.
>
> There will be very little change for ATSIC's elected arm, its staff, and the organisations who receive funding or services from ATSIC. In particular:
>
> - ATSIC will remain the Government's chief Indigenous source of policy advice
> - Regional Councils will continue to play a central role in this process
> - the overall budget will remain unchanged, and
> - existing funding for organisations will continue subject to normal conditions.[12]

13 June 2003	**ATSIC Review Discussion Paper released** The ATSIC Review Team releases a discussion paper outlining the main themes from their consultations to date and setting out a number of proposals for a revised ATSIC. The Review states that there continues to be 'overwhelming support' for a national body to represent the interests of Indigenous peoples, 'but very little support for ATSIC's current performance' with the ATSIC Board not having 'discharged its advocacy and representation functions effectively'. Accordingly, they stated that 'ATSIC has reached a crisis point in respect of its public credibility and with its Indigenous constituency'.

On 13 June 2003, the ATSIC Review Team releases a discussion paper outlining the main themes from their consultations to date and setting out a number of proposals for a revised ATSIC.

In the discussion paper the Review Panel noted that:

> There was overwhelming support among key stakeholders for a National body to represent the interests of Aboriginal and Torres Strait Islanders, but very little support for ATSIC's current performance.
>
> The consensus was that the Board had not discharged its advocacy and representation functions effectively. A disconnect was seen between the Board and Regional Councils, the Regional Councils and their communities, and even more of a gap between communities and the Board.
>
> After more than twelve years, ATSIC has reached a crisis point in respect of its public credibility and with its Indigenous constituency. Great concern is being expressed that this is spilling over from ATSIC and adversely impacting on other areas such as the reconciliation movement. A concerted effort is required to reposition ATSIC as a positive force for Indigenous advancement; otherwise it will become irrelevant or face abolition.[13]

12 *ibid*.
13 Hannaford, J., Collins, B and Huggins, J., *op.cit.,* p24.

Preliminary findings of the Review Panel were that an effective regional structure should:

- be based on local Indigenous communities;
- assist with establishing effective local community structures;
- assist with establishing effective community governance;
- assist with the identification of community needs, their priorities and the measures to address those needs;
- identify community needs that have regional significance;
- prepare regional plans to address the regional and local needs;
- advocate regional needs; and
- assist local, state and national agencies to implement the regional needs plan.[14]

Overall the Review Panel noted that, 'State and National programs should be informed by the regional plans and undertake activities consistent with those plans'.[15]

The Review Panel identified a range of model options for a restructured ATSIC.

1. *Status Quo or 'Parliamentary' model* involves ATSIC's elected representatives setting policy and priorities, but removes from the elected arm any involvement in determining funding to reflect those policies and priorities, including in relation to the delivery of services.
2. *Regional Authority model* replaces the existing 35 Regional Councils with 16 Regional Authorities which would prepare needs-based Regional Plans, establish criteria for funding decisions and programs, and report on outcomes. The National Board would comprise the 16 Chairs and a Torres Strait Regional Authority (TSRA) Commissioner.
3. *Regional Council model* incorporates the same roles and responsibilities for the elected arm as the Regional Authority model. It retains the existing 35 Regional Councils with full-time chairs elected by each Council. Instead of Zone Commissioners, members of Regional Councils in each 'zone' elect one of 16 National Board members (in addition to the TSRA member).
4. *Devolution model* proposes structural changes that could be implemented as a means of delivering more effectively the outcomes that Indigenous and non-Indigenous Australians are seeking through this current review. In particular, it would involve the Commonwealth delivering appropriate Indigenous-specific programs and services through State/Territory agencies.[16]

14 *ibid.,* p54.
15 *ibid.*
16 *ibid.,* pp 8-9.

1 July 2003 **ATSIS commences operations**

ATSIS commences operations. The Minister for Immigration, Multicultural and Indigenous Affairs issues directions requiring ATSIS to:

- Conform to the policies and strategies set by ATSIC and also have regard to Government policy;
- Focus on addressing relative need between regions in implementing programs;
- Ensure best practice in engaging service providers, including through competitive tendering and performance- based contracts; and
- Comply with the conflict of interest directions for ATSIC.

Aboriginal and Torres Strait Islander Services (ATSIS), a new executive agency to administer ATSIC's programs, commences operations on 1 July 2003. The Minister for Immigration, Multicultural and Indigenous Affairs issues the following directions for ATSIS to comply with in its operations.

- In implementing programs and arranging services for Indigenous peoples, the CEO will take all reasonable steps to ensure that ATSIS:
  - conforms to the policies and strategic priorities set and promulgated by the Aboriginal and Torres Strait Islander Commission (ATSIC)
  - reflects the priorities set by Regional Councils in their regional plans as the critical guide for interventions and services within a region, giving due emphasis to addressing needs
  - facilitates linked approaches with other government agencies (both Commonwealth and State/Territory) to optimise outcomes for clients
  - coordinates its activities to achieve effective synergies with overall Government policies and priorities, and
  - has appropriate regard to overall Government policies and priorities.
- Having appropriate regard to functional priorities and strategies for addressing relative need determined by the ATSIC Board, the CEO will take all reasonable steps to ensure that resources are apportioned between regions and communities according to demonstrable relative need, taking into account of the availability of alternative services in those areas and the supplementary intent of Indigenous specific services.
- The choice of and relationship with individual service providers should be based on best practice, including:
  - outcome-based funding and performance-based contracts for services delivery
  - market testing and competitive tendering wherever appropriate

  - assessment based on comparative efficiency and effectiveness, including demonstrated capacity to deliver, and
  - management structures that reflect principles of sound governance and leadership by fit and proper individ-uals with a record of effective management.

- The CEO of ATSIS will take all reasonable steps to ensure that ATSIS does not make grants or loans or offer contracts or provide guarantees to organisations in circumstances where such grant or provision would be precluded by my Conflict of Interests Directions issued 24 December 2002 and amended 3 February 2003.
- The CEO of ATSIS will take all reasonable steps to ensure that ATSIS operates in partnership with ATSIC and Regional Councils.
- Where any dispute arises as to ATSIS's interpretation of ATSIC policies and Regional Council priorities, ATSIS should make every effort to resolve these matters, raising any unresolved matters with me where necessary.[17]

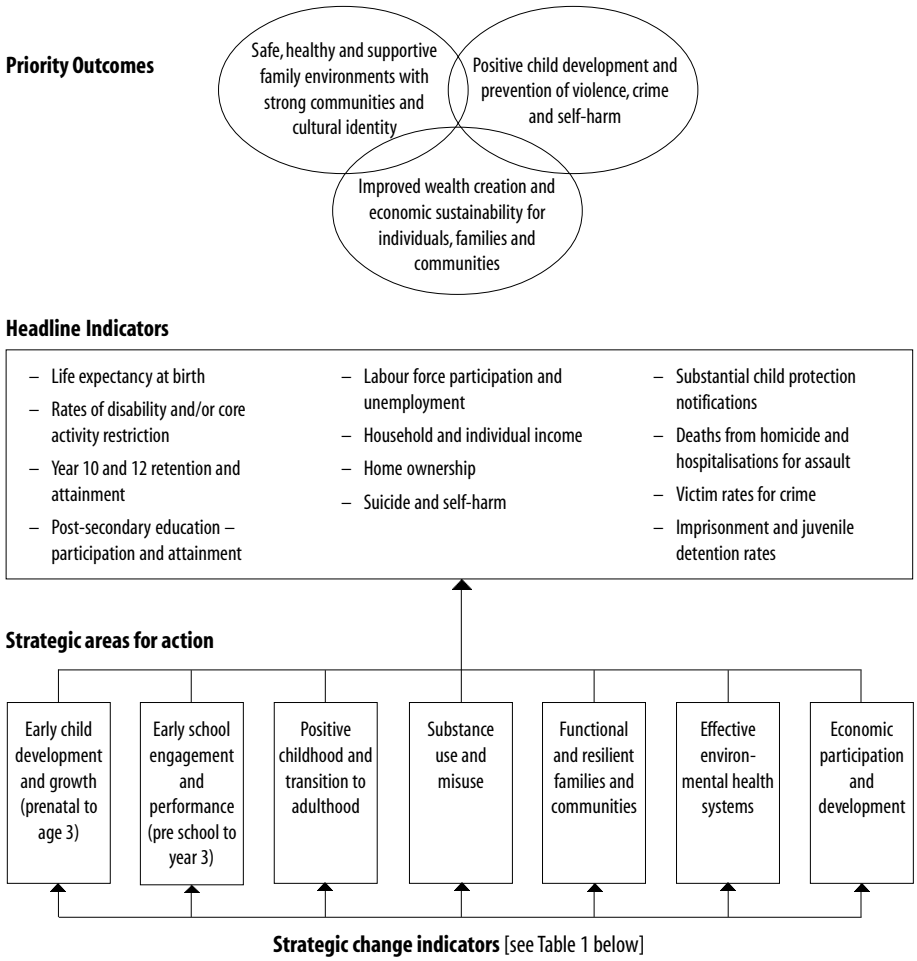
22 August 2003	**National reporting framework for Indigenous disadvantage is endorsed by COAG** The Prime Minister writes to the Steering Committee for Government Service Provision on behalf of COAG and endorses the proposed national reporting framework for Indigenous disadvantage. The framework seeks to present statistics on Indigenous disadvantage strategically by measuring progress against indicators in the short, medium and long term. It acknowledges the inter-relationship between different factors in contributing to Indigenous disadvantage, and that holistic solutions are required, involving whole of government activity, to achieve lasting improvements.

On 22 August 2003, the Prime Minister writes to the Steering Committee for Government Service Provision on behalf of COAG to formally endorse the Committee's proposed national reporting framework for Indigenous disadvantage. The framework had been developed as a result of COAG's decision of 5 April 2002 to commission the Committee to develop a regular report against key indicators of indigenous disadvantage. The Committee had conducted consultations with governments, Indigenous organisations and other stakeholders during 2002 and 2003 on the draft framework.

This framework establishes a three tiered framework to measure the actual outcomes for Indigenous people as opposed to the operation of specific policy programs. The framework is contained in Diagram 1 on the following page.

17 Ruddock, P. (Minister for Indigenous Affairs), *Commencement of Aboriginal and Torres Strait Islander Services,* Media release, 1 July 2003.

