Chapter 3

Addressing the fundamental flaw of the new arrangements for Indigenous affairs – the absence of principled engagement with Indigenous peoples

This is the third successive *Social Justice Report* to report on the implementation of the new arrangements for Indigenous affairs at the federal government level. The past two *Social Justice Reports* have emphasised the importance of governments ensuring the effective participation of Indigenous peoples in decision making that affects our lives. This includes the development of policy, program delivery and monitoring by governments at the national, as well as state, regional and local levels.

The *Social Justice Report 2005* expressed significant concerns about the lack of progress in ensuring processes were operating to ensure the participation of Indigenous peoples in policy, particularly at the regional and national levels. The report also provided a stern warning about the implications of failing to address this issue as an urgent priority. It stated that the 'absence of processes for Indigenous representation at all levels of decision making contradicts and undermines the purposes of the new arrangements'.[1] The report called for *principled engagement* with Indigenous peoples as a fundamental tenet of federal policy making.

This chapter does three things.

First, it provides an update on the progress made over the past twelve months in ensuring the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them' with a particular emphasis on developments at the national and regional level. It is clear that the mechanisms for Indigenous participation in the new arrangements remain inadequate. Indeed this ongoing failure to ensure Indigenous participation in decision making is the fundamental flaw in the implementation of the new arrangements.

Second, it looks to developments at the local level through Shared Responsibility Agreements (SRAs) to see how this program of activities is unfolding. Substantial effort has been devoted to this program of small scale interventions. This can be

1 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p136.

justified if it provides a pathway to improving existing mechanisms for engaging with Indigenous communities at the local level and identifying the crucial barriers to sustainable development within communities. It is reasonable to expect such lessons after two years of solid engagement.

The chapter examines progress under the SRA program by engaging with those people affected most by them – namely, the Indigenous communities who have entered into SRAs. This is achieved through a series of interviews with three SRA communities and through analysing the results of a national survey of two thirds of those Indigenous communities or organisations that had entered into an SRA by the end of 2005.

Third, the chapter looks to ways forward which address the significant concerns that are set out in the chapter. As the chapter makes clear, Government commitments exist to ensure the maximum participation of Indigenous peoples in decision-making and these commitments have been consistently re-affirmed. The concerns in this chapter reflect a problem of implementation of these commitments.

The absence of appropriate mechanisms for the participation of Indigenous peoples in the new arrangements is a significant policy failure. It is inconsistent with our human rights obligations, existing federal legislation, and the government's own policies.

The immediate impact of this policy failure is to render Indigenous voices silent on new policy developments, in the legislative reform process and in the setting of basic policy parameters and the delivery of basic services to Indigenous communities. The chapter emphasises the potential danger of the new arrangements to the well being of Indigenous peoples, if the concerns raised in this report are not addressed as an urgent priority.

Developments in ensuring the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'

The importance of regional Indigenous participatory mechanisms in the new arrangements

The legislation which forms the foundation for the new arrangements, the *Aboriginal and Torres Strait Islander Act 2005* (Cth), has as one of its objectives 'to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.[2]

The government has continually emphasised the importance of ensuring such participation as an integral component of its arrangements for Indigenous Affairs. In June 2005, the then Minister for Immigration and Multicultural and Indigenous

2 *Aboriginal and Torres Strait Islander Act 2005* (Cth), section 3(a), Available online at: www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/889B9887C357132ECA257227001E0801/$file/AbTorStrIsland2005.doc.

Affairs confirmed that the government remained committed to establishing representative bodies at the regional level:

> We have always stated that, following the dissolution of ATSIC Regional Councils from July 1 this year, there will be room for genuine Indigenous representative bodies to emerge in their place.[3]

This commitment has been constantly re-iterated by the Government since. They have stated that through regional Indigenous Coordination Centres, 'the Australian government is committed to real engagement with Indigenous people in the areas where they live'.[4]

The Minister for Families, Community Services and Indigenous Affairs has also stated that:

> We aim to make it simpler for Indigenous people to deal with government. We want to show respect by encouraging them to be active participants in solving their own problems...
>
> (T)he one-size-fits-all approach will not work. We need different strategies for urban, rural and remote areas. Indeed we must recognise that every individual community is different and that local solutions need to be designed with local people to suit their local circumstances.[5]

The Government has emphasised that the new arrangements are intended to ensure that programs are 'being implemented more flexibly in response to local Indigenous needs' and that 'Indigenous communities at the local and regional level… have more say in how (funding) is spent'.[6]

In their implementation, the new arrangements are underpinned by five key principles. These include:

> **2. Regional and local need**
>
> ICCs are talking directly with Indigenous communities and groups about their priorities and needs and their longer term vision for the future. Shared responsibility Agreements (SRAs) may result from these discussions…
>
> The Australian government is also progressing negotiations on Regional Partnership
>
> Agreements (RPAs) to tailor government interventions across a region. RPAs can also provide a framework for recognising the range of regional Indigenous engagement arrangements that develop around Australia.
>
> **5. Leadership**
>
> Strong leadership is required to make the arrangements work, both within government and from Indigenous people.

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3 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements*, Media Release ID: vIPS 22/05, 29 June 2005.

4 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p2, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

5 Minister Brough, Foreword in Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p v, available online at: www.oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

6 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p2, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

> The regional engagement arrangements that Indigenous people establish will provide leadership and be accountable to the people and communities they represent.
>
> Where Indigenous leadership capacity and organisational governance need to be strengthened, the Australian government can provide support.[7]

What is clear from this is that the Government has acknowledged that mechanisms for Indigenous participation at the regional level are essential if the whole of government model it is seeking to implement is to work.

Regional Indigenous participatory mechanisms have an essential role in the new arrangements as the link in the chain that connects policy making from the top to service delivery that is relevant and appropriate at the grass roots. It is essential to identify local need and to facilitate regional planning and coordination.

In materials explaining the operation of the new service delivery arrangements, the Government explains the role and importance of regional engagement arrangements and agreement-making processes to facilitate partnerships between Indigenous peoples and governments. Regional Partnership Agreements are seen as a key mechanism to achieve this. The Government's approach is described as follows:

> Through ICCs, the Australian government has been consulting with Indigenous
>
> communities and state/territory governments about regional solutions to regional needs.
>
> Regional Partnership Agreements (RPAs) are negotiated to coordinate government services and deliver initiatives across several communities in a region. They are a means of eliminating overlaps or gaps, and promoting collaborative effort to meet identified regional needs and priorities. They may also involve industry and non-government organisations.
>
> RPAs also seek to build communities' capacity to control their own affairs, negotiate with government, and have a real say in their region's future.
>
> RPAs may include shared responsibility Agreements (SRAs) with local communities or groups that support the objectives of the RPA.[8]

RPAs are a tool to facilitate and recognise regional Indigenous engagement arrangements. As the Government explains:

> Regional Indigenous engagement arrangements are evolving in a number of regions to help Indigenous people talk to government and participate in program and service delivery. These engagement arrangements are a mechanism for making and implementing agreements between government and Indigenous people based on the principles of partnership, shared responsibility and self-reliance.
>
> The Australian government does not want to impose structures but will support and work with arrangements that are designed locally or regionally and accepted by Indigenous people as their way to engage with government.

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7 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p8, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

8 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p40, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

> The government has supported consultation with Indigenous people about the types of engagement arrangements they want. Communities need time to think through these issues, and views differ widely across regions on the most appropriate models.
>
> In Western Australia and New South Wales, the Australian and state governments are already supporting new engagement arrangements in the Warburton and Murdi Paaki regions respectively.
>
> Bilateral agreements with state and territory governments are also pointing to a variety of approaches to regional engagement. These approaches include regional authorities in the Northern Territory and 'negotiation tables' in Queensland.
>
> Regional Partnership Agreements are a primary mechanism for government to provide funding for regional Indigenous engagement arrangements. More regional Indigenous engagement agreements are likely to be finalised as indigenous groups negotiate with the Australian and other governments on their funding. [9]

Regionally based Indigenous Coordination Centres (ICCs) provide the interface with Indigenous communities for the establishment of regional indigenous engagement arrangements and the finalisation of RPAs. To assist in this process the Government has created four panels of experts to support ICCs, including for the specific task of 'developing regional engagement arrangements'.[10]

Similarly, a 'multiuse list of community facilitators/coordinators' has also been created to compliment the more specialised and technical services of the Panels of Experts. Members of the Multiuse List are intended to create links between communities and governments, coordinate and develop service delivery, support communities and specific groups, such as women and youth, in identifying their priorities, in negotiating agreements with government, and in developing new regional engagement arrangements.[11]

Progress in supporting Indigenous engagement at the regional level

Last year's *Social Justice Report* provided an extensive overview of developments towards the establishment of regional Indigenous representative bodies.

The report noted the considerable progress that had been made in negotiating regional representative arrangements and structures. It reported that consultations had been conducted across many regions to identify replacement representative structures during the year, and that OIPC had provided funds through the ICCs for Indigenous peoples to convene local and regional meetings to discuss options for new regional representative arrangements.[12]

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9 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p40, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

10 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p40, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

11 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p41, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf..

12 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp110-111.

An overview of progress on a state-by-state basis showed that there were promising developments in determining culturally appropriate regional representative models, although there were gaps and problems with some of the models.[13] I emphasised the need to finalise and operationalise representative organisations where negotiations were largely complete, and to make greater progress in other areas where models had not yet been finalised.

Overall, I found the situation to be of some concern:

> The consequence of the current status of these models is that there are few mechanisms for Indigenous participation at the regional level…[14]
>
> Addressing the absence of regional representative structures is an urgent priority for the 2005-06 financial year. It would be wholly unacceptable for regional structures to not exist and not be operational in all ICC regions by the end of this period.[15]

The report recommended that the Australian government, in partnership with state and territory governments, prioritise, with Indigenous peoples, the negotiation of regional representative arrangements and that Representative bodies should be finalised and operational by 30 June 2006 in all Indigenous Coordination Centre regions.[16]

At that time, the Government had finalised one RPA that recognised the Ngaanyatjarra Council as the representative body for 12 communities spread across the Ngaanyatjarra lands in Western Australia.