Diagram 1: COAG Framework for reporting on Indigenous disadvantage



The first tier of the framework outlines the three **priority outcomes** of:

- Safe, healthy and supportive family environments with strong communities and cultural identity;
- Positive child development and prevention of violence, crime and self-harm; and
- Improved wealth creation and economic sustainability for individuals, families and communities.

The framework acknowledges that areas such as health, education, employment, housing, crime and so on are inextricably linked. Disadvantage or involvement in any of these areas can have serious impacts on other areas of well-being. It is also premised on a realisation that there are a range of causative factors for Indigenous disadvantage. This necessitates reporting on progress in addressing both the larger, cumulative indicators (such as life

expectancy, unemployment and contact with criminal justice processes) which reflect the consequences of a number of contributing factors, as well as identifying progress in improving these smaller, more individualised factors.

To reflect these strategic considerations, the framework seeks to present progress in addressing Indigenous disadvantage at two levels (the second and third tier of the framework). The second tier of the framework is a series of twelve **headline indicators** that provide a snapshot of the overall state of Indigenous disadvantage.

These headline indicators are measures of the major social and economic factors that need to be improved if COAG's vision of an improved standard of living for Indigenous peoples is to become reality. As it is difficult to measure progress in change in these indicators in the short term, the framework also has a third tier of indicators. There are seven **strategic areas for action** and a number of supporting **strategic change indicators** to measure progress in these. The particular areas and change indicators have been chosen for their potential to respond to policy action within the shorter term and to indicate intermediate measures of progress while also having the potential in the longer term to contribute to improvements in overall Indigenous disadvantage (as reflected through the 'headline indicators'). The seven strategic areas and related indicators are set out in the following table.

Table 1: COAG Overcoming Disadvantage framework: Strategic areas for action and strategic change indicators

Strategic areas for action	Strategic change indicators
1. Early child development and growth (prenatal to age 3)	• Rates of hospital admission for infectious diseases • Infant mortality • Birth weight • Hearing impediments
2. Early school engagement and performance (preschool to year 3)	• Preschool and school attendance • Year 3 literacy and numeracy • Primary school children with dental caries
3. Positive childhood and transition to adulthood	• Years 5 and 7 literacy and numeracy • Retention at year 9 • Indigenous cultural studies in school curriculum and involvement of Indigenous people in development and delivery of Indigenous studies • Participation in organised sport, arts or community group activities • Juvenile diversions as a proportion of all juvenile offenders • Transition from school to work

4. Substance use and misuse	• Alcohol and tobacco consumption • Alcohol related crime and hospital statistics • Drug and other substance use
5. Functional and resilient families and communities	• Children on long term care and protection orders • Repeat offending • Access to the nearest health professional • Proportion of indigenous people with access to their traditional lands
6. Effective environmental health systems	• Rates of diseases associated with poor environmental health (including water and food borne diseases, trachoma, tuberculosis and rheumatic heart disease) • Access to clean water and functional sewerage • Overcrowding in housing
7. Economic participation and development	• Employment (full-time/part-time) by sector (public/private), industry and occupation • CDEP participation • Long term unemployment • Self employment • Indigenous owned or controlled land • Accredited training in leadership, finance or management • Case studies in governance arrangements

13 November 2003	**First report to COAG on Indigenous disadvantage is released** The first report against the National Reporting Framework for Overcoming Indigenous Disadvantage is released by the Steering Committee for Government Service Provision. It confirms that Indigenous disadvantage is broadly based, with major disparities between Indigenous people and other Australians in most areas. The report also identifies gaps in data collection which need to be addressed to improve the quality of the information contained in the report. It is subsequently agreed that the report will be published every two years rather than annually, as originally intended.

On 13 November 2003, the first report against the National Reporting Framework for Overcoming Indigenous Disadvantage is released by the Steering Committee for Government Service Provision. Titled *Overcoming Indigenous Disadvantage*, the report confirms that Indigenous disadvantage is broadly based, with major disparities between Indigenous people and other Australians in most areas.

The Chairman of the Steering Committee has commented on the findings of the report that it:

> confirms the pervasiveness of Indigenous disadvantage. It is distressingly apparent that many years of policy effort have not delivered desired outcomes; indeed in some important respects the circumstances of Indigenous people appear to have deteriorated or regressed. Worse than that, outcomes in the strategic areas identified as critical to overcoming disadvantage in the long term remain well short of what is needed.[18]

A summary of the main findings of the report in relation to the twelve headline indicators is provided in Table 2 below. These headline indicators are measures of the major social and economic factors that need to be improved if COAG's vision of an improved standard of living for Indigenous peoples is to become reality.

Table 2: Summary of findings of the Overcoming Disadvantage report – headline indicators[19]

Headline Indicator	Key Message
Life expectancy at birth	The life expectancy of Indigenous people is around 20 years lower than that for the total Australian population.
Rates of disability and/or core activity restriction	Nationally comparable data on the prevalence of disability with the Indigenous population are currently not available.
Years 10 and 12 retention and attainment	Indigenous students have a tendency to leave school once they reach the age when attendance is no longer compulsory. Nationally in 2002, non-Indigenous students were twice as likely to continue to year 12 as Indigenous students. From 1998 to 2002, Indigenous apparent retention rates increased slightly.
Post secondary education – participation and attainment	While TAFE participation among Indigenous people in 2001 was typically higher than for the rest of the population, university attendance was lower, with other Australians being 1.8 times more likely to attend university than Indigenous people.

18 Banks, G., *Indigenous disadvantage: assessing policy impacts,* Speech, *Pursuing opportunity and prosperity conference*, Melbourne, 13 November 2003, p9, http://www.pc.gov.au/speeches/cs20031113/index.html.

19 Steering Committee for the Review of Government Service Provision (SCRGSP), *Overcoming Indigenous Disadvantage: Key Indicators 2003,* Productivity Commission, Canberra, 2003, ppxxiv-xxxiii.

	Indigenous post secondary attainment in 2001 was significantly lower, with 12.5 per cent of Indigenous people having attained a level 3 certificate or above, compared to 33.5 per cent of non-Indigenous people.
Labour force participation and unemployment	Labour force participation for Indigenous people in 2001 was 50.4 per cent of the population aged 15 years and over, compared to 62.6 per cent for non-Indigenous people. Unemployment in 2001 was 2.8 times higher for Indigenous than for non-Indigenous people. CDEP participation significantly reduces recorded Indigenous unemployment rates.
Household and Individual income	In 2001, both household and individual incomes were lower on average for Indigenous than non-Indigenous people across all regions, and they are much lower in remote locations.
Home ownership	Indigenous individual home ownership rates in 2001 were much lower than those for non-Indigenous people in all regions.
Suicide and self-harm	In 2001, the suicide rate for Indigenous people was considerably higher than the rate for other Australians. Suicide death rates for the Indigenous population were particularly high in the 25-34 year age group.
Substantiated child protection notifications	In most jurisdictions, the administration rate for Indigenous children was higher than for non-Indigenous children in 2001-02.
Deaths from homicide and hospitalisations for assault	During 1999-2001, homicides as a proportion of total deaths, were far greater in the Indigenous population (2.1 per cent) than the non-Indigenous population (0.2 per cent). The main category for hospitalisation for Indigenous people was assault by bodily force.
Victim rates for crime	Indigenous people were much more likely to be victims of murder, assault, sexual assault and domestic violence than non-Indigenous people.

Imprisonment and juvenile detention rates	On 30 June 2002, Indigenous people were 15 times more likely than non-Indigenous people to be in prison.

The Report notes that the existence of data sets or ease of developing them was a practical consideration that influenced the choice of indicators in the framework:

> In many cases, the selected indicators are a compromise, due not only to the absence of data, but also to the unlikelihood of any data becoming available in the foreseeable future… In some cases, however, an indicator has been included even when the data are not available on a national basis, or are substantially qualified. These are indicators where there is some likelihood that data quality and availability will improve over time. In two cases where there were no reliable data available, the indicators were nevertheless considered to be so important that qualitative indicators have been included in the report.[20]

In reporting against each of the headline indicators and strategic change indicators in the first report, the Steering Committee has noted limitations in data availability and quality. Each chapter of the report contains a section titled 'future directions in data' which notes current developments which will contribute to addressing the difficulties in data availability and quality in future years, and how exactly specific initiatives will do this. It also identifies major deficiencies and areas where there is an urgent and outstanding need for improved statistical collection methods.[21]

28 November 2003	**ATSIC Review Panel releases final report** The ATSIC Review Panel releases its final report, *In the hands of the regions*. The report recommends that ATSIC should be the 'primary vehicle to represent Aboriginal and Torres Strait Islander peoples' and that its role and functions should be strengthened. In strengthening ATSIC, the report proposes a range of reforms and principles to create, and underpin, a 'new ATSIC'.

The ATSIC Review Panel releases its final report, *In the hands of the regions*. The report concludes that, 'the existing objects of the *ATSIC Act* should be retained'[22] and that:

> ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and be an agent for positive change in the development of policies and programs to advance the interests of Indigenous Australians.[23]

20 *ibid.,* para 2.9.
21 See: *ibid*., pLII.
22 Hannaford, J., Huggins, J., Collins, B., *In the Hands of the Regions – Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra, 2003, p8.
23 *ibid.*

The review also identified reforms required to ATSIC's role so that ATSIC:

- Enables Aboriginal and Torres Strait Islander people to build a future grounded in their own histories and cultures within the broader Australian framework;
- Represents and promotes the views of Aboriginal and Torres Strait Islander people, including their diversity of opinion;
- Vigorously pursues the interests of Aboriginal and Torres Strait Islander people through partnerships with Aboriginal and Torres Strait Islander communities, governments and other sectors of Australian society;
- Influences priorities, strategies and programs at the national, State/Territory and regional level;
- Minimises and streamlines the government interface with Indigenous communities;
- Promotes good Indigenous governance;
- Recognises the complexity of relationships between Aboriginal and Torres Strait Islander individuals, communities, organisations and governments and the values and limitations created by this;
- Is an equal partner in all negotiations, resourced adequately to achieve this equality, and commands goodwill and respect;
- Increases women's participation and expression of views;
- Ensures that there is transparent accountability of all organisations that are funded to provide services for Aboriginal and Torres Strait Islander people;
- Maintains its unique status; and
- Recognises that ATSIC is a key player, but not the only player, that seeks to advance the interests of Aboriginal and Torres Strait Islander Australians with government and others.[24]

The Review Panel also offered a number of principles to underpin a 'new ATSIC':

- ATSIC should be the peak state/territory and national body, which advocates for the development of Indigenous communities;
- The Chairs of the Regional bodies (and relevant Commissioners) should provide the State/Territory policy interface with the governments co-coordinating regional activities;
- Representatives from each State/Territory should then constitute the national body, achieving a direct relationship between the regional, state and national levels;
- The national body should provide the policy interface for the commonwealth government setting and advocating a national strategic direction; and monitoring against ATSIC's national plan to reinforce the accountability of program and service providers;
- ATSIC's primary focus should be on building strong local communities through development and implementation of a needs-based Regional Plan;

24 *ibid.,* p25.

- State/Territory and national programs should be informed by, and undertake activities consistent with, Regional Plans;
- Strengthening Indigenous communities must not be based solely on the provision of welfare services;
- Indigenous Australians should be provided with equal access to health services and there should be an appropriate balance of preventative, environmental and public health policies, programs and services;
- Health, education, training skills development and employment are integral to building the local and regional economy on a long term sustainable basis;
- Housing should be provided on the basis of ensuring access is available to those who need it and ownership is available to those who desire it;
- All government funded programs should be subject to an independent assessment of outcomes; and
- The role of elected officials should be clearly delineated from that of the administration.[25]

During the review the panel received a consistent message that 'Aboriginal and Torres Strait Islander people see ATSIC as an important stepping stone to a desired future, and believe its role is to assist them get where they want to go'.[26]

15 January 2004	**Reform of the Aboriginal Councils and Associations Act announced** The government announces that it intends to reform the *Aboriginal Councils and Associations Act*. The proposed reforms are intended to improve corporate governance standards for Indigenous organisations. Amendments are not presented to Parliament in 2004. They are anticipated to be introduced in mid-2005.

On 15 January 2004, the Minister for Immigration and Multicultural and Indigenous Affairs announces that, 'the Government intends to introduce legislation to reform the *Aboriginal Councils and Associations Act* to improve the effectiveness of Indigenous organisations for the benefit of their communities'.[27]

The proposed legislative reforms respond to conclusions made in the *Final Report of the Review of the Aboriginal Councils and Associations Act 1976 (Cth)*,[28]

25 *ibid.,* pp25-26.
26 *ibid.,* p24.
27 Vanstone, A. (Minister fro Indigenous Affairs), *Indigenous Organisations to Benefit from Reforms*, Media Release, 15 January 2004.
28 Corrs Chambers Westgarth, *A Modern Statute for Indigenous Corporations: Reforming the Aboriginal Councils and Associations Act – Final Report of the Review of the Aboriginal Councils and Associations Act 1976 (Cth),* Office of the Registrar of Aboriginal Corporations (ORAC), Canberra, December 2002.

as well as findings from subsequent research undertaken by the Office of the Registrar of Aboriginal Corporations (ORAC).[29]

The Minister stated that:

> The need for reform is clear. The ACA Act was enacted more than 25 years ago as a method of incorporating mostly not for profit Indigenous organisations. However, it has failed to keep pace with subsequent developments in company law and accountability requirements given the size and numbers of Indigenous corporations today.
>
> The reforms will deliver:
>
> - Rationalisation of the number of corporations through a focus on pre-incorporation scrutiny and support for alternatives to incorporation;
> - Conferencing opportunities to encourage agencies to resolve co-ordination issues;
> - Accreditation training for Directors of Corporations and members;
> - Expanded dispute assistance in the form of an improved members' complaint service, information and opinion service and supported referrals for mediation;
> - Improvements to existing information about Indigenous corporations and their 'health' to support better regulation, and also assist members and funding bodies; and
> - A rolling program of 'healthy corporation' checks tailored to Indigenous corporations, coupled with more streamlined responses to critical problems, in order to fully protect critical assets and funds held by corporations.[30]

As at January 2005, ORAC is working with the Office of Parliamentary Counsel to prepare a draft Bill. ORAC is aiming to have the Bill prepared by June 2005 and anticipates it will be introduced to Parliament shortly thereafter.

4 March 2004	**Aboriginal and Torres Strait Islander Legal Services to be put to competitive tender** The Government announces that from 1 July 2005, funding of Aboriginal and Torres Strait Islander Legal Services (ATSILS) will begin to shift from a grant funding process to a competitive tender process. Successful tenderers will be engaged by the Government under contract for a three-year funding period. The Government also releases an Exposure Draft of the proposed purchasing arrangements and calls for public feedback on the proposed tendering process. The Minister for Indigenous Affairs announces on 30 June 2004 that following public comment on the proposed tendering process the government has amended the criteria for funding.

29 ORAC, *Reforms to the Aboriginal Councils and Associations Act 1976,* ORAC, (undated), http://www.orac.gov.au/about_orac/legislation/reform_act.aspx, (17 January 2005).

30 Vanstone, A. (Minister for Indigenous Affairs), *Indigenous Organisations to Benefit from Reforms, op.cit.*

On 31 August 2004, the Attorney General announces that requests for tenders in Victoria and Western Australia will be released in November 2004, with other states and territories to follow progressively over the following eighteen months. The successful tenderers are expected to start delivering services on 1 July 2005.

On 4 March 2004, the Minister for Indigenous Affairs announces that, 'Indigenous legal services are set for a shake-up under proposed reforms that will focus on the delivery of services rather than just block grants to organisations'.[31]

The Minister continues, 'These important reforms will ensure that legal services are tendered in a competitive environment thereby ensuring that Indigenous people get value for money. A larger emphasis will also be out on allocating the services to those most in need'.[32]

The government simultaneously released the *Exposure Draft of the Request for Tender* and invited comments regarding the proposed tendering process.[33]

Under previous/current arrangements ATSILS apply to the funding program for funding and receive funding in annual block grants. Under the new arrangements ATSILS are required to competitively tender for funding.

On 30 June 2004 the Minister for Indigenous Affairs announces that in response to public feedback from the Exposure Draft, the Government will amend the criteria for tenders. In addition to the criteria amendments, the tendering process would be staged progressively, rather than a simultaneous process.[34]

On 28 July 2004 the Attorney General announced details of the amendments to the tender arrangements as well as the modified timeline for the release of the requests for tender. The proposed tender arrangements would be modified to:

- Reinstate addressing Indigenous incarceration as a priority of the provision of legal services;
- Remove directions that would have allowed successful tenderers to refuse to provide legal services relating to public drunkenness and to repeat offenders for violent offences; and
- Include in the selection process requirements that prospective tenderers demonstrate their ability to provide Indigenous leadership and culturally-sensitive legal services.[35]

31 Vanstone, A. (Minister for Indigenous Affairs), *Legal Aid Reforms to Benefit Indigenous Australians,* Media Release, 4 March 2004.

32 *ibid.*

33 *ibid.*

34 Vanstone, A. (Minister for Indigenous Affairs), *Tendering of Legal Services for Indigenous Australians,* Media Release, 30 June 2004.

35 Calma, T. (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Revised Approach to Tendering of Legal Services to Indigenous Peoples Welcomed*, Media Release, 2 August 2004.

The Attorney-General announces that the tendering process will commence with Victoria and Western Australia, followed by Queensland. The Attorney-General announced that:

> All three processes are to be completed in time for the successful tenderers to commence operations from 1 July 2005. The tendering process in other States and the Northern Territory will start after that date.[36]

On 31 August 2004, the Attorney-General announced that the request for tenders for Victoria and Western Australia will commence in November 2004. The Attorney-General's Department advised that it will be conducting tender information sessions and tender assistance workshops for potential Indigenous tenderers only. The closing date for lodgement of tenders is 17 December 2004.[37] The selected tenderers are expected to start delivering services on 1 July 2005.[38] Successful tenderers will be funded for the period 1 July 2005 to 30 June 2008. The Attorney-General announces that the tender process will commence for Queensland in March 2005.[39]

30 March 2004 — **Federal Opposition announces will to abolish ATSIC if it wins federal election**

The Australian Labor Party announces that if elected at the forthcoming federal election it will put into place a new framework for Indigenous self-governance and program delivery. This would involve abolishing ATSIC and replacing it with a new Indigenous representative structure.

The Australian Labor Party announces that if elected at the forthcoming federal election it will abolish ATSIC and put into place a new framework for Indigenous self-governance and program delivery. This new framework would be based on five principles.

1. *Make Indigenous service delivery a national priority*. This would be achieved by listing Indigenous services and governance on the COAG agenda;
2. *Partnerships*. Will work more closely with communities which would involve the devolution of services and creating pooled funding arrangements;
3. *Regional governance*. Regional and community partnerships are the best way to ensure services and resources are getting to the people who need them;

36 Ruddock, P. (Attorney General), *Legal Tender to Deliver Better Outcomes for Indigenous Australians*, Media Release, 28 July 2004.

37 Attorney General's Department, *Request for Tender No 04/29 for the Purchase of Legal Aid Services for Indigenous Australians*,(undated), http://www.ag.gov.au/agd/www/agdhome.nsf/AllDocs/7FA9AB264D640932CA256F49001A7753?OpenDocument (17 January 2005).

38 Ruddock, P. (Attorney General), *Tendering for Indigenous Legal Services Starts*, Media Release, 12 November 2004.

39 Ruddock, P. (Attorney General), *Tendering for Indigenous Legal Services Starts in November*, Media Release, 31 August 2004.

4. *Combination of opportunity and responsibility*. Opportunity will be created by providing extra and improved government services; and
5. *Advocacy, advice and accountability*. Indigenous participation in policy-making will be increased by the formation of a new directly-elected national Indigenous body.[40]

15 April 2004	**Government announces that ATSIC to be abolished and new arrangements introduced from 1 July 2004** The Government announces that ATSIC and ATSIS are to be abolished and that new arrangements for the administration of Indigenous affairs will be introduced from 1 July 2004. Changes to be introduced include: • Introduction of legislation to abolish ATSIC; • The appointment of a National Indigenous Council; • Devolution of Indigenous-specific programmes to main-stream departments; • Establishment of a Ministerial Taskforce on Indigenous Affairs; • Establishment of a Secretaries Group on Indigenous Affairs; • Creation of a new Office of Indigenous Policy Coordination (OIPC); • Movement to a single budget submission for Indigenous affairs; • Creation of Indigenous Coordinating Centres (ICC's); and • Adoption of Shared Responsibility Agreement (SRA) and Regional Partnership Agreement (RPA) approaches

On 15 April 2004, the Prime Minister announced that as a result of the examination by Cabinet of the ATSIC Review report, and also an extensive examination of Indigenous affairs policy:

> when Parliament resumes in May (2004), we will introduce legislation to abolish ATSIC…
>
> Our goals in relation to Indigenous affairs are to improve the outcomes and opportunities and hopes of Indigenous people in areas of health, education and employment. We believe very strongly that the experiment in separate representation, elected representation, for Indigenous people has been a failure…
>
> we've come to a very firm conclusion that ATSIC should be abolished and that it should not be replaced, and that programmes should be mainstreamed and that we should renew our commitment to the challenges of improving outcomes for Indigenous people in so many of those key areas.[41]

40 Latham, M. (Leader of the Opposition) and O'Brien, K. (Shadow Minister for Reconciliation and Indigenous Affairs), *Opportunity and Responsibility for Indigenous Australians*, Transcript of Joint Press Conference, Media Release, 30 March 2003, pp2-3.