It had also finalised a Shared Responsibility Agreement which recognised the Murdi Paaki Regional Assembly as the peak regional Indigenous body in the Murdi Paaki region of far north-west New South Wales. It is understood that the Murdi Paaki Regional Assembly is now close to signing a RPA to formalise strategic planning arrangements proposed through community planning processes undertaken as part of the SRA.

In brief, it is worth recalling developments relating to the creation of regional representative structures as they stood 12 months ago:

- The government, through ICCs, supported consultations with Indigenous communities to identify replacement regional representative structures following the abolition of ATSIC;
- At 30 June 2005, when ATSIC Regional Councils ceased to exist, no replacement representative structures were in place;

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13 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p117 and pp112-114.

14 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp110-111.

15 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC Sydney 2005, p136.

16 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, Recommendation 4.

- The then Minister announced on 29 June 2005 that representative arrangements had been 'finalised' in 10 of the 35 ICC regions, with consultation and negotiation ongoing in other regions;[17] and
- All State and territory governments had indicated their support for regional representation in their jurisdictions (based on different models).

As the *Social Justice Report 2005* noted, 'common to all the existing proposals (for regional structures) is that the federal government has not as yet outlined in concrete terms how they will support them'.[18] In particular, there was no clarity as to how regional bodies would be funded and the type and level of administrative support they would be provided. The report noted that Regional Partnership Agreements provided an appropriate model for developing regional structures.

Throughout the past twelve months, the government has continued to state that it is committed to establishing regional representative structures. In correspondence with my Office in December 2006, the Office of Indigenous Policy Coordination stated that RPAs are the primary mechanism for formally engaging with Indigenous peoples and communities at a regional level, and that they:

> … are a way of harnessing the potential of communities in a region through genuine partnerships involving many sectors, backed by a serious commitment of resources.[19]

As discussed further below, commitments to ensure Indigenous participation and engagement are also contained in each bilateral agreement between the Australian government and the states and territories.

The Government also released guidelines indicating the parameters of what support they would provide for regional structures. These guidelines were for 'Regional Indigenous Engagement Arrangements' (RIEA) and were intended to:

> … [P]rogress RIEA proposals that are consistent with the Australian Government's principles of partnership, shared responsibility and self-reliance, and to provide feedback to communities on proposals that are not consistent with the Australian Government's objectives.[20]

A notable feature of these guidelines is that they do not use the phrase 'representative structures'. This language of representation had been acceptable during the first year of the new arrangements. Importantly, the various proposals submitted to the government before 30 June 2005 were for replacement representative structures.

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17 The regions where arrangements were 'finalised', 'continuing' or 'to begin shortly' were specified in the Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp111-114.

18 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p117.

19 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2006*, 23 December 2006, p2.

20 Australian Government, FaCSIA, Office of Indigenous Policy Coordination, *Regional Indigenous Engagement Arrangements*, available online at: www.oipc.gov.au/documents/RegionalIndigenousEngagementArrangements_Parameters.pdf.

The RIEA guidelines therefore elaborate the shift by the Government from supporting 'representation' to supporting 'engagement arrangements'. The parameters for Australian Government funding set out in the guidelines are as follows:

- Initial Australian Government funding be capped and limited to one year after which further support be negotiated through RPAs;
- Funds support meeting costs such as travel but not sitting fees or remuneration;
- State and Territory Governments participate through RPAs or bilateral agreements;
- The Government retain the right to engage directly with communities or other bodies;
- The Government be assured of the legitimacy of RIEAs among their constituents; and
- RIEAs not be 'gatekeepers' or have decision-making responsibilities concerning Indigenous program funding.[21]

A second key feature of the guidelines is that they substantially reduce the scope of what the federal government would consider supporting and funding. Regional Indigenous Engagement Arrangements will only get funding support for a year, after which time any further support must be negotiated through a Regional Partnership Agreement. Whilst this does not necessarily preclude organisations with a degree of permanency, it shows that engagement arrangements are to be contingent on RPAs.

The shift in focus that the guidelines present is problematic in that various proposals were prepared *prior* to these guidelines being made public and available. Indeed, the guidelines were in all likelihood developed as a response to concerns by the government about the content of the proposals developed prior to 30 June 2005.

This means that proposals submitted by Indigenous communities would be assessed against guidelines that the proponents were unaware of and which would require a much narrower and restricted proposal for support to be forthcoming.

The document outlining the guidelines made clear that the guidelines outlined would be utilised 'to progress RIEA proposals' such as the 18 that had been received at the time. This suggests that the Government would engage with the proponents of regional models to consider their proposals in light of the government guidelines.

Over the past eighteen months and since the adoption of these guidelines, the Government has finalised two RPAs – in Port Hedland and the East Kimberly (both signed in November 2006).

Neither of these agreements relate to supporting Regional Indigenous Engagement Arrangements. Instead, they are the result of negotiations within two trial sites under a Memorandum of Understanding (MoU) between the Government and the Minerals Council of Australia.

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21 The guidelines state that they 'include' these principles, although no other principles are elaborated elsewhere. Australian Government, FaCSIA, Office of Indigenous Policy Coordination, *Regional Indigenous Engagement Arrangements*, available online at: www.oipc.gov.au/documents/RegionalIndigenousEngagementArrangements_Parameters.pdf.

The MoU with the Minerals Council is about building partnerships between the government, mining sector and Indigenous communities. The MoU negotiation process involved local Indigenous leaders through the *Indigenous Leaders Dialogue* - a forum through which local Indigenous leaders advise the MCA about Indigenous aspirations and anticipated outcomes from the MoU.

Case studies of these RPAs are included in the *Native Title Report 2006.* The Report notes that a concern during the negotiation of the RPAs was the lack of sufficient Indigenous engagement. In relation to the East Kimberly RPA, the *Native Title Report 2006* states that:

> From the outset, parties to the RPA saw it as an initiative of the Australian Government. There is evidence that the negotiation processes were run according to the Government's own agenda and plans were hastily developed in a rush to meet fixed deadlines leaving other parties feeling pressured to follow for fear of being left behind… The level of community engagement (on the RPA) is regarded as greatly inadequate.
>
> As a result of the lack of engagement with Indigenous people, there is a critical lack of understanding within the community about the RPA, and what it aims to deliver. For example, there was reported confusion between the RPA and other changes to regional governance arrangements including changes to the Community Development Employment Project. This kind of confusion has the potential to skew commitment and expectations of the RPA, and may lead to dissatisfaction with outcomes. In addition, as long as communities are uncertain about the nature of the RPA, they will be unable to take advantage of the opportunities it creates.[22]

Aside from these RPAs emanating from the MoU with the Minerals Council, no other RPAs have progressed in the past eighteen months.

In researching this report, my Office sought to contact the proponents of proposed regional arrangements that had been identified by the Minister for Indigenous Affairs as 'finalised' in June 2005. My purpose was to identify what had transpired over the past 12-18 months and whether the proposals as submitted had been considered and what advice had been provided back to the proponents of these bodies in order to advance them (consistent with the commitment given by the government when it announced its guidelines for RIEAs). [23]

Those proposals that had been identified as 'finalised' related to the following ICC regions:

- Many Rivers, Northern NSW;
- Gulf and West Queensland;
- Central Queensland;
- Cairns and District Reference Group;
- East Kimberly District Council;
- Kullari Regional Indigenous Body;
- Yamatji Regional Assembly;

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22 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2006*, HREOC, Sydney, 2007, Chapter 3.

23 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements*, Media Release ID: vIPS 22/05, 29 June 2005, available online at: http://www.atsia.gov.au/media/former_minister/media05/v0522.aspx.

- Nulla Wimla Kutja;
- Ngaanyatjarra Council; and
- Murdi Paaki Regional Assembly.[24]

In Hansard in federal Parliament in May 2006 the Government stated that two arrangements had been established and were receiving funding support from the Australian Government and sixteen other reports from Indigenous groups had been received by the Australian Government for consideration.[25]

Information on progress was sought initially from the relevant ICCs and the Office of Indigenous Policy Coordination. For some of the proposed regional structures, the ICCs advised that they had no contact information for the proponents of the models and that there had been no activity to advance discussions within the region over the past year.

In a regular request for information to the OIPC that I make for each *Social Justice Report* I also specifically requested a region by region update on progress in advancing RIEAs and in consideration of proposals that had been submitted to OIPC through the ICCs. The OIPC provided no response to this question.[26]

Discussions with Indigenous community members who had been involved in proposing structures for these regions also revealed that little progress had occurred in progressing RIEAs. Part of the difficulty in this was the fact that most of the models had been presented by, or were facilitated by, the relevant ATSIC Regional Council prior to their abolition. Accordingly, there is now no institutional structure in place to progress the proposals made.

Various community members noted that the process of negotiating an RIEA had not progressed due to a lack of communication from the OIPC and ICC, with the proponents not hearing from the local ICC regarding their proposal,[27] no financial support from any level of government to facilitate progressing the proposal, lack of communication on the proposal between the state or territory government and the federal government, and/ or a lack of support for the proposal by the state or territory government.[28]

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24 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements*, Media Release ID: vIPS 22/05, 29 June 2005, available online at: http://www.atsia.gov.au/media/former_minister/media05/v0522.aspx. A colour map showing areas where representation arrangements are in place and where consultations are continuing is available at: www.indigenous.gov.au/OIPC_Regional_Representational_Map.pdf.

25 Commonwealth of Australia, Parliamentary Debates, *Senate Official Hansard, No. 4 2006*, Thursday 11 May 2006, Forty First Parliament, First Session – Sixth Period, pp185-186.

26 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2006*, 23 December 2006.

27 For example, in relation to the proposal of the Gulf and Western Queensland Indigenous Regional Coordination Assembly.

28 Interviews conducted by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner with Indigenous community members who had been involved in the consultation processes for the establishment of Regional Indigenous Engagement Arrangements, July – December 2006. In a number of interviews with ICC staff they reported that the regional representative bodies 'do not exist' and were unable to provide contact information (for the following regions: Nulla Wimla Kutja, Yilli Rreung Aboriginal Corporation, Northern Tablelands Aboriginal Community, Kamilaroi, South Central Queensland, Malarabah, Perth Noongar, Wangka Wilurrara and Papta Warra Yunti).

The Government explains the current absence of consultative mechanisms as follows:

> *Mr Yates* - There was quite a lot of work done in the follow-up to the abolition of the ATSIC regional councils, typically in conjunction with state or territory governments where they were reviewing representative arrangements or machinery for engagement with government. So there has been quite a lot of work done over the last couple of years, but they have not all translated into replacement arrangements. As far as possible we were looking to try and support arrangements which both levels of government would be backing rather than having multiple layers. Our focus in terms of the future has been on, at the regional level, the engagement that we are having there where that translates into regional partnership agreements. We are quite ready and willing to work with the other parties and provide resources to support the effectiveness of Indigenous groups engaging with government to enable those regional partnership agreements to work well.[29]

There is an important change in approach here, from an emphasis on regional *structures,* to regional *processes and agreements*, particularly RPAs.

Given the advanced state of discussions a year ago in a number of regions, it is quite remarkable that progress towards recognising regional representative structures has stalled, if not dissipated.

Even more remarkably, the OIPC has sought to suggest that this lack of progress is a result in a shift in the thinking and preferences of Indigenous people themselves!

In Senate Estimates they stated:

> … what we [FaCSIA] have found is that some of the early thinking in a number of regions, which was to re-establish something very similar to an ATSIC regional council, has dissipated. They [Indigenous peoples] have realised that that is not workable or meaningful for them and they have moved on. So we are in a situation where we are having to work more case by case in different regions, and it is taking a while, but the timetable is very much in the hands of Indigenous people, as is the shape of any engagement arrangements that that results in.[30]

This proposition needs to be tested further. It is not consistent with the findings of discussions conducted by my Office and it is not consistent with the apparent lack of activity by OIPC and ICC to progress this important issue.

As indicated above, immediately following the demise of the ATSIC Regional Councils and over the course of the first year of the new arrangements, the government expressed a clear intention to assist Indigenous peoples to establish replacement bodies for regional participation. After an initial level of activity by OIPC to this end, this undertaking was quietly dropped and replaced with a commitment to RIEAs.

It now seems that the federal government would prefer to avoid anything resembling the ATSIC Regional Council model. I have serious doubts that this fully

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29 Yates, B., Deputy Secretary, FaCSIA, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA45, available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

30 Yates, B., Deputy Secretary, FaCSIA, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA45, available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

represents the will of Indigenous peoples in the regions, or that they have 'moved on' in their thinking.

Given the unqualified nature of the government's initial undertakings, a more thorough explanation of what is being done to replace the ATSIC Regional Councils with appropriate regional representative organisations is called for.

While it is desirable not to foist a standard model on different regions, and this is one of the reasons given for the slowness in getting regional engagement arrangements in place or supported,[31] I remain concerned that the vacuum in Indigenous regional participation is creating problems.

It is difficult for Indigenous communities to deal with the volume of changes, agencies and requirements under the new arrangements and the increasing entanglements of red tape.[32] There is a need to support authentic and credible structures and processes for Indigenous communities that allow them to engage with governments, be consulted, and where appropriate, provide informed consent.

In my view the government has adopted a cynical and disingenuous approach in which the apparatus of the new arrangements play no active role in engaging with Indigenous peoples on a systemic basis to ensure that mechanisms for Indigenous participation can become a reality.

The Government has clearly stated that one of the priority areas for their Expert Panels and 'Multiuse list of community facilitators/coordinators' is to assist in the development of regional engagement arrangements. This demonstrates that they are fully aware that such arrangements will only become a reality if intensive support is provided to Indigenous communities to develop models that are suitable to their local needs.

It is fanciful to expect that RIEAs will emerge solely through the efforts of Indigenous communities that are under-resourced and that in most instances do not have the necessary infrastructure to conduct the wide-ranging consultation and negotiation required to bring a regional engagement structure into existence.

It is also convenient for Government to leave this issue solely up to Indigenous peoples to progress. I would suggest that this is done in full knowledge that the outcome of this approach will be an absence of regional engagement arrangements.

There is a clear need for special assistance to ensure that Indigenous peoples are able to, in the words of the object of the *Aboriginal and Torres Strait Islander Act 2005*, ensure the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.

Options for addressing this significant failure of the new arrangements are discussed in detail in the final section of this chapter.

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31 Yates, B., Deputy Secretary, FaCSIA, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA45, available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

32 Morgan Disney & Associates Pty Ltd, *A Red Tape Evaluation in Selected Indigenous Communities: Final Report for OIPC*, May 2006, available at http://www.oipc.gov.au/publications/PDF/RedTapeReport.pdf accessed 19 January 2007.

As noted in chapter 2 of this report, a related concern is that each regional Indigenous Coordination Centre is now developing its own Regional Action Plan which identifies the key issues that the ICC will focus on in a twelve month period.

The plans will cover work completed through a variety of mechanisms including RPAs and SRAs, strategic intervention arrangements and community in crisis interventions. The plans are to be endorsed by federal government state manager groups and will highlight the most significant community and government work which the ICC is involved as well as link into national priorities.[33]

It is a concern that ICCs are developing such action plans in the absence of systematic engagement with Indigenous communities at a regional level and in the absence of Regional Indigenous Engagement Arrangements in nearly all ICC regions. Ensuring such engagement with Indigenous communities should be a fundamental pre-requisite to determining service delivery priorities and in the identification of need for each ICC region.

As I have travelled around the country I have discussed this situation with Government staff in ICCs and OIPC state offices. These staff, particularly at the field operative level, are observing the frustration, disengagement and bewilderment of Indigenous peoples. Many of these staff have had long term relationships with indigenous communities and peoples and they are experiencing the pressures of top down impositions that are not likely to see any real and sustainable outcomes for indigenous people. They also feel disempowered themselves, and that the culture within the OIPC is one that does not value their views and concerns. Many have expressed an unwillingness to raise their concerns for fear of reprisals.

Government would benefit from conducting a confidential survey of all staff in ICCs to gauge their views on the current directions in implementing the new arrangements and to raise suggestions on the way forward to achieve sustainable outcomes.

Indigenous participation in decision making at the national level

Last year's *Social Justice Report* provided a detail overview of the issues relating to Indigenous engagement at the national level.[34] These include:

- difficulties in ensuring the involvement of Indigenous peoples in inter-governmental framework agreements (such as health and housing agreements with the states and territories);
- the removal from the *Aboriginal and Torres Strait Islander Act 2005* (Cth) of previously existing requirements for departments to consult with Indigenous peoples in planning and implementing their activities; and
- the absence of processes for engagement with Indigenous peoples at the national level.

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33 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report* 2006, 23 December 2006, p5.

34 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp130-135.

In the past twelve months, there have been limited changes at the national level to the situation as described in the *Social Justice Report 2005*. The government has continued to utilise the National Indigenous Council (NIC) as the primary source of advice on Indigenous policy[35] and has not sought to engage more broadly with Indigenous communities on matters of policy development that affect our lives.

The result of this has been a noticeably low level of participation of Indigenous peoples in inquiry processes (such as parliamentary committees) on matters of crucial importance to Indigenous peoples and a new 'unilateralism' in policy development.

There are two principle concerns that I have regarding developments at the national level over the past 12- 18 months.

- First, we have seen reforms being introduced extremely quickly with limited processes for consultation and engagement from Indigenous peoples. Limited processes for engagement are compounded by the lack of capacity of Indigenous communities and low levels of awareness of the various reforms proposed. During the course of some reform processes, the government has stated that they are under no obligation to consult with Indigenous peoples – this has contributed to the emergence of a culture within the federal government that does not place sufficient value upon Indigenous engagement and participation.
- Second, as the government has continued to bed down the new arrangements they have continued to distance Indigenous peoples from processes for agreeing to policy priorities – this includes through setting the key priorities for inter-governmental cooperation through bilateral agreements with the states and territories without Indigenous participation, and a changed focus in federal processes, such as through the strategic interventions approach described in chapter 2.

Last year's *Social Justice Report* expressed concern at the existence of multiple processes to reform Indigenous policy that were taking place concurrently and the limited ability for Indigenous people and communities to engage in these processes. I noted my concern that:

> … the cumulative impact of the parallel reforms currently taking place is overwhelming some communities and individuals.
>
> This renders it very difficult for Indigenous peoples to participate meaningfully in policy development, program design and service delivery. This is particularly so in the absence of representative structures to coordinate and focus the input of communities, particularly in relation to legislative reform and inquiry processes.

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35 The NIC has expressed significant concerns to the Government that it does not consider that their advice has been treated appropriately. In December 2006, it was reporting that there was 'serious disquiet among NIC members who say they feel marginalised' with the Government taking limited notice of their advice. NIC chairwoman Sue Gordon was quoted as saying there was "no question' there were reservations about whether or not the council was being fully consulted on issues and whether our capacity was being utilised, especially through our dealings with the bureaucracy. The fact he (Mr Brough) undertook to improve the Government's interaction with the council is very welcome' she added': Karvelas, P., *Aboriginal adviser quits in protest*, The Australian, 1 December 2006, p3.

> The intention of the reforms is plainly to improve engagement and service delivery with Indigenous peoples… The rapid rate of the reforms and the accompanying impact it is having on communities and individuals needs to be acknowledged by governments.[36]

This situation has continued over the past year.

For example, communities have had to deal with the following ongoing reform processes that have been occurring simultaneously at the national level:

- Reforms to governance arrangements for Aboriginal councils and associations, which had been held over for a further twelve months;
- Reforms to the CDEP program, as well as processes for the lifting of Remote Area Exemptions in some remote communities; and
- Reforms of other employment related services, such as Indigenous Employment Centres, the Structured Training and Employment Program (STEP), and welfare to work reforms.

At the same time, consultations have been conducted relating to:

- Reforms to the Aboriginal Land Rights (Northern Territory) Act, including substantial reforms for land tenure arrangements in townships and proposed changes to the permit system;
- Six inter-connected reform processes for different aspects of the native title system, followed by draft legislation to implement the findings of some of these consultation processes (with further amendments expected later on); and
- Reforms to the community housing and infrastructure program.