41 Howard, J. (Prime Minister), *Transcript of the Prime Minister, The Hon John Howard MP, Joint Press Conference with Senator Amanda Vanstone, Parliament House, Canberra,* 15 April 2004, pp1-2.

In its place, the Government announced that it would introduce new arrangements for the administration of Indigenous affairs. The new arrangements are comprised of the following elements:

- *Introduction of legislation to abolish ATSIC* – Legislation will be introduced to abolish ATSIC. As an interim measure Regional Councils will remain operational until 30 June 2005, mainly in an advisory capacity;
- *Support for regional Indigenous representative structures* – The Government will maintain a network of Indigenous Coordination Centres in rural and remote areas to help coordinate programme design and service delivery at a regional and local level;
- *Devolution of Indigenous specific programs to mainstream government departments and agencies* – all relevant functions, programmes, assets and appropriations of ATSIC and ATSIS will be transferred to mainstream government departments;
- *Movement to a single budget submission for Indigenous affairs* – Funding for government Indigenous-specific programmes will continue to be quarantined for use for Indigenous-specific purposes and separately identified in budgets and annual reports. Under the new arrangements, all departments will contribute to a single, coordinated Budget submission for Indigenous-specific funding that supplements the delivery of programs for all Australians;
- *The establishment of a Ministerial Taskforce on Indigenous Affairs* – Chaired by the Minister for Immigration, Multicultural and Indigenous Affairs and consisting of Ministers with program responsibilities for Indigenous Affairs. The taskforce is intended to provide high-level direction to the Government on Indigenous policy;
- *Government appointment of a National Indigenous Council* – the Government will appoint a non-statutory National Indigenous Council as a forum for Indigenous Australians to provide policy advice to the Government at a national level;
- *The establishment of a Secretaries Group on Indigenous Affairs* – the Ministerial taskforce will be supported by heads of government departments as members of a Secretaries Group on Indigenous Affairs, which will prepare a public annual report on the outcomes of Indigenous-specific programmes. Secretaries will be accountable to their portfolio Ministers; and

- *The creation of an Office of Indigenous Policy Coordination* (OIPC) – Located within the Department of Immigration, Multicultural and Indigenous Affairs, it will provide policy advice to the Minister; coordinate Indigenous policy development and service delivery across the Government; oversee relations with state and territory governments on Indigenous issues; and monitor the performance of government programmes and services for Indigenous people, including arrangements for independent scrutiny.[42]
- *Adoption of Shared Responsibility Agreement (SRA) and Regional Partnership Agreement (RPA) approaches* – SRAs will set out clearly what the family, community and government is responsible for contributing to a particular activity, what outcomes are to be achieved, and the agreed indicators to measure progress. Under the new approach, groups will need to offer commitments and undertake changes that benefit the community in return for government funding. RPA's provide a mechanism for guiding a coherent government intervention strategy across a region, eliminating overlaps or gaps, and promoting coordination to meet identified priorities for the region.[43] ICC's will be involved the negotiating SRA's and RPA's.

20 April 2004	**Connecting Government report outlines whole of government challenge for public service** The Management Advisory Committee to the Australian Public Service Commission releases its report, *Connecting Government: Whole of government Response to Australia's Priority Challenges.* The report outlines the challenges in implementing a whole of government approach to the public service. The Secretary of the Department of Prime Minister and Cabinet launches the report and describes the new arrangements for Indigenous affairs as 'the biggest test of whether the rhetoric of connectivity can be marshalled into effective action . . . It is an approach on which my reputation, and many of my colleagues, will hang'.

On 20 April 2004, the Management Advisory Committee to the Australian Public Service Commission releases a report titled *Connecting government: Whole of government responses to Australia's priority challenges*. The Report observes:

42 Vanstone, A. (Minister for Indigenous Affairs), *Minister's letter to Indigenous organisations*, 22 April 2004,(unpublished) pp3-4.

43 Office of Indigenous Policy Coordination (OIPC), 'Indigenous Representation', *New Arrangements in Indigenous Affairs, OIPC,* <http://www.oipc.gov.au/About_OIPC/new_arrangements.asp (24 January 2005).

> Making whole of government approaches work better for ministers and government is now a key priority for the APS… Ministers and government expect the APS to work across organisational boundaries to develop well-informed, comprehensive policy advice and implement government policy in a coordinated way.[44]

Whole of government is defined in this report as:

> [P]ublic service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, program management and service delivery.[45]

The *Connecting Government* report identifies a number of challenges in implementing a whole of government approach. The Secretary of the Department of Prime Minister and Cabinet acknowledges that the new arrangements for the administration of Indigenous affairs constitute 'the biggest test of whether the rhetoric of connectivity can be marshalled into effective action… It is an approach on which my reputation, and many of my colleagues, will hang'.[46]

In reference to the new arrangements, the Secretary states:

> the vision is of a whole-of-government approach which can inspire innovative national approaches to the delivery of services to Indigenous Australians, but which are responsive to the distinctive needs of particular communities.[47]

27 May 2004	**ATSIC Amendment Bill 2004 introduced to Parliament** The *ATSIC Amendment Bill 2004* is introduced to Parliament. The Bill proposes the abolition of ATSIC in two stages – the National Board of Commissioners to be abolished from 30 June 2004 and the Regional Councils from 30 June 2005. The House of Representatives passed the Bill on 2 June 2004.

The *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004* is introduced to Parliament. The Bill proposes the abolition of ATSIC in two stages – the National Board of Commissioners to be abolished from 30 June 2004 and the Regional Councils from 30 June 2005. It also provides for matters consequential to the abolition of ATSIC, including the transfer of the Regional Land Fund to the Indigenous Land Corporation and ATSIC's Housing Fund and Business Development Program to Indigenous Business Australia.

44 Management Advisory Committee, *Connecting government – Whole of government responses to Australia's priority challenges*, Australian Public Service Commission, Canberra, 2004, p2.
45 *ibid.,* p4.
46 *ibid.,* p4.
47 Shergold, P. (Secretary, Department of the Prime Minister and Cabinet), Speech,*Connecting Government: Whole of Government Response to Australia's Priority Challenges,* 20 April 2004, pp10-11.

The Torres Strait Regional Authority, which provides a range of Indigenous specific services to Torres Strait Islanders living in the Torres Strait Islands region, will continue to perform its current role.[48]

Minister Hardgrave notes that the Bill, along with the Government's proposed new arrangements, 'seek to address the failings of the recent past in providing equality in service provision and equality in opportunity to our first people, the Indigenous people of Australia'.[49]

28 May 2004	**Ministerial Taskforce on Indigenous Affairs is created**
	The Government announces the creation of the Ministerial Taskforce on Indigenous Affairs. The Taskforce will provide high-level direction on Indigenous policy development.
	The Taskforce is chaired by the Minister for Immigration, Multicultural and Indigenous Affairs and comprised of Ministers from portfolios relevant to improving outcomes for Indigenous Australians.

The Government announces the creation of the Ministerial Taskforce on Indigenous Affairs. The Minister for Immigration and Multicultural and Indigenous Affairs notes that:

> This taskforce will be responsible for driving, through the Government agencies represented, the delivery of improved services and outcomes for Indigenous Australians…
>
> It will coordinate the Government's Indigenous policies and report to Cabinet on directions and priorities in Indigenous policy. The Prime Minister has asked that as a first step, the Taskforce provide him with a Charter, with a focus on making the mainstream work better for Indigenous people. The Ministerial Taskforce will report annually to the Expenditure Review Committee of Cabinet on the performance of Indigenous specific programs and the allocation of resources across agencies…
>
> A Secretaries Group, chaired by the Secretary of the Department of the Prime Minister and Cabinet will support the Ministerial Taskforce. It will also report annually on the outcomes of Indigenous specific services.
>
> The Ministerial Taskforce will be advised by the National Indigenous Council when formed. The taskforce will meet directly with the council at least twice a year.[50]

48 Hardgrave, T. (Minister for Citizenship and Multicultural Affairs), *Hansard*, House of Representatives, 27 May 2004, p29318.

49 *ibid*.

50 Vanstone, A. (Minister for Indigenous Affairs), *Ministerial Taskforce on Indigenous Affairs*, Media Release, 28 May 2004.

The Minister for Immigration and Multicultural and Indigenous Affairs will chair the Taskforce. Other members are:

- Minister for Transport and Regional Services;
- Attorney General;
- Minister for Health and Ageing;
- Minister for Family and Community Services;
- Minister for Employment and Workplace relations;
- Minister for Education, Science and Training;
- Minister for Communications, Information Technology and the Arts;
- Minister for the Environment and Heritage; and
- Minister for Justice and Customs.

11-14 June 2004 **National Indigenous Leaders Conference calls for national representative body**

The National Indigenous Leaders Conference is held in Adelaide. Participants call for a new national representative structure for Indigenous peoples and proposes a range of principles for such a body.