Legislation has also been introduced to the federal Parliament that impacts on Indigenous communities relating to:

- Land rights reforms in the Northern Territory (through the *Aboriginal Land Rights (Northern Territory) Act 1975*);
- Indigenous heritage protection (through the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*);
- Indigenous governance (through the *Aboriginal Councils and Associations Act 1976*);
- Banning of consideration of Aboriginal customary law in federal sentencing matters (through the *Crimes Amendment (Bail and Sentencing) Act 2006*);
- The removal of consent procedures for traditional owners in the nomination of sites for storage of radioactive waste on Indigenous lands (through the *Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006*); and
- Welfare to work reforms (through the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006)*

36 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney 2005, p104.

Parliamentary inquiries have also been conducted into:

- petrol sniffing in remote Aboriginal Communities;
- national parks, conservation reserves and marine protected areas;
- the Indigenous visual arts and craft sector;
- Indigenous stolen wages;
- Native Title Representative Bodies (this inquiry was in addition to the four separate consultation processes on native title issues conducted by the Attorney-General's Department);
- Indigenous employment;
- health funding;
- the non-fossil fuel energy industry;
- mental health;
- civics and electoral education, including the non-entitlement of prisoners (of whom Indigenous peoples make up a significant proportion) to vote; and
- an identity card (which is likely to have a significant impact on Indigenous peoples as high users of government services such as the welfare and health systems).

These activities are just some of the reforms that have occurred at the national level. They do not include significant reforms at the state and territory level – such as to governance arrangements and local councils in Queensland and the Northern Territory; the operation of the state based land council system, care and protection and adoption systems in NSW; protections through a Bill of Rights in the A.C.T, Victoria, Tasmania and Western Australia; and inquiries into family violence and child sexual abuse in NSW and the NT, among other things.

The consultation processes and reforms at the federal level have also been difficult for Indigenous peoples to participate in due to the short timeframes within which consultation for some of the reforms have taken place. The adequacy of consultation processes for CDEP and related employment changes, for example, were discussed in Chapter 2 of this report.

An issue of major concern has been the shortness of time for parliamentary inquiries into issues of relevance to the situation of Indigenous peoples and particularly for draft legislation. This has been particularly noticeable in inquiries before the Australian Senate where public consultation on proposed legislation has consistently been severely curtailed.

For example:

- The Senate Committee inquiry into changes to federal sentencing laws to ban consideration of Aboriginal customary law was formed on 14 September 2006 with submissions required to be submitted by 25 September 2006 – just 11 days later (with the committee due to report by 16 October 2006). Just 5 submissions were received from Indigenous organisations. The final report noted that the Government confirmed

that 'there was no direct consultation' on the content of the Bill with groups who could be affected.[37]

- The Senate Committee Inquiry into the provisions of the amendments to the *Aboriginal Land Rights (Northern Territory) Act 1975* was created on 22 June 2006 for inquiry and report by 1 August 2006. The Committee received 4 submissions from Indigenous organisations. The final report of the inquiry (by both government and non-government members of the Committee) stated:

  'The Committee considers the time made available for this inquiry to be totally inadequate. The *Aboriginal Land Rights (Northern Territory) Act* is one of the most fundamentally important social justice reforms enacted in Australia and these are the most extensive and far reaching amendments that have been proposed to the Act. There was insufficient time for many groups to prepare submissions and a single hearing was complicated by the necessity to include a number of teleconferences within the hearing. Additionally, time constraints prevented the Committee hearing from a number of witnesses'.[38]

The lack of emphasis given to ensuring that Indigenous peoples are able to participate in decision making processes that affect us is of serious concern.

As I note elsewhere in this report, the lack of engagement generally with Indigenous peoples ensures that the system of government, of policy making and service delivery, is a passive system that deliberately prevents the active engagement of Indigenous peoples. This contradicts the central policy aims of the new arrangements, which includes commitments to partnerships, shared responsibility and mutual obligation.

It is paradoxical for the Government to criticise Indigenous people for being passive victims and stuck in a welfare mentality yet to continually reinforce a policy development framework that is passive and devoid of opportunity for active engagement by Indigenous peoples.

I find it particularly disturbing that there is a lack of acknowledgement of the importance of Indigenous engagement and participation in policy making. I am concerned that there is emerging a culture within the federal public service, led by the Office of Indigenous Policy, which does not place sufficient value upon such engagement.

This has been particularly notable in debates about reforms to land rights in the Northern Territory, particularly those relating to changes to land tenure in townships. The government has stated before the Senate Committee inquiring into the amendments to the land rights legislation that it is not under an obligation

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37 Senate Legal and Constitutional Legislation Committee, *Report on the Crimes Amendment (Bail and Sentencing) Bill 2006*, Parliament of Australia, Canberra 2006, para 3.6, available online at: www.aph.gov.au/senate/committee/legcon_ctte/crimes_bail_sentencing/report/index.htm. The Bill had resulted out of the Ministerial Summit on Violence and Abuse in Indigenous communities – that Summit had also not been attended by Indigenous representatives.

38 Senate Community Affairs Committee, *Provisions of Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, Parliament of Australia, Canberra 2006, para 1.3. Available online at: www.aph.gov.au/senate/committee/clac_ctte/aborig_land_rights/report/index.htm.

to consult with Indigenous peoples on the proposed changes, and that that role lay instead with the land councils in the Northern Territory.[39]

In subsequent discussions where I have expressed concern about the lack of community consultation on the issue of town leasing, the OIPC have also noted that they are not obliged under the legislation to consult with the community, just with a section of it, that is traditional owners, which the government has stated could mean just one person in some instances.[40]

As a matter of practicality, processes for engaging with stakeholders about proposed reforms are integrally linked to achieving successful implementation at the community level. It is a mistake to believe that reforms that are developed in a vacuum will be embraced by communities. It is far more likely that such reforms will be perceived as disempowering and paternalistic. As a consequence, governments will face greater difficulties in realising their intended goals. This will particularly be so if those goals are not shared by Indigenous communities.

The absence of a national representative body exacerbates this situation.

It is my impression, from discussions with officials in different departments and agencies and from observing current practices, that government departments are struggling about *how* to consult and with *who*.

As reported in the past two *Social Justice Reports,* Indigenous peoples have been giving attention to the necessary components of a replacement national body for the Aboriginal and Torres Strait Islander Commission (ATSIC).

The National Indigenous Leaders Conference was convened in Adelaide in June 2004 and set out principles that must be met for any national body to be credible.[41] A smaller steering committee of participants in that process have met since that initial meeting, including at a meeting in Melbourne in 2006, to advance their proposal.

To date, there has been limited information made publicly available about this process or its outcomes. This is unfortunate given the urgent and compelling need for a national representative body to be in place.

The *Social Justice Report 2004* set out a number of options for ensuring the effective participation of Indigenous peoples in decision making at the national level. These included the establishment of a national congress of Indigenous representative

39 The dissenting report of Opposition Senators notes, for example, that they 'strongly disagree with the Office of Indigenous Policy Co-ordination's (OIPC) submission that it was not their responsibility to communicate the changes with Traditional Owners. Even if it was the responsibility of the Land Councils, the shortage of time and resources made it physically and logistically impossible for Land Councils to consult their traditional owner base': Senate Community Affairs Committee, *Provisions of Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, Dissenting Report – Opposition Senators, Parliament of Australia, Canberra 2006, available online at: www.aph.gov.au/senate/committee/clac_ctte/aborig_land_rights/report/d01.htm.

40 Under the reforms to the Act they are legally correct in that they are not required to consult with the Indigenous community more broadly or the community that would be directly affected by any changes. This does not, of course, make the policy process a sound one. The amendments to the land rights legislation relating to town leasing does not include a caveat which would render processes invalid where consent has not been obtained or even where fraudulent behaviour has occurred: this also undermines a 'culture' of effective participation in decision making.

41 See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, p105, pp174-175.

organisations, annual meetings of Indigenous service delivery organisations, and the establishment of a national Indigenous non-government organisation.[42]

My current assessment of these options is as follows:

- *Establishing a national body comprised of the chairpersons of Regional Indigenous Representative Structures* – this is essentially the model proposed by the ATSIC Review Team in 2004. It is presently not a feasible model due to the absence of regional representative structures, as discussed in this chapter. The convening of a national forum should still be treated as a high priority once regional structures have been established across the country.
- *Establishing a National Forum of existing Aboriginal and Torres Strait Islander peak organisations* – This could provide an interim approach to a more inclusive national representative model. The Forum could be attended by National Secretariats and State Associations for:
    - Indigenous women's legal services;
    - Torres Strait Islander organisations;
    - native title organisations and land councils;
    - legal services;
    - childcare services;
    - community controlled health organisations;
    - justice advisory committees;
    - stolen generations organisations;
    - peak Indigenous education organisations;
    - networks for CDEP; and
    - Job Network providers and so forth.

  I would see enormous value in bringing together these organisations to share common experiences and consider mechanisms for improved coordination and consideration of issues in a whole of government matter. The absence of such a coordinated approach from Indigenous organisations (who are clearly not equipped or resourced to operate in this way) creates a mismatch between the Government's new whole of government approach and the ability of Indigenous peoples to participate in it.

  A National Forum of Service Providers and peak bodies would be useful as an ongoing mechanism, but ultimately would not substitute the need for a representative body to ensure effective engagement with Indigenous communities.
- *Establishing a national non-government organisation of Indigenous peoples* – This may well be the result of current consultations being undertaken by Indigenous peoples. The difficulty that this model will face is ongoing funding and adequate resourcing. In addition to issues around establishing a mandate for the organisation, time will need to be devoted to options for resourcing such a body to ensure that it has the capacity to undertake the necessary level of activity. Where this model

42 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, p105.

> exists internationally, such as the Assembly of First Nations in Canada, the Indigenous peoples it represents have a secure land and resource base that assures the ongoing viability of such a mechanism.
>
> This is, in my view, achievable. Lessons regarding funding arrangements and structure can be learnt from similar organisations internationally but also from domestic organisations in other sectors – such as the Federation of Ethnic Community Councils of Australia and the Australian Council for Overseas Aid.

The current lack of effective participation of Indigenous peoples at the national level is a matter of major concern. If the current approach is to continue unabated, we risk government policy processes entrenching existing problems of lack of engagement. This will result in systemic problems in Indigenous policy and service delivery.

Due to my ongoing concerns about this issue, I have identified the following as a follow up action for my Office over the coming year.

Follow Up Action by Social Justice Commissioner

The Social Justice Commissioner will work with Indigenous organisations and communities to identify sustainable options for establishing a national Indigenous representative body.

The Commissioner will conduct research and consultations with non-government organisations domestically and internationally to establish existing models for representative structures that might be able to be adapted to the cultural situation of Indigenous Australians, as well as methods for expediting the establishment of such a body given the urgent and compelling need for such a representative body.

Indigenous participation in determining priorities for inter-governmental cooperation

Concurrent to these developments, the government has continued to bed down the new arrangements and to confirm changes in policy through processes that do not include Indigenous participation at the outset. This has primarily occurred through a new focus on 'intensive interventions' and through an emphasis on setting priorities and agreed areas for action through bilateral agreements with the states and territories.

Generally speaking, Indigenous engagement is limited to the implementation of the priorities once they have already been agreed between governments. Chapter 2 of this report discussed the federal government's movement towards a bilateral interventionist model of 'strategic interventions' or 'intensive interventions' in some communities designated as being 'in crisis'.

As noted in chapter 2, the interventionist model puts the strategic decision-making clearly in the hands of government – the Indigenous community only becomes

involved *after* the basic decision to intervene has been made and respective levels of commitment have been agreed between different governments.

'Strategic intervention' in this context in fact means 'restricted Indigenous participation' at a governmental and priority-setting level. Priorities are determined by outsiders (governments), and only then are the insiders (the community) invited to participate in the detailed planning and implementation. This does not appear to provide a sound basis for 'ownership' of initiatives undertaken as part of such strategic interventions.

This approach is more broadly applied through the negotiation of bilateral agreements on Indigenous affairs between the federal government and the states and territories.

In general terms, the bilateral agreements commit each government to work in partnership and in accordance with principles as agreed through the Council of Australian Governments (COAG). They also include schedules of priority actions which are agreed solely by governments without Indigenous participation.

In contrast to this lack of engagement prior to the finalisation of the bilateral agreements, each agreement then commits the Australian government and the relevant state or territory government to ensure Indigenous participation in the implementation of the agreement. For example:

- *The Bilateral Agreement with the Northern Territory Government:* identifies the Northern Territory's proposed local government reforms through the creation of Regional Authorities under the NT *Local Government Act 1994* as the main model for Indigenous participation and engagement. As noted in last year's *Social Justice Report*, this is primarily focused on rural and remote areas and does not address the needs of Indigenous peoples in urban centres in the Northern Territory. This model is also not universally accepted by Indigenous peoples in the Territory as the appropriate mechanism. To address this, the bilateral agrees to consider representational issues 'through flexible arrangements (including options that bring together Indigenous peak bodies)'[43] although there have been no developments in progressing this in the past year.
- *The Bilateral Agreement with the Queensland Government* commits both governments to 'work with Aboriginal and Torres Strait Islander people to determine community engagement arrangements at the local level' and to use the Queensland government's 'negotiation table' process as 'the key community engagement mechanism'.[44]
- *The Bilateral Agreement with the New South Wales Government:* recognises the NSW Government's Two Ways Together Framework as the foundation for cooperation between the two governments on service delivery

43 Australian Government and Northern Territory Government, *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005-2010,* schedule 2.3, 6 April 2005, available online at: http://www.oipc.gov.au/publications/PDF/IndigenousAffairsAgreement.pdf.

44 Australian Government and Queensland Government, *Agreement on Aboriginal and Torres Strait Islander Service Delivery Between The Commonwealth of Australia and The Government of Queensland 2005-2010,* paras 16-22, 5 December 2005, available online at: www.oipc.gov.au/publications/PDF/IndigenousAffairsAgreementQLD.pdf.

to Aboriginal communities, including through Shared Responsibility Agreements.[45]

The NSW Government's Operational Guidelines for SRAs require NSW government agencies to satisfy themselves that there has been a proper consultative process with Indigenous peoples in developing an SRA.[46]

- *The Bilateral Agreement with the South Australian Government*: commits both governments to 'work with Indigenous people to determine arrangements for engagement at the local and/ or regional levels' and in acknowledgement of the large proportion of Indigenous people who reside in urban areas in South Australia to ensure that modified arrangements are put in place for engagement in urban areas.[47] Consistent with this, the South Australian government commenced a four month consultation process with Indigenous communities in October 2006 to identify an appropriate structure for a state-wide Aboriginal Advisory Council.[48] I commend the Government of South Australia for undertaking this initiative.
- *The Bilateral Agreement with the Western Australian Government*: Commits both governments to work with Indigenous people to determine effective arrangements for engagement, through the conduct of consultations with Indigenous communities.[49] In August 2006, the Western Australian government also commenced a consultation process to identify better ways to engage with Indigenous leaders and to identify long-term strategies to strengthen the participation of Aboriginal people in the state's development. This process is due to conclude by 31 August 2008. [50] I commend the West Australian Government for undertaking this initiative.

It is unclear how any engagement arrangements agreed at the state level, such as the processes currently underway in South Australia and Western Australia, will link to the federal level. It can be expected, however, that there will be a connection due to the commitments made in the bilateral agreements. It remains to be seen whether such cooperation is forthcoming from the federal government once the models freely chosen by Indigenous peoples have been revealed – particularly if these models extend beyond the acceptable parameters for the federal

45 Australian Government and New South Wales Government, *Overarching Agreement on Aboriginal Affairs Between the Commonwealth of Australia and The State of New South Wales 2005-2010*, para 32, 17 April 2006, available online at: http://www.oipc.gov.au/publications/PDF/NSW_IndigAgreement.pdf.

46 NSW Department of Aboriginal Affairs, *Operational guidelines for NSW government officers negotiating shared responsibility agreements*, available online at: http://www.daa.nsw.gov.au/data/files//operational guidelinesforSRAs.pdf.

47 Australian Government and South Australian Government, *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and The State of South Australia 2006-2011,* paras 20 and 24, 17 April 2005, available online at: http://www.oipc.gov.au/publications/PDF/SA_IndigAgreement.pdf.

48 Weatherill, Jay (MP), *SA Aboriginal Advisory Council*, Press Release, 23 October 2006, available online at: www.ministers.sa.gov.au/news.php?id=814.

49 Australian Government and Western Australian Government, *Bilateral Agreement on Indigenous Affairs between the Commonwealth of Australia and The State of Western Australia 2006-2010,* July 2006, available online at: www.oipc.gov.au/publications/PDF/SA_IndigAgreement.pdf.

50 Western Australian Parliament, *Parliamentary Question without notice Lieutenant General John Sanderson - Appointment*, Hon Giz Watson, 14 September 2006, available online at: www.parliament.wa.gov.au/pq/qsearch.nsf/e55da5ba38cfb7c548256d870006876b/a24afc2daa865cf5482571ed007b9bd4?OpenDocument.

government as laid down in their Guidelines for Regional Indigenous Engagement Arrangements.

It remains unfortunate that priorities have been identified through the bilateral agreements without Indigenous participation and engagement and that there continues to be a lack of any mechanism to facilitate Indigenous participation as the agreed actions for inter-governmental cooperation are undertaken..

Engagement with Indigenous peoples at the local level – Indigenous perspectives on Shared Responsibility Agreements

Over the first two years of the new arrangements, there has been considerable effort devoted to developing Shared Responsibility Agreements (SRAs) with Indigenous communities and organisations. This stands in marked contrast to the lack of activity in ensuring the existence of regional mechanisms for Indigenous participation and engagement.

This section of the report considers what lessons can be learnt from this local level engagement, particularly in light of the concerns at the inappropriate mechanisms and processes for engagement that currently exist at the regional, state and national levels.

Why focus on SRAs?

Considerable emphasis has been placed on SRAs by the Office of Indigenous Policy Coordination since the inception of the new arrangements.

They have been described as forming one of the beacons of innovation that they hope will be the hallmark of the new arrangements. SRAs have been identified as having the potential to open up communities to new streamlined forms of service delivery that 'cut red tape' and address the longstanding problems of accessibility of mainstream programs, by 'harnessing the mainstream'. Officers responsible for negotiating SRAs within regional ICCs are optimistically named 'solution brokers' in accordance with these expectations.

SRAs have also been prominent due to the policy emphasis within them on mutual obligation: they have been promoted as one of the key approaches for addressing passivity in communities by instilling a culture of reciprocity, through mutual obligation for the delivery of services over and above basic citizenship entitlements.

As such, SRAs provide one of the main tools through which regional Indigenous Coordination Centres engage with Indigenous communities or organisations at the local level, alongside the continued administration of existing grant processes.

In both practical terms and also the 'publicity' of the new arrangements, SRAs have occupied an importance that far outweighs the percentage of expenditure that they represent.

This is the primary reason why there should continue to be detailed attention and analysis devoted to the effectiveness of this program.

SRAs have emerged out of the COAG trial model and were quickly applied more broadly prior to that model being evaluated and its particular challenges identified, such as the high input costs and intensive effort required for engagement prior to the delivery of services hitting the ground in communities.

The previous two *Social Justice Reports* have highlighted the significant challenges for SRAs to meet the expectations placed upon them by the government – both legal, in ensuring compliance with human rights and specifically the *Racial Discrimination Act 1975* (Cth), and practical, in ensuring sound engagement with Indigenous communities to ensure that the process can contribute to the long term needs of those communities rather than distracting attention and effort away from the urgent needs of communities.

As the previous chapter of this report notes, the initial focus on SRAs has produced only modest outcomes in relation to improving mainstream accessibility. This has been hampered by limited flexibility at the regional level, with all SRAs originally having to be sent back to Canberra for approval prior to proceeding, no matter what level of expenditure was involved.

Similarly, the definitions of and approaches to SRAs have continuously changed, with current references to 'single issue' SRAs, comprehensive SRAs, holistic SRAs and with the additional blurring of distinctions between SRAs and Regional Partnership Agreements. This lack of clarity and singular focus is consistent with the instability that characterises the new arrangements more than two years into their implementation (and as discussed in detail in the previous chapter).

There has also been a tendency for particular SRAs to blur the boundaries of what is acceptable in terms of service provision for basic entitlements to communities. The application of mutual obligation principles within agreements has also been problematic on occasion, and has moved away from the initial intention of supporting communities to become active participants to being perceived as providing a punitive approach to service delivery.