Over 200 Indigenous participants attend the National Indigenous Leaders Conference from 11-14 June in Adelaide. The conference declares its support for the existence of a National Indigenous Representative Body. The participants called for any future national representative body to be based on the following principles:

- We the Indigenous People of Australia and we alone have the right to determine who represents us locally, regionally, nationally and internationally;
- We are determined to establish a sustainable independent National Indigenous Representative Body (NIRB) that reflects the aspirations and values of our peoples;
- The NIRB needs to gain its legitimacy from our people;
- Any process to establish a NIRB must acknowledge who we are, honour our diversity and commit to inclusive processes for all our people;
- Our NIRB must be open, transparent and accountable to the Aboriginal and Torres Strait Islander Peoples;
- We respect and are committed to the right of our peoples to make free and informed choices for them, their families and communities;
- We have an obligation to respect and protect our right to self-determination, our human rights, our humanity, our First Peoples' status and our inherent rights that flow from that status;
- We have a duty to pursue social justice and economic development for all Aboriginal and Torres Strait Islander peoples; and

- Our duty is to leave a lasting legacy for our grandchildren's grandchildren.[51]

16 June 2004 **Senate Inquiry into ATSIC Amendment Bill 2004 established**

The Senate establishes the Select Committee for the Administration of Indigenous Affairs and refers the *ATSIC Amendment Bill 2004* to it for inquiry.

On 16 June 2004, the Senate agrees that a Select Committee, to be known as the Select Committee on the Administration of Indigenous Affairs be appointed to inquire into the following matters:

(a) the provisions of the *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004*;

(b) the proposed administration of Indigenous programs and services by mainstream departments and agencies; and

(c) related matters.[52]

The Committee is due to report by 31 October 2004.

16 June 2004 **Ministerial Taskforce Charter adopted**

The Ministerial Taskforce adopts a Charter which outlines the government's 20-30 year vision for Indigenous affairs. It aims to ensure Indigenous Australians 'make informed choices', 'realise their full potential' and 'take responsibility for managing their own affairs'. The Charter also identifies early childhood intervention, safer communities, and reducing welfare dependency as the priority areas for attention in Indigenous affairs.

The new Ministerial Taskforce on Indigenous Affairs (see above) met on 16 June 2004 where they agreed on the need for a 20-30 year vision for Indigenous Affairs.

The Taskforce agreed that:

> Indigenous Australians, wherever they live, have the same opportunities as other Australians to make informed choices about their lives, to realise their full potential in whatever they choose to do and to take responsibility for managing their own affairs.[53]

51 Conference participants, *Draft text of key principles and values for a National Indigenous Representative Body and a national inclusive process*, National Indigenous Leaders Conference, Adelaide, 14 June 2004, unpublished.

52 Senate Select Committee on the Administration of Indigenous Affairs, *Terms of Reference,* 17 Nov 2004.

53 Vanstone, A. (Minister for Indigenous Affairs), *Ministerial Taskforce to focus on Indigenous Families*, Media Release, 16 June 2004.

The Federal Minister for Indigenous Affairs stated that:

> The Government has allocated $2.9 billion to Indigenous programmes in 2004-05… While there have been real improvements the rate of progress is not good enough, and the Ministerial taskforce will play a vital role in driving the Government's reforms to Indigenous affairs.[54]

The Minister added:

> A key part of developing a 20-30 year agenda will be testing Indigenous peoples aspirations: where do they want their communities (their children, grandchildren, old people) to be in 20-30 years time?[55]

In agreeing to the 20-30 year vision the Taskforce identified three areas for priority attention:

- early childhood intervention and improving primary health and early education outcomes, to head off longer term problems;
- safer communities; and
- reducing dependency on passive welfare and boosting employment and economic development in Indigenous comm-unities'.[56]

The 20-30 year vision for Indigenous Affairs is set out in the *Ministerial Taskforce on Indigenous Affairs Charter*.[57]

Table 3: Ministerial Taskforce Charter on Indigenous Affairs

Introduction

1. The Ministerial Taskforce will set the long term agenda, determining the Australian Government's vision for Indigenous affairs, in 20-30 years, and focussing urgently on the strategies that need to be put in place now to achieve improved outcomes, recognising that:
   - despite the significant commitment of governments of all persuasions over a long period, progress on key indicators of social and economic well being for Indigenous Australians has only been gradual; and
   - to make better progress there must be inter-generational change.
2. A key element of this will be testing Indigenous peoples aspirations: where do they want their communities (their children, grandchildren and older people) to be in 20-30 years time? What do they want their communities to look like?
3. In announcing the new Indigenous affairs arrangements on 15 April 2004, the prime Minister signalled that the Government's goals are 'to improve the outcomes and opportunities and hopes of Indigenous people in areas of health, education and employment.' The Prime Minister had previously committed the Government to addressing Indigenous family violence as a priority.
4. The Ministerial taskforce will focus on practical measures such as these and other related issues such as economic development, safer communities, law and justice.

54 *ibid.*
55 *ibid.*
56 OIPC, *New Arrangements in Indigenous Affairs, op.cit.*
57 OIPC, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs*, Ministerial Taskforce on Indigenous Affairs Charter, August 2004, pp14-17.

5. However, the taskforce recognises the importance to Indigenous people of other issues such as cultural identity and heritage, language preservation, traditional law, land and 'community' governance.
    - These are issues on which Indigenous people themselves should take the lead, with government supporting them as appropriate.
6. The functions of the Ministerial Taskforce are set out in **Attachment C (i)**. Membership is set out in **Attachment C (ii)**.
7. The following statement encapsulates the Taskforce's long term vision for Indigenous Australians:

    'Indigenous Australians, wherever they live, have the same opportunities as other Australians to make informed choices about their lives, to realise their full potential in whatever they choose to do and to take responsibility for managing their own affairs'.
8. The Ministerial Taskforce is determined to create the best possible policy environment in which this can be achieved.
9. The focus will be on supporting families and individuals rather than organisations – although these can have important roles in supporting families and individuals in many cases.
10. The Ministerial Taskforce will seek advice from and be informed by:
    - a National Indigenous Council of experts;
    - Indigenous representative networks established at the regional level to replace ATSIC Regional Councils, and by the work of the Regional Councils in the meantime;
    - Indigenous people (families and individuals) more generally through a number of mechanisms
    - the Australian Government Secretaries Group on Indigenous Affairs; and
    - lessons from the COAG Trials and elsewhere.
11. In determining key priorities for urgent action it will be guided by the Productivity Commission's Report on Overcoming Indigenous Disadvantage, commissioned by COAG, in particular it seven Strategic Areas for Action:
    - early child development and growth (prenatal to age 3);
    - early school engagement and performance (preschool to year 3);
    - positive childhood and transition to adulthood;
    - substance use and misuse;
    - functional and resilient families and communities;
    - effective environmental health systems;
    - economic participation and development

Urgent Priorities

12. The are many urgent priorities in Indigenous communities that warrant focus and attention from the Taskforce. These include:
    - early child development and growth (prenatal to age 3);
    - Inadequate housing;
    - Poor health;
    - Low life expectancy;
    - Poor educational outcomes;
    - Low employment rates;
    - Low self esteem;

- Family violence;
- Law and order;
- High population growth;
- Isolation.

13. Taking account of the urgent priorities and its long term vision, the Taskforce will focus on three key areas of intervention for the development of coherent, cross agency approaches over the next 12 months:
    - Early childhood intervention, improving primary health and improving early educational outcomes;
    - Safer communities (including issues of authority, governance and law and order); and
    - Reducing dependency on passive welfare and boosting economic development and employment.

Doing Business

14. Through a single budget submission, to be brought forward by the Minister for Immigration and Multicultural and Indigenous Affairs, the Taskforce will:
    - Report annually to the expenditure Review Committee on the performance of Indigenous specific programmes and services and the proposed allocation of resources across agencies; and
    - Review performance with a view to using the Indigenous funding pool flexibility and reallocating resources to the approaches that are seen to work best.
15. The Taskforce will develop a consistent approach to the way the Australian Government does business with Indigenous communities – reviewing and re-engineering programmes and services to achieve more streamlines and flexible arrangements.
16. The Taskforce will take account of the Council of Australian Governments (COAG) deliberations on Indigenous service delivery arrangements.

Implementation

17. The Secretaries Group on Indigenous Affairs will support the Ministerial Taskforce in progressing policy development and implementation of priority strategies and initiatives.

21 June 2004

Report into Capacity Building and Service Delivery in Indigenous communities released

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs releases *Many Ways Forward, Report of the inquiry into capacity building and service delivery in Indigenous communities.*

The Report finds that there is an urgent need for a new approach to be adopted by the government sector as well as the need to build the capacity of Indigenous communities and organisations.

The Report presents a series of recommendations that aim to ensure:

- basic data collection is nationally consistent and comparable, and focussed on outcomes;
- the Government institute a coordinated annual report to parliament on its progress in achieving agreed outcomes and benchmarks;

- a comprehensive evaluation is made of the COAG Trials, and a regular report on progress is made to Parliament;
- improved integration, coordination and cooperation within and between levels of government in consultation with Indigenous Australians occurs;
- a strong commitment is made to improving the capacity of government agencies; and
- the development of partnerships between the private/corporate/philanthropic sectors and Indigenous organis-ations is encouraged and supported.

On 19 June 2002 the Minister for Immigration and Multicultural and Indigenous Affairs referred to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs an inquiry into capacity building and service delivery in Indigenous communities. The terms of reference are as follows.

> The committee will inquire into and report on strategies to assist Aboriginal and Torres Strait Islanders better manage the delivery of services within their communities. In particular, the Committee will consider building the capacities of:
>
> a) community members to better support families, community organisation and representative councils so as to better deliver the best outcomes for individuals, families and communities;
>
> b) Indigenous organisations to better deliver and influence the delivery of services in the most effective, efficient and accountable way; and
>
> c) government agencies so that policy direction and management structures will improve individual and community outcomes for Indigenous people.[58]

On 21 June 2004, the Committee releases its' report, titled *Many Ways Forward, Report of the inquiry into capacity building and service delivery in Indigenous communities.* The report found that:

> … for there to be real change in the effectiveness of service delivery, and ultimately improvements in the outcomes for Indigenous Australians, a significant change in the approach of governments needs to occur.[59]

The report states:

> Though many Indigenous organisations successfully apply for funding to deliver government services to their communities, the overwhelming evidence received by the Committee suggests that the way in governments deliver funding often compromises the ability of Indigenous

58 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Many Ways Forward – Report on the inquiry into capacity building and service delivery in Indigenous communities*, Commonwealth of Australia, Canberra, June 2004, pxxii.

59 *ibid.,* p240.