The *Social Justice Report 2005* gave extensive consideration to the Shared Responsibility Agreement (SRA) making process. It included human rights guidelines for the process of making SRAs as well as guidelines to guide the content of SRAs.[51]

The report also identified a number of 'follow up actions' that my Office would undertake over the subsequent period in relation to SRAs. These included that my Office would monitor the SRA process, including by:

- considering the process for negotiating and implementing SRAs;
- considering whether the obligations contained in agreements are consistent with human rights standards;
- establishing whether the government has fulfilled its commitments in SRAs; and
- consulting with Indigenous peoples, organisations and communities about their experiences in negotiating SRAs.[52]

51 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp140-146.

52 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, Follow Up Actions 2-4, pp iii – iv.

I have continued to monitor SRAs over the past year through a three stage process.

First, the Office of Indigenous Policy Coordination has forwarded copies of all SRAs to my Office. This arrangement will no longer be necessary as all SRAs are now published online on the OIPC website at: http://www.indigenous.gov.au/sra.html.

Second, a national survey was conducted with Indigenous communities and organisations who had entered into an SRA. My office received many responses to the survey, and Indigenous people from numerous communities also contacted staff in my office to discuss their SRA in more detail.

Third, I sought first hand information from Indigenous organisations and communities by means of interview based case studies. My staff visited some communities and organisations from which we had received responses through the survey, and conducted interviews in order to enhance the feedback already obtained from the surveys. These interviews provide a richer qualitative sampling of community perspectives on SRAs.

So what then have been the outcomes of SRAs to date for Indigenous peoples, *as defined by Indigenous peoples?*

This section of the report provides the outcomes of the national survey of communities who have entered into SRAs as well as of specific case studies which provide further specific information about the challenges faced during the negotiation process.

Through both of these processes the purpose was to find out directly from Indigenous peoples about their experiences and identify whether they were satisfied with the process. Some of the questions I was interested in asking through the survey and case studies include:

- Has the community been satisfied with the outcomes of the SRA?
- How did the community come to enter the SRA and how did they find the process?
- Did the service as outlined in the SRA get delivered to the community?
- What supports, if any did the community receive from government?
- What were the critical factors for the community in achieving the objectives of the SRA?
- Has the SRA had longer term benefits – e.g. simplified service delivery, improved communication with government?

The outcomes of the national survey are discussed first, followed by the case studies. This section of the report then ends by drawing together the implications from these to guide the SRA process into the future.

Findings of the national survey of Indigenous communities that have entered into Shared Responsibility Agreements

• Introduction and Survey methodology

A national survey of Indigenous groupings that had entered into a SRA was conducted between 4 September 2006 and 15 November 2006. The survey results reflect the perceptions and understanding of the SRA process by those Indigenous communities, organisations, families and individuals who had entered into an agreement.

I invited all communities who had entered into an SRA before 31 December 2005 to complete a survey about the process involved in developing and implementing their SRA. The cut off date was chosen to ensure that there had been sufficient time for the SRA to come into effect and for its objectives to be realised.

The survey consisted of 27 questions, with a combination of standard response questions and open questions to gain contextual qualitative information. All of the questions gave respondents the opportunity to add their own information.

The survey focused on the content of the SRA, the negotiation process and the community's views on the SRA process. The full survey questionnaire is reproduced as **Appendix 3** of this report.

The survey was undertaken on a voluntary basis. Participants were informed that their responses were to be kept confidential and all responses would be sufficiently de-identified to preserve their privacy, and in turn enable them to offer frank feedback on the SRA process.

To increase accessibility for communities and organisations, the survey was posted on the HREOC website. Each community representative was able to complete and submit the entire survey online. I sent a letter to the communities before the survey was posted, explaining why I was interested in conducting the survey and encouraging communities to participate. Paper copies were also available on request and my staff also assisted some respondents to complete the survey over the phone.

The survey sample includes SRAs signed before 31 December 2005. For this period there were 108 SRAs finalised, involving 124 communities.

In addition to communities that had entered into a SRA prior to 31 December 2005, the Survey results include data relating to a further four SRAs in four communities who had entered into SRAs in early 2006. These communities had been referred to the online Survey forms by other communities that had been invited to submit results.

At the close of the survey, responses had been received relating to 67 SRAs finalised prior to 31 December 2005, and 71 SRAs in total.[53]

Based on 67 SRAs, out of a possible 108 SRAs prior to 31 December 2005, the survey had a 62% response rate. This is considered a very good response rate, especially

53 Some communities had more than one SRA in place in the community and duplicated their response for each SRA negotiated during the period. Due to this, the 78 responses received were collapsed, yielding 63 survey responses that represented the 71 SRAs.

given that some of the SRAs were for relatively small projects and the survey required at least an hour to complete.

In disseminating the survey there was two interesting administrative issues faced:

- The OIPC and ICC did not have an accurate record of signatories to SRAs. The OIPC could not identify the relevant contact people for each SRA. This required working with each regional ICC to identify the relevant organisations or communities in order to distribute the Survey. During this process, it was not possible for the ICC or OIPC to identify all signatories to SRAs.
- Some communities refused to participate in the survey on the basis that: a) the SRA in their community was for such an insubstantial sum of money that they felt they were already required to over-report and spend too much time in relation to the agreement; and b) for some communities, the SRA had been dependent on a particular individual who had left the community since the SRA was signed. In this situation, some communities stated they had insufficient knowledge about the SRA to comment on its effectiveness – the SRA clearly had no relevance or currency in those communities.

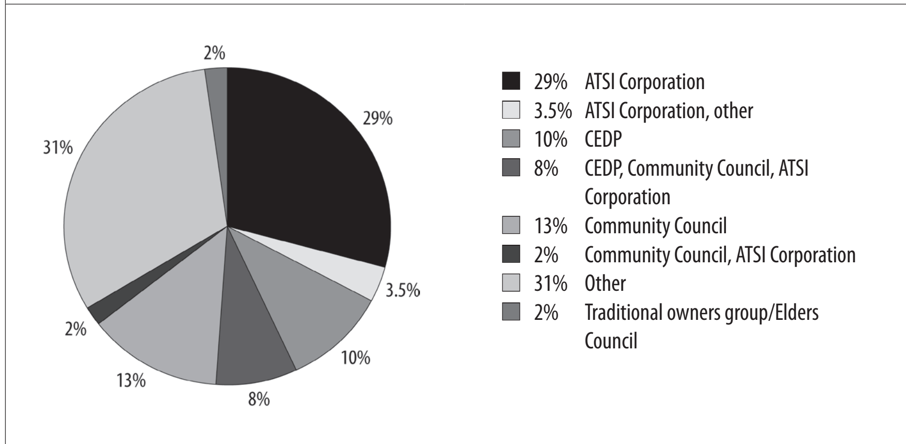
• Key Features of SRAs – Survey responses

The greatest numbers of survey respondents were from Western Australia with 21 responses (32%) and the Northern Territory with 15 responses (24 %). Respectively, 10 (16%) were from Queensland, 8 (13%) South Australia, 6 (10%) NSW, 3 (5%) Tasmania, and no responses from Victoria. The high response rates for Western Australia were not surprising given the large number of SRAs in operation during the survey period.

To understand what type of communities or community organisations have been utilising SRAs, the survey asked respondents to describe their organisation. **Graph 1** below shows that 29% of the respondents described their organisation as an Aboriginal/ Torres Strait Islander corporation, and 13% as a Community Council. A large number of organisations (31%) fell into the 'other category'. This included a range of organisations including schools, Aboriginal housing services, charitable trusts, a police unit or other organisations which fell into a number of different categories.

While the survey did not specifically ask whether the organisation responding was Indigenous community controlled, 7 schools and 1 police unit completed the survey in relation to the SRA they had negotiated. In relation to the SRA with the police unit, further discussions with an Indigenous organisation in that community which had a specific role in the SRA revealed that they had had no involvement in its development.

Graph 1: Description of the organisation entering into the SRA

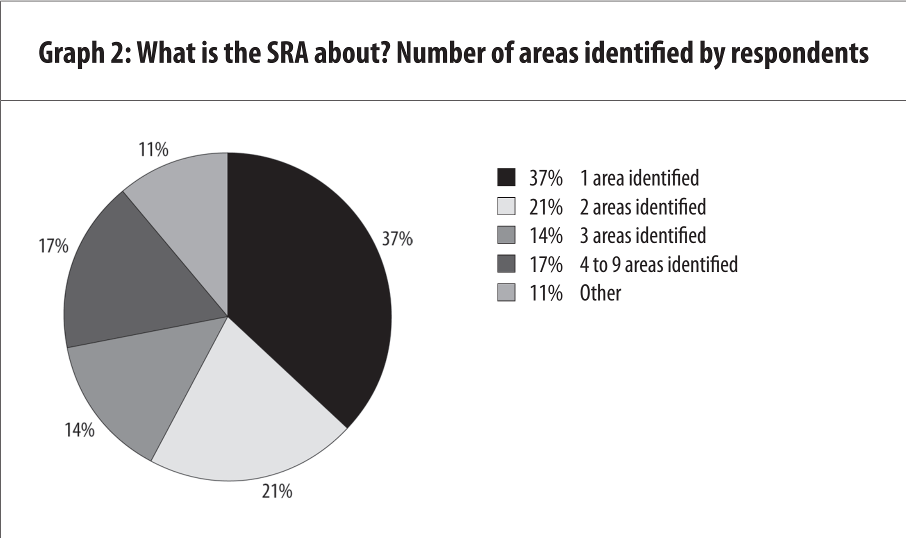


The survey asked respondents to identify what the SRA is about, selecting from a list of identified categories. The categories were:

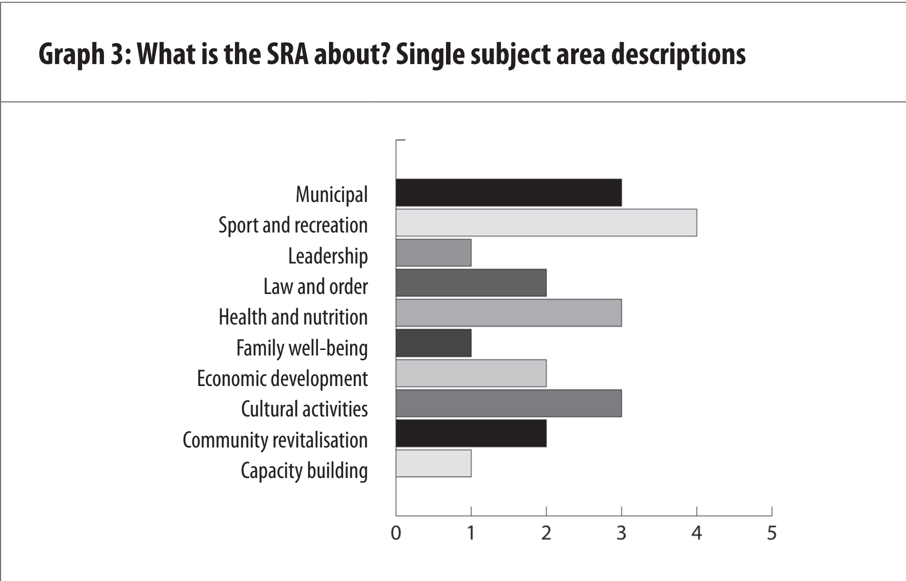
- capacity building;
- municipal services;
- sport and recreation;
- health and nutrition;
- community revitalisation;
- cultural activities;
- leadership activities;
- housing;
- economic development;
- family wellbeing;
- law and order and
- other.