> organisations to appropriately or sustainably address their needs. These criticisms include the length of funding cycles; the complex reporting requirements; the piecemeal nature of funding; the focus for 'trials', but not for ongoing, successful programs; and the lack of government integration resulting in duplication over funding areas and intended outcomes.[60]

The report contains 15 recommendations relating to the above concerns. In brief, the report recommends focus be placed on issues such as data collection and annual reporting to Parliament on progress on addressing Indigenous disadvantage, with an emphasis on the COAG Trials. The recommendations also stress the importance of benchmarks and headline indicators as outlined in *Overcoming Indigenous Disadvantage*.

With respect to the new arrangements, Recommendation 7 is particularly noteworthy:

> The Committee recommends that, in relation to the provision of services to Aboriginal and Torres Strait Islander communities, the Commonwealth Government ensure a whole of government approach, together with the States and Territories and local government, in consultation with Indigenous Australians, including:
>
> (a) a shift in emphasis in service provision to a regional or location specific basis (in full consultation with the Indigenous communities involved);
>
> (b) the co-location of relevant Commonwealth Government and other agency staff;
>
> (c) enhancing communication and developing partnerships both with Indigenous communities and families, and between governments;
>
> (d) the incorporation of capacity building into the design and implementation of programs delivering services to Indigenous communities, including funds to enable mentoring of community members and organisations;
>
> (e) the further development of program benchmarks in terms relevant to Indigenous people, and the adoption of regular public reporting regimes on those benchmarks, including reporting to the relevant Indigenous communities;
>
> (f) the creation of frameworks for service delivery that are familiar and acceptable to Indigenous people;
>
> (g) the enhancement of the skills and capacity of agency staff (including cross-cultural and language training, and the placement of high level staff and policy makers 'on the ground' in Indigenous communities) and the placement of appropriately skilled field officers 'on the ground', and reducing the turnover rate of such staff;

60 *ibid.,* p246.

(h) a commitment to the creation of Indigenous specific positions in agency structures; and that it report on progress to the Commonwealth Parliament on a regular basis (possibly in conjunction with the proposed report on Indigenous disadvantage) and procedures be implemented to ensure that the report presented to the House of Representatives stands referred to this Committee for its consideration.

The report also recommends that improvements be made to the funding models including the development of a 'single budget with a single reporting regime and the building of a governance training and mentoring component into funding provisions as well as a continued development of training and mentoring programs in partnership with Indigenous communities and organisations.[61]

25 June 2004	**COAG principles for new arrangements in Indigenous affairs endorsed** COAG endorses a *National framework of principles for government service delivery to Indigenous Australians* as well as confirming its commitment to the whole of government trials and practical reconciliation. The National Principles will inform the Taskforce and Secretaries Group when developing and monitoring strategies to address Indigenous disadvantage.

The National Principles relate to six issues:

- Sharing responsibility;
- Harnessing the mainstream;
- Streamlining service delivery;
- Establishing transparency and accountability;
- Developing a learning framework; and
- Focussing on priority areas.

At its meeting of 25 June 2004, COAG also endorsed a *National Framework of Principles for Government Service Delivery to Indigenous Australians*. This framework confirms, at the inter-governmental level, the principles which underpin the new administrative arrangements at the federal level. The framework is set out in Table 3 below.[62]

61 *ibid.,* pxxvii, Recommendation 8.

62 Council of Australian Governments' Meeting, Canberra, 25 June 2004, Attachment B, http://www.coag.gov.au/meetings/250604/index.htm.

Table 4: National Framework of Principles for Government Service Delivery to Indigenous Australians

All jurisdictions are committed to achieving better outcomes for indigenous Australians, improving the delivery of services, building greater opportunities and helping indigenous families and individuals to become self-sufficient. To this end, and in delivering services to indigenous people, COAG agreed to national framework of principles for delivering services to indigenous Australians.

Sharing responsibility

- Committing to cooperative approaches on policy and service delivery between agencies, at all levels of government and maintaining and strengthening government effort to address indigenous disadvantage.
- Building partnerships with indigenous communities and organisations based on shared responsibilities and mutual obligations.
- Committing to indigenous participation at all levels and a willingness to engage with representatives, adopting flexible approaches and providing adequate resources to support capacity at the local and regional levels.
- Committing to cooperation between jurisdictions on native title, consistent with Commonwealth native title legislation.

Harnessing the mainstream

- Ensuring that indigenous-specific and mainstream programmes and services are complementary.
- Lifting the performance of programs and services by:
  - reducing bureaucratic red tape;
  - increasing flexibility of funding (mainstream and indigenous-specific) wherever practicable;
  - demonstrating improved access for indigenous people;
  - maintaining a focus on regional areas and local communities and outcomes; and
  - identifying and working together on priority issues.

Supporting indigenous communities to harness the engagement of corporate, non-government and philanthropic sectors.

Streamlining service delivery

- Delivering services and programmes that are appropriate, coordinated, flexible and avoid duplication:
  - including fostering opportunities for indigenous delivered services.
- Addressing jurisdictional overlap and rationalising government interaction with indigenous communities:
  - negotiating bi-lateral agreements that provide for one level of government having primary responsibility for particular service delivery, or where jurisdictions continue to have overlapping responsibilities, that services would be delivered in accordance with an agreed coherent approach.
- Maximising the effectiveness of action at the local and regional level through whole-of-government(s) responses.
- Recognising the need for services to take account of local circumstances and be informed by appropriate consultations and negotiations with local representatives.

Establishing transparency and accountability

- Strengthening the accountability of governments for the effectiveness of their programmes and services through regular performance review, evaluation and reporting.
- Ensuring the accountability of organisations for the government funds that they administer on behalf of indigenous people.
- Tasking the Productivity Commission to continue to measure the effect of the COAG commitment through the jointly-agreed set of indicators.

Developing a learning framework

- Sharing information and experience about what is working and what is not.
- Striving for best practice in the delivery of services to indigenous people, families and communities.

Focussing on priority areas

- Tackling agreed priority issues, including those identified in the *Overcoming Indigenous Disadvantage Report*:
  - early childhood development and growth; early school engage-ment and performance, positive childhood and transition to adulthood; substance use and misuse; functional and resilient families and communities; effective environmental health systems; and, economic participation and development.

Within this National Framework appropriate consultation and delivery arrangements will be agreed between the Commonwealth and individual States and Territories.

In its communiqué, COAG also:

- reaffirms its commitment to the whole of government trials, stating that governments would, 'continue to work through the processes agreed at each site and to improve cooperation between all levels of government';[63]
- agrees to commence negotiations between State and Commonwealth agencies to reduce the extent of family violence and child abuse in Indigenous communities in accordance with the *National Framework on Indigenous Family Violence and Child Protection* (as agreed at the meeting); and
- resolved that senior officials would report annually on the progress of practical reconciliation against the action priority areas of: investment in community leadership initiatives; reviewing and re-engineering government programmes and services to ensure they deliver practical support to Indigenous Australians; and the forging of closer links between the business sector and Indigenous communities to help promote economic independence.[64]

63 *ibid.*, p3.
64 *ibid.*

1 July 2004	**New arrangements in Indigenous affairs commence** Under the new arrangements, 'more than $1 billion of former ATSIC-ATSIS programs was transferred to mainstream departments'. These departments will be required to 'accept responsibility for Indigenous services' and be 'held accountable for outcomes'. The transfer of Indigenous service to mainstream departments aims to ensure that departments will 'work in a coordinated way' and 'to make sure that local families and communities have a real say in how money is spent'.

On the 30 June 2004, the Minister advised that as of 1 July 2004,

> More than $1 billion of former ATSIC-ATSIS programmes have been transferred to mainstream government agencies and some 1300 staff commence work in their new Departments as of tomorrow.
>
> We want more of the money to hit the ground. We are stripping away layers of bureaucracy to make sure that local families and communities have a real say in how money is spent…
>
> A small number of programmes, subject to specific references in the ATSIC Act, will remain with a remnant ATSIS body pending the passage of the Bill to abolish ATSIC.[65]

All programs and services formerly delivered by ATSIC-ATSIS have continued.[66] Table 5 below shows which government departments each ATSIC-ATSIS program has been transferred to.

Table 5: Transfer of ATSIS-ATSIC functions from 1 July 2004[67]

Program	Portfolio
Community Development and employment; business development and assistance; home ownership	Employment and Workplace Relations
Community Housing and infrastructure; Indigenous women	Family and Community Services

65 Vanstone, A. (Minister for Indigenous Affairs), *Australian Government Changes to Indigenous Affairs Services Commence Tomorrow*, Media Release, 30 June 2004.
66 *ibid.*
67 *ibid.*

Art, culture and language; broadcasting services; sport and recreation; maintenance and protection of Indigenous heritage	Communication, Information Technology and the Arts
Legal and preventative; family violence prevention; legal services	Attorney-General
Access to effective family tracing and reunion services	Health and Ageing
Indigenous rights; international issues; native title and land rights; repatriation; Indigenous Land Fund; community participation agreements; Torres Strait Islanders on the mainland; planning and partnership development; public information	Immigration, Multicultural and Indigenous Affairs

Table 6: Transfer of agencies to new portfolios

Agency	Portfolio
Aboriginal and Torres Strait Islander Services	Disbanded: programs taken over by mainstream agencies; coordination functions taken over by Office of Indigenous Policy Coordination within Department of Immigration, Multicultural and Indigenous Affairs
Australian Institute of Aboriginal and Torres Strait Islander Studies	Education, Science and Training
Aboriginal Hostels Ltd	Family and Community Services
Indigenous Business Australia	Employment and Workplace Relations
Indigenous Land Corporation; Torres Strait Regional Authority; Registrar of Aboriginal Corporations	Immigration, Multicultural and Indigenous Affairs
Office of Evaluation and Audit	Finance

31 August 2004	**Senate inquiry interim report and dissenting reports released** The Senate Select Committee on the Administration of Indigenous Affairs releases its interim report and government Senators release a dissenting report. The Committee report lists the number of public hearings held and submissions received by the Committee and states that due to the federal election it will be unable to complete its inquiry. The dissenting interim report notes that 'little support expressed for ATSIC' in submissions received. The Senate Committee was reconvened on 17 November 2004 and is due to report in March 2005.