Respondents were able to select as many of the subject areas that they felt applied to their SRA.

As shown below in **Graph 2**, 37% of respondents identified a single category, while the remainder reported that their SRA fell into a number of different categories. There were no clear patterns arising from how the communities described their SRAs, which in itself may reveal something about community perceptions of the SRAs. This may suggest that many communities perceive the aims of the SRA as much broader than a single issue.



Of those 37% of respondents that were able to categorise their SRA into a single subject area, **Graph 3** shows the spread of SRA subject areas.



As shown in Graph 2, a large number of communities listed more than category to describe their SRA. Given the unique combinations nominated by respondents no clear groupings arise but a further breakdown is provided in Table 1 below. **Table 1** shows how many communities nominated each category. The most reported category was 'other' (24 respondents), followed by capacity building and cultural activities (18 respondents).

Table 1: What is the SRA about?

Category	Frequency
Cultural revitalisation	18
Capacity building	18
Sport and recreation	17
Health and nutrition	16
Community revitalisation	12
Family wellbeing	10
Leadership	10
Law and order	5
Municipal services	6
Economic development	8
Other	24

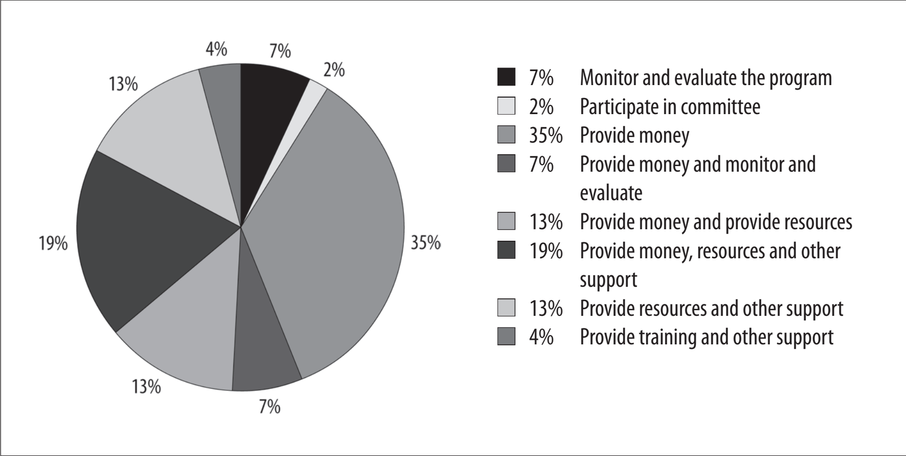
• Obligations contained in SRAs

As SRAs impose obligations on both parties entering into the agreement, respondents were asked to describe the respective obligations of the federal government, state governments and community.

In relation to the federal government, **Graph 4** shows that 35% of communities report that the federal government contributed money to either fund a salary or a specific project. The next most common obligation (19%) was a combination of money, resources such as infrastructure, equipment, staff or consultants and any other form of support.

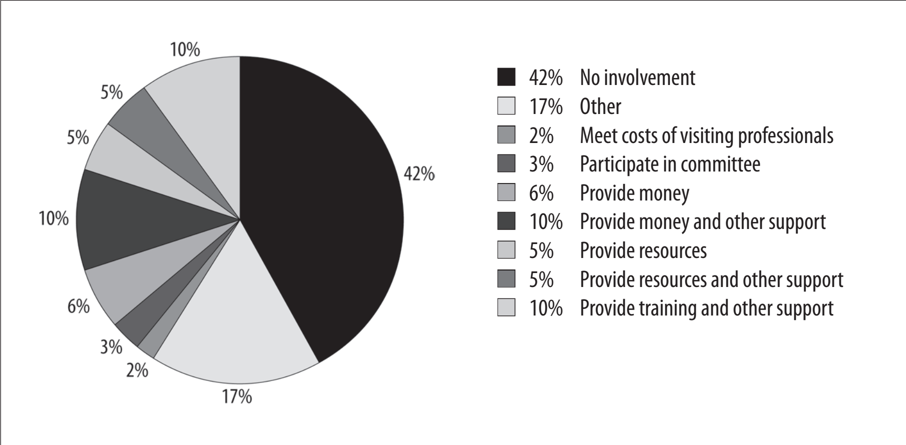
The range of different federal obligations reported by communities suggests that at least in principle, the federal government is committing to a greater range of support mechanisms. This result appears to suggest that through these SRAs the government is moving away from purely providing funding, to greater involvement in the actual implementation of a program. This may be through monitoring and evaluation, provision of resources and infrastructure, as well as training and participation in steering or other committees.

Graph 4: Commonwealth government obligations under the SRA



Given that SRAs are a federal government initiative it is not surprising, that almost half (42%) of respondents reported no state government involvement or obligations in the agreement. **Graph 5** illustrates the various obligations of state governments under the SRAs, according to the survey responses.

Graph 5: State government obligations under the SRA



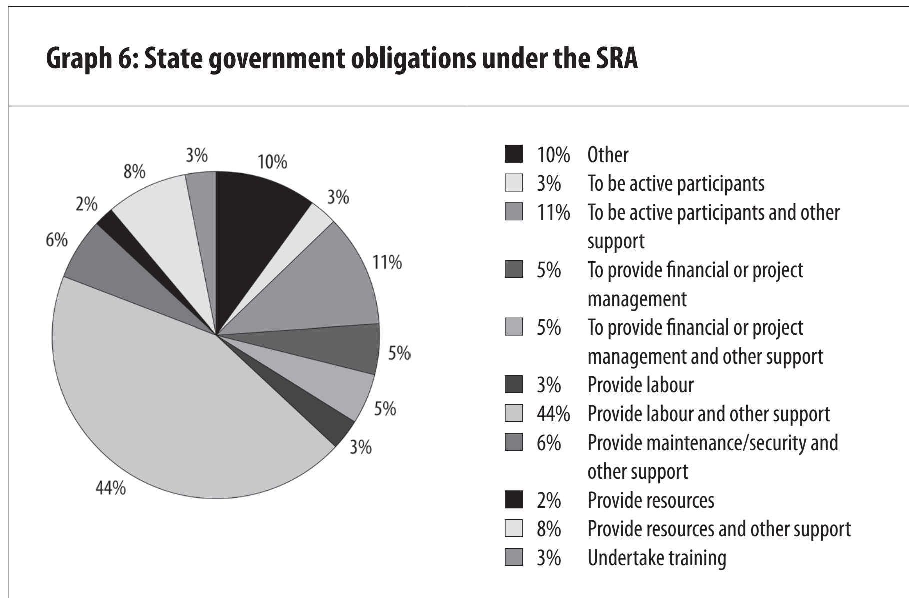
The absence of state government participation in many SRAs may reflect the simple, single issue nature of the SRAs that have been negotiated to date.[54] As the process becomes more sophisticated and 'comprehensive SRAs' begin to emerge, it is anticipated that the level of state government involvement will increase.

Some communities reported positive interactions with state governments and constructive use of state government obligations in SRAs. For instance, one community used the SRA process as an opportunity to develop Memorandums of Understanding (MoUs) with state government partner agencies to improve service delivery and coordination. One respondent also reported that the state government made the major contribution, with the federal government taking a less active role, namely, only participating in steering committees. This may be entirely appropriate, depending on the individual needs of each community and each SRA.

The very nature of SRAs bestows obligations on communities in return for the benefit negotiated with government. As shown in **Graph 6** below, the respondents reported a wide range of obligations.

74% of communities reported that they were required to fulfil two or more different obligations. The most commonly reported obligation was to provide labour and other support, which can include either one or a combination of the other obligations. Other obligations set out in the survey were, to be active participants in the community, to provide maintenance and security, to organise sporting and recreational activities or to undertake training.

Graph 6: State government obligations under the SRA



54 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

A large number of communities listed more than one obligation. This is represented in Graph 6 as 'other support'. A further breakdown provided in **Table 2** below shows how many communities nominated each category. The most reported community obligation was to provide labour (31 respondents), closely followed by providing financial or project management (29 respondents).

Table 2: Community Obligations

Community Obligation	Frequency
Provide labour	31
Provide financial or project management	29
To be active participants in the community	20
To provide maintenance and security	19
Other	18
To provide resources	17
To undertake training	16
To organise sporting or recreational activities	14

Most of the respondents were able to categorise their obligations. However, those that provided additional information gave another dimension on the nature and scope of community's obligations. In particular, one community reported obligations on individuals to participate in health treatment, health education and be supported by family during this treatment in return for treatment facilities and support.

Another community reported that in return for a municipal service, community members were obligated, among other requirements, to actively work on addressing substance misuse issues. Addressing substance misuse is a complex, often entrenched and resource intensive process. There is concern that this sort of obligation may be disproportionate to the obligation and commitment made by the federal government, particularly if the SRA is not accompanied by related services and programs. This may ultimately place an unfair burden on Indigenous communities and has the potential to fail and consequently discredit the Indigenous participants, not the funding party.