The Senate Select Committee on the Administration of Indigenous Affairs was due to report its findings on 31 October 2004. The Committee released an interim report on 31 August 2004 which noted that it had conducted seven public hearings and received 89 submissions, but was unable to complete its final report due to the prorogation of Parliament.[68]

In response to the absence of a final report and any preliminary findings, the Government Senators of the Committee released a dissenting report. This report noted that, 'in the submissions and hearing there has been little support expressed for ATSIC'.[69]

The Senate Select Committee on the Administration of Indigenous Affairs was reconvened on 17 November 2004 for its inquiry into the *ATSIC Amendment Bill*. It will report in March 2005.[70]

6 November 2004	**The National Indigenous Council is appointed** The Minister for Immigration, Multicultural and Indigenous Affairs announces the membership of the government-appointed advisory body, the National Indigenous Council (NIC). The NIC is not intended to be a representative body or to replace ATSIC. Members of the NIC are appointed based on their 'expertise and experience in particular policy areas'. Mrs Sue Gordon is appointed as the Chairperson of the NIC. The NIC will meet four times per year and advise the Ministerial Taskforce on Indigenous Affairs.

68 Crossin, T., *Select Committee on the Administration of Indigenous Affairs – Interim Report*, 31 August 2004, http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/report/interim/interim%20_report.pdf.

69 Scullion, N., *Select Committee on the Administration of Indigenous Affairs – Government Senators' Dissenting Report*, 31 August 2004, http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/report/interim/govt_senators%20_dissent.pdf

70 Crossin T., *ATSIC Abolition Causing 'Confusion',* ABC News on-line, 18 November 2004, http://www.abc.net.au/message/news/stories/ms_news_1245968.htm (24 January 2004).

The Minister for Immigration, Multicultural and Indigenous Affairs announces the membership of the Government-appointed advisory body, the National Indigenous Council (NIC). It is composed of Government appointed Indigenous Advisers (which comprises both Torres Strait Islander and Aboriginal members). The Government advises that the NIC has been:

> appointed based on members' expertise and experience in particular policy areas. Members of the Council will provide advice on policy and service delivery to the Ministerial Taskforce.
>
> The NIC will meet at least four times a year and directly with the Ministerial Taskforce at least twice a year. The Council or its members may also meet with the Secretaries' Group and individual departments on issues in their areas of expertise.
>
> The NIC will advise on priority areas for funding, and alert the Government to emerging issues. It will also promote constructive dialogue and engagement between government and Indigenous people and organisations.[71]

Members of the NIC are: Mrs Sue Gordon AM (Chair), Mr Wesley Aird, Dr Archie Barton, Professor Mary Ann Bin-Sallik, Ms Miriam Rose Baumann OAM, Mr Joseph Elu, Mr Robert Lee, Mr Adam Goodes, Dr Sally Goold OAM, Dr John Moriarty AM, Mr Warren Mundine, Mr Joe Procter, Mr Michael White and Ms Tammy Williams. They are appointed for an initial terms of 2 years. They are not paid for the role, though will receive sitting fees for meetings.

8-9 December 2004	**NIC conducts inaugural meeting**
	The National Indigenous Council holds its' inaugural meeting. The Terms of Reference for the NIC are agreed with the government. The NIC agrees that the priority policy areas for Indigenous affairs are:
	• early childhood intervention;
	• safer communities; and
	• reducing passive welfare.

The NIC met in Canberra for its inaugural meeting from 8-9 December 2004. During this meeting the NIC's Terms of Reference for the NIC are agreed as follows:

1. Provide expert advice to the Government on how to improve outcomes for Indigenous Australians in the development and implementation of policy affecting Aboriginal and Torres Strait Islander people;
2. provide expert advice to government on how to improve programme and service delivery outcomes for Aboriginal and Torres Strait Islander people including maximising the effective interaction of mainstream and indigenous-specific programmes and services;

71 OIPC, *op.cit.,* p6.

3. Provide advice on Indigenous Australians' views on the acceptance and effectiveness of Commonwealth and State and Territory Government programmes;
4. Provide advice on the appropriateness of policy and programme options being considered to address identified needs;
5. Provide advice to government on national funding priorities;
6. Alert government to current and emerging policy, programme and service delivery issues;
7. Promote constructive dialogue and engagement between government and Aboriginal and Torres Strait Islander people, communities and organisations;
8. Provide advice on specific matters referred to it by the Minister; and
9. Report to the Minister as appropriate on the NIC's activities and achievements.[72]

The Terms of Reference also states that the NIC will not advise the government on specific funding proposals.

In addition to the Terms of Reference, the NIC and Ministerial Taskforce identified three priority areas to be addressed. These are: 'early childhood intervention; safer communities; and overcoming passive welfare with improvements in employment outcomes and economic development for Indigenous Australians'.[73]

72 Gordon, S., *First meeting of the National Indigenous Council: A very good beginning*, Media Statement, 9 December 2004.

73 *ibid*.

Appendix 2

How the *Racial Discrimination Act 1975* applies to Shared Responsibility Agreements

The *Racial Discrimination Act 1975* (Cth) (RDA) makes it unlawful to discriminate on the basis of race, colour, descent or national or ethnic origin. The proscriptions of unlawful discrimination in the RDA potentially apply to Shared Responsibility Agreements (SRAs), including:

- the negotiation stage of SRAs;
- the terms and conditions imposed upon Indigenous communities, or parts of Indigenous communities, by SRAs; and
- any other effects of SRAs on Indigenous communities or individuals.

It is not possible to determine in the abstract, or on the basis of the information currently available, whether SRAs are likely to raise issues under the RDA. That will depend upon the terms and circumstances of each SRA.

The relevant factors that need to be considered to establish whether a particular SRA complies with the RDA are set out below.[1]

Unlawful discrimination under the RDA

Section 9(1) of the RDA prohibits 'direct' discrimination on the basis of race. It provides:

> It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human

1 Please note: (1) This material is provided for information only. It should not be relied upon for legal advice. (2) It has been assumed that the development of SRAs will be an exercise of the executive power of the Commonwealth under s.61 of the *Constitution.* We are not aware of any new legislation that has been introduced to provide a statutory basis for SRAs. If an agreement is authorised by legislation, other issues may arise (see s10(1) of the RDA).

right or fundamental freedom in the political, economic, social, cultural or any other field of public life.[2]

Section 9(1A) of the RDA provides for what is generally known as 'indirect' discrimination.[3] Section 8 of the RDA contains an exception to unlawful discrimination for 'special measures'.

Each of the following elements must be established for 'direct' discrimination to be found.

- **An act involving a distinction based on race**

The first element of s.9(1) of the RDA is that it is unlawful to do any act involving a **distinction based on race**.[4] There must be a sufficient connection between the race of the complainant and the alleged discriminatory conduct.[5]

Set out below are hypothetical examples of how this issue might arise in the context of SRAs.

- The government's acts in negotiating the provision of services to an Indigenous community via an SRA may be found to be acts involving a relevant distinction in circumstances where non-Indigenous communities in the same or similar localities are provided with the same or similar services in the absence of an SRA. In determining whether the distinction was 'based on' race, a Court would consider whether race was a 'real reason' or 'true basis' for that distinction.[6]
- Once an SRA has been negotiated with an Indigenous community, a refusal by the government or some other person to provide services to that community or to a member of that community unless they comply with the requirements of the agreement may be an act involving a relevant

2 The RDA also includes specific prohibitions on direct discrimination in certain areas of public life: access to places and facilities (s.11); land, housing and other accommodation (s.12); provision of goods and services (s.13); right to join trade unions (s.14); and employment (s.15).

3 This appendix focuses on direct discrimination and does not consider the necessary elements for establishing indirect discrimination under the RDA. For information about the necessary elements for establishing indirect discrimination see: Aboriginal and Torres Strait islander Social Justice Commissioner, *Implications of the Racial Discrimination Act 1975 with reference to state and territory liquor licensing legislation,* Speech – 34th Australasian Liquor Licensing Authorities' Conference, 26-29 October 2004, Hobart, Tasmania, online at: http://www.humanrights.gov.au/speeches/race/LiquorLicensingAuthoritiesConference.html.

4 We use the expression 'based on race' to mean 'based on race, colour, descent or national or ethnic origin'.

5 *Macedonian Teachers' Association of Victoria Inc v HREOC* (1998) 91 FCR 8 at 33.

6 *Purvis v New South Wales (Department of Education and Training)* (2003) 202 ALR 133, 138 [14] (Gleeson, C.J.), 171-2 [166] (McHugh and Kirby, J.J.), 187 [236] (Gummow, Hayne and Heydon, J.J.). Section 18 of the RDA provides that where an act is done for two or more reasons, and one of the reasons is race (or other ground), the act will be taken to be done by reason of race (or other ground), whether or not this is the dominant or even a substantial reason for doing the act. It is sufficient if race or another ground is simply one of the reasons for doing an unlawful act.

distinction. This distinction might be said to be particularly evident if there were non-Indigenous members of the community who were not required to comply with the SRA to access the services. However, again, a court would need to be satisfied that the distinction was 'based on race', requiring consideration of the 'real reason' or 'true basis' for that distinction.

- **The act impairs the enjoyment of a right 'on an equal footing'**

The second element of s.9(1) of the RDA is that the 'act' is only unlawful if it has the purpose or effect of impairing the recognition, enjoyment or exercise, **on an equal footing**, of any human right or fundamental freedom.

The phrase **on an equal footing** contemplates a comparison of some kind. The comparison must involve the group, defined by reference to race, to which the complainant belongs. In determining the group with whom the comparison should be made, s.9(1) has been held to allow a broad comparison 'that involves looking at the footing upon which rights are enjoyed by those sections of the community at large who do not suffer from the racial discrimination…that the Act aims to eliminate'.[7]

The appropriate comparator will therefore depend on the circumstances and nature of a particular complaint. For example, the appropriate comparison for an Indigenous community that is subject to the terms of an SRA that provides services to promote economic development in return for the maintenance of health and hygiene standards in the community might be to:

- any other remote non-Indigenous communities that receive government services to assist with the economic development of the region but are not required to enter into SRAs; or
- any non-Indigenous people within the proximity of the Indigenous community that benefit from the economic development of that community, but are not subject to the terms of the SRA.

- **A human right or fundamental freedom is impaired**

The third element of s.9(1) is that an act involving a distinction based on race is only unlawful if it has the **purpose or effect of nullifying or impairing the enjoyment of a person's human rights** and **fundamental freedoms** on an equal footing with persons of other races.

The terms 'human rights' and 'fundamental freedoms' in s.9(1) of the RDA describe those rights and freedoms the enjoyment of which permits each member of a society equally with all other members of that society to live in dignity, to engage freely in any public activity and to enjoy the public benefits of that society.

7 *Australian Medical Council v Wilson* (1996) 68 FCR 46 at 48.

If it appears that a racially classified group or one of its members is unable to:

- live in the same dignity as other people who are not members of the group;
- engage in a public activity as freely as others can engage in such an activity in similar circumstances; or
- to enjoy the public benefits of that society to the same extent as others may do.

then there is a prima facie nullification or impairment of human rights and fundamental freedoms.[8]

The reference to a human right or fundamental freedom includes, but is not limited to, any right of a kind referred to in Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD).[9] Article 5 includes political rights, civil rights, and economic, social and cultural rights, including:

- the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
- the right to housing;
- the right to public health, medical care, social security and social services;
- the right to education and training;
- the right to equal participation in cultural activities;
- the right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and parks.

It is relevant to note that human rights and fundamental freedoms do not encompass every right which a person has under a particular legal system.[10] For example, not all forms of welfare can be characterised as a human right or as falling within the right to social security and social services mentioned in Article 5 of CERD.

In *Secretary, Department of Veteran's Affairs v P*,[11] the Court held that the right to a war veteran's benefit fell outside the rights referred to in s.9(1). This was because the benefit, being 'confined to those persons who have served the interests of one nation against the interests of other nations, stands outside the range of universal human rights, that is, rights to which all persons are entitled equally with everyone else irrespective of their national origins'.[12] Further, the benefit was held to fall outside the right to social security and social services

8 *Gerhardy v Brown* (1985) 159 CLR 70 at 126-127. There are some limited exceptions to this proposition. See for example the discussion on special measures below.
9 Section 9(2) of the RDA.
10 *Gerhardy v Brown* (1985) 159 CLR 70 at 126.
11 (1998) 79 FCR 594.
12 *ibid,* 600.

(as mentioned in Article 5 above). This was because Article 5 'deals only with State-provided assistance to alleviate need in the general community and with benefits provided to advance the well-being of the entire community'.[13] His Honour concluded, citing his earlier decision in *Ebber v Human Rights and Equal Opportunity Commission* (1995) 129 ALR 455 at 476-477;

> ... the rights and freedoms protected by ss 9(1) and 10(1) [of the RDA] do not encompass every right which a person has under the municipal law of the country that has authority over him or every other right which he may claim; rather are those sections limited to protecting those particular rights and freedoms with which the Convention is concerned and those other rights and freedoms which, like those specifically referred to in the Convention, are fundamental to the individual's existence as a human being.[14]

An assessment of whether an SRA has the effect of nullifying or impairing the enjoyment of a person's **human rights** and **freedoms** on an equal footing with persons of other races will be a central issue in the determination of whether a particular agreement is unlawful under the RDA.

Relevant to this assessment is the nature of the services provided to Indigenous communities by SRAs. Significant debate has arisen in relation to whether the services provided via SRAs may indeed be 'essential services'.[15] That is, however, not the question. The question is whether there is a relevant human right or fundamental freedom. Article 5 of CERD refers to rights including:

- the right to public health, medical care and social services;
- the right to education and training; and
- the right of access to any place or service intended for use by the general community.

If an SRA clearly deals with those matters it is more likely to potentially involve the nullification or impairment of relevant human rights. Many SRAs are, however, likely to raise more difficult questions. For example, it might be argued that the provision of public money for social services to a particular Indigenous community falls outside the right to social services in Article 5 of CERD, by reason of its targeted nature. That is, it might be argued that the benefit is conferred on too narrow a section of the community and it is not provided to advance the well being of the entire community.[16]

13 *ibid,* 601.
14 *ibid,* 599-600.
15 Carr, K., *Government indigenous deals one-sided,* Media Release, 8 December 2004; Ridgeway, A., *Mutual obligation: The door swings both ways,* Media Release, 9 December 2004.
16 See analogous reasoning in *Secretary, Department of Veteran's Affairs v P* (1998) 79 FCR 594.

Could an SRA be considered a 'special measure' under the RDA?

Section 8(1) of the RDA contains an exception to unlawful discrimination for special measures. It provides that:

> This Part does not apply to, or in relation to the application of, special measures to which paragraph 4 of Article 1 of the Convention applies except measures in relation to which sub-section 10(1) applies by virtue of sub-section 10(3).

Article 1(4) of CERD, with which s 8(1) is concerned, provides as follows:

> Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

There are four elements of a special measure, as follows. A special measure:

- confers a benefit on some or all members of a class;
- the membership of which is based on race, colour, descent, or national or ethnic origin;
- for the sole purpose of securing adequate advancement of the beneficiaries in order that they may enjoy and exercise equally with others human rights and freedoms; and
- in circumstances where the protection given to the beneficiaries by the special measure is necessary in order that they may enjoy and exercise equally with others human rights and freedoms.[17]

A special measure must not be continued after the objectives for which it was taken have been achieved.[18] The determination of whether a particular SRA could be considered a special measure within the meaning of the RDA will depend upon the facts and circumstances of the agreement. The issues to be considered in making this determination are set out below.

• Does the measure confer a benefit on a class?

The first question to be considered is: does the measure confer a **benefit** on some or all members of a class. The class to be benefited must be a racial group or individuals belonging to the group. In making this assessment, courts

17 *Gerhardy v Brown* (1985) 159 CLR 70 at 133.
18 *ibid,* 139.

have looked to both the benefits of a measure and any costs or disadvantages borne by the beneficiaries of the measure.[19]

SRAs provide for the delivery of government funded services to Indigenous communities on the condition that the communities contribute in return for the government assistance. The assessment of whether a particular agreement confers a **benefit** on an Indigenous community will turn on the terms of the agreement. In conducting this assessment, a court is likely to consider both the services provided to the community and the impact of the conditions imposed by the agreement.

One issue that may arise is whether any conditions imposed by a particular SRA require the Court to conclude that there is in fact no benefit conferred, meaning that it is inconsistent with the character of a special measure.[20] Difficult issues of fact would arise here and close scrutiny of the particular SRA would be required to consider such an argument.

- **The purpose of the measure**

A special measure must have the **sole purpose** of securing adequate advancement of the beneficiaries. There are a number of sources from which the purpose of a special measure can be discerned. The purpose of a measure is discerned from its terms and from the operation which it has in the circumstances to which it applies. Any fact which shows what the persons who took the measure intended it to achieve casts light upon the purpose for which it was taken provided the measure is not incapable of achieving what is intended.[21]

However, the purpose of securing adequate advancement for a racial group is not necessarily established by showing that the person who takes the measure does so for the purpose of conferring a benefit, if the group does not seek or wish to have the benefit. In *Gerhardy v Brown*,[22] Brennan J stated that the 'wishes of the beneficiaries for the measure are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of securing their advancement'.[23] Brennan J went on to state:

> The dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them. An Aboriginal community without a home is advanced by granting them title to the land they wish to have as a home. Such a grant may satisfy a demand for land rights. But an Aboriginal community would not be advanced by granting them title to land to which they would be confined against their wishes.[24]

19 *ibid,* 133.
20 *ibid,* 133-134. See Brennan J's consideration of whether the Land Rights Act conferred a benefit on Pitjantjatjaras.
21 *ibid,* 135.
22 (1985) 159 CLR 70.
23 *ibid,* at 135.
24 *ibid.*

Importantly, the terms and conditions upon which the benefit is conferred will be relevant to the court's assessment of the purpose of the agreement. The wishes of the Indigenous community with whom the agreement was made may also be relevant. We note, however, that difficult issues may arise for a court's consideration where the wishes or views of the Indigenous community are not uniform.

- **The need for the measure**

The next question: is there a need to take the measure and does the measure secure no more than adequate advancement? The need must match the purpose.

To determine whether the measure in question is **necessary** to remove inequality in fact, the circumstances affecting the lives of the Indigenous community must be known and an opinion must be formed as to whether the measure is necessary and likely to be effective to improve those circumstances. The objective circumstances affecting the disadvantaged group are matters of fact that are capable of ascertainment albeit with difficulty.[25]

Once the objective circumstances have been ascertained, an assessment must be made about a number of matters: What is 'adequate advancement' of the beneficiaries in the circumstances? Do they require the protection given by the measure in order to enjoy human rights and freedoms equally with others? The High Court has held that this is, at least in some respects, a political question that a court is ill equipped to answer. Accordingly, a court can go no further than determining whether the political branch of government that employed the measure acted reasonably in making its assessment. The question becomes: could the political assessment inherent in the measure reasonably be made? [26]

- **The measure must not be continued once its objectives have been achieved**

Article 1(4) of CERD provides that measures must not 'lead to the maintenance of separate rights for different racial groups' nor 'be continued after the objectives for which [they were] taken have been achieved'.

The High Court has held that this does not deny the character of a special measure to a measure that does not, from its inception, define the time when it is to cease. The indicium is satisfied if, when the time arrives, separate rights are repealed and special measures are discontinued. Brennan J stated as follows in *Gerhardy v Brown*:

> As it is impossible to determine in advance when the objectives of a special measure will be achieved, the better construction of the provisos is that they contemplate that a State Party will keep its special measures under review, and that the measure will lose its character of a special measure at the time when its objectives have been achieved. But the provisos do not require the time for the operation of the special measure

25 *ibid,* 137.
26 *ibid,* 137-139.

> to be defined before the objectives of the special measure have been achieved.[27]

In the event that SRAs do not provide for the review of the provision of services to Indigenous communities or define a time when the provision of the services is to cease, this would not be fatal to the characterisation of the agreement as a special measure. It is, however, contemplated that the government would keep the agreements under review in order to monitor whether the stated objectives have being achieved.

Summary

SRAs and the circumstances surrounding their negotiation and application are subject to the operation of the RDA. Complaints of racial discrimination under s.9(1) of the RDA may be brought to the Human Rights and Equal Opportunity Commission (the Commission) for investigation and conciliation.[28] If conciliation is unable to resolve the complaint, then it is terminated by the Commission[29] and the complainant may make an application to the Federal Magistrates Court or the Federal Court.[30]

It is not possible to determine in the abstract (and on the basis of the information currently available) whether SRAs will breach the RDA. Accordingly, we have set out above the elements of 'direct' race discrimination under the RDA and the issues that might arise from the negotiation and implementation of SRAs, as well as the elements that would need to be satisfied for an SRA to constitute a special measure.

27 *ibid,* 140.
28 Section 46P of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).
29 Section 46PH(1) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).
30 Section 46PO of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).