Given the large proportion of communities obligated to provide labour and other resources, it is not surprising that 61% of respondents reported that their local CDEP scheme is involved in activities for the SRA. A further 29% reported no CDEP involvement and 10% of the respondents didn't know if the CDEP were involved in the SRA.

Of note is the very low number of respondents who reported that the federal government agreed under the SRA to increase CDEP places in the community. Only three communities indicated a government commitment to increase places,

combined with other obligations. As noted in last year's *Social Justice Report*, it is important that if an SRA requires CDEP labour from the community, this should be negotiated so that the SRA does not result in the re-allocation of necessary places away from existing activities, rather than resulting in the provision of additional SRA CDEP places.[55]

• Monitoring process for the SRA

To ensure obligations are being met by all parties, monitoring and evaluation is crucial to the SRA process. Nearly all of the respondents reported some form of monitoring of the SRA, with a small number of nil responses, or respondents unsure about the exact process. On the whole, most respondents appear satisfied with the processes in place.

Almost a third of the respondents specifically reported that their local Indigenous Coordination Centre (ICC) is involved in the monitoring and evaluation of the SRA. Once again, most descriptions of their role was favourable although one community did express concern, describing their monitoring process as:

> … to be hounded by the ICC Broker to spend the money and only in a particular way or process. Our organisation had to carry all the administration costs as well - no provision for that by the ICC broker or the SRA.

However, most of the monitoring processes in place did not appear to be too onerous on the community. Many communities seem to have incorporated monitoring and reporting into existing meetings or providing data and documentation that should be readily accessible. Other examples of monitoring processes included:

- monthly steering committee meetings;
- council and community meetings included discussion and monitoring of the SRA;
- quarterly or monthly progress reports on project, often completed by the community project worker;
- provision of photos documenting work completed;
- provision of financial records related to the project;
- provision of statistics, for instance, about the number of participants in a project or any improvements against agreed performance indicators;
- participant satisfaction surveys; and
- consultations and interviews with relevant staff working on the project.

• The negotiation process for the SRA

SRAs are a new way for government to engage with Indigenous communities about their needs. In last year's report I set out guidelines for agreement making that incorporates the free, prior and informed consent of communities.[56] This year, through the national survey, I have been able to examine how communities feel

55 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney 2005, p142.

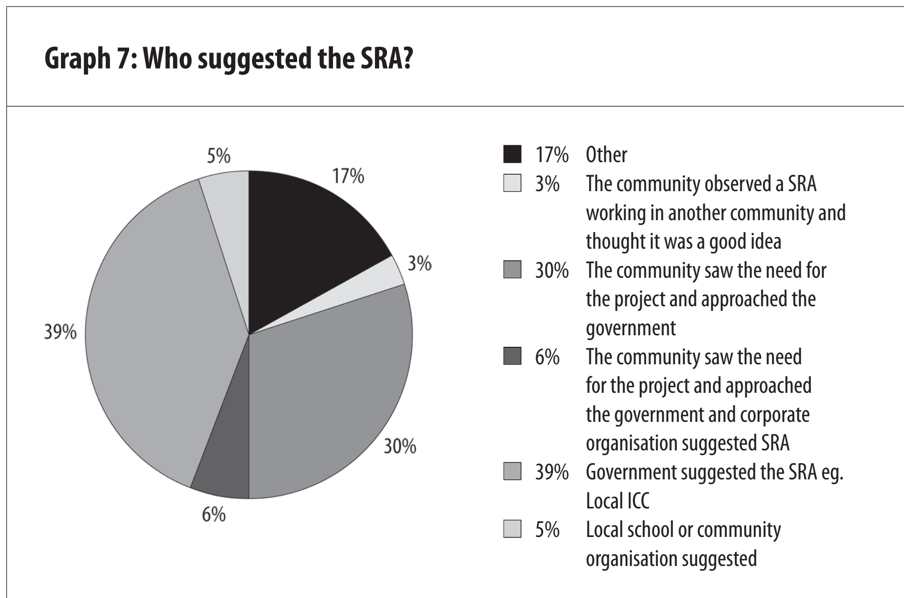
56 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney 2005, p142.

the negotiation process is working for them, and in turn how it upholds these key human rights principles.

When asked why communities decided to negotiate an SRA most indicated a particular community need or service delivery gap that they thought could be addressed by the SRA. It is noted that five respondents (8% of the sample) stated that they entered into the SRA negotiations as they felt they had no other alternative to access much needed funding.

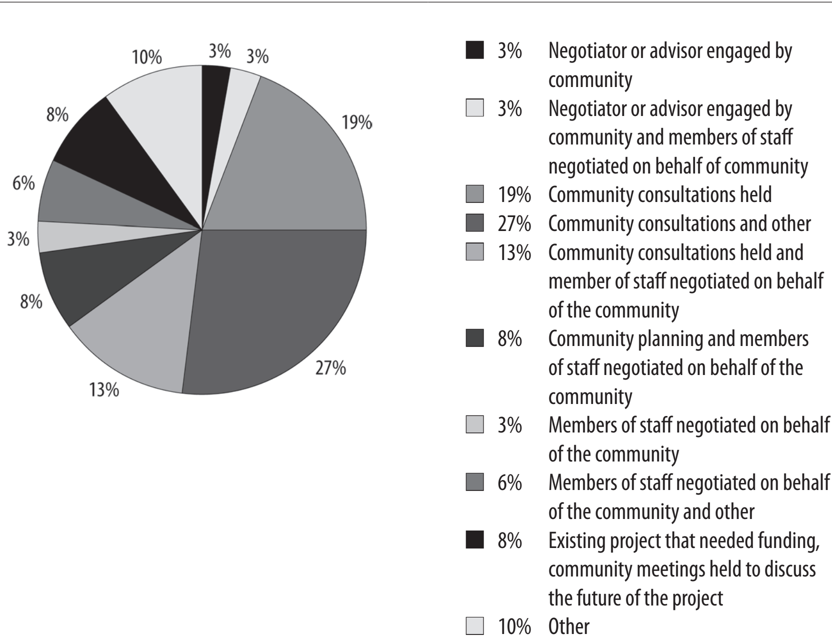
In the survey I was interested in how the SRA negotiation process was initiated and progressed. As illustrated in **Graph 7** below, 39% of respondents indicated that the government, usually through the local ICC, approached the community and suggested the SRA. The next most frequent initiation process was by the community identifying a need itself and then approaching government (30%).

Graph 7: Who suggested the SRA?



Once the SRA had been suggested, **Graph 8** shows that 19% of the respondents reported that community consultations were undertaken in preparation for the negotiation process. Community consultations were used to help prepare the community negotiators for the SRA negotiation and to discuss the content of the SRA and the obligations on the community. A further 27% of respondents stated that community consultations were held in combination with another method of preparation, such as community planning or engaging a negotiator. The exclusive use of professional negotiators or advisors occurred in a small number of reported SRAs (3%). Communities were much more likely to utilise members of staff from their organisation to negotiate on behalf of the community, in conjunction with community consultation or community planning processes or negotiators, totalling 33% of all respondents.

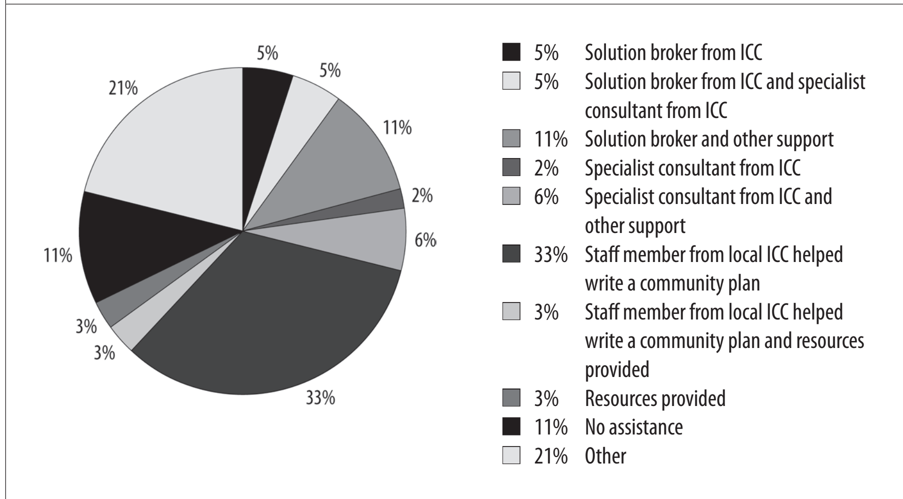
Graph 8: How did the community prepare to make the SRA?



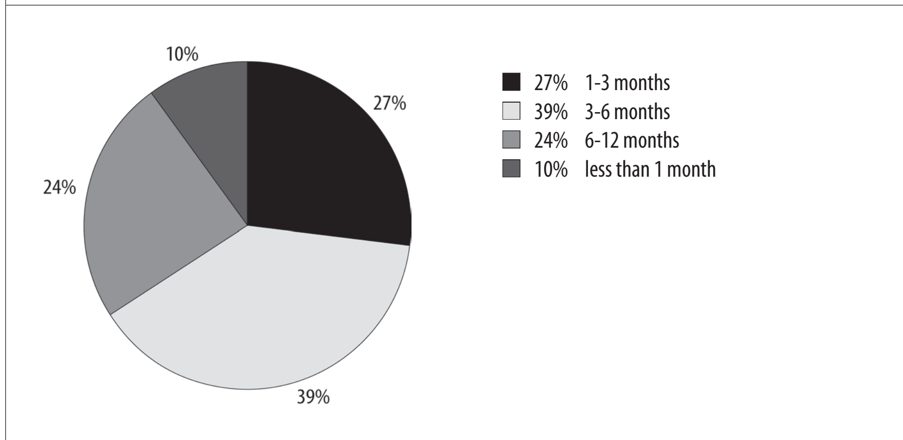
In recognition of the possible complexities and barriers impacting on effective negotiation, the survey also asked participants about any assistance they received from government to facilitate the process. **Graph 9** illustrates these results.

The local ICC seems to have been most instrumental, with 33% of the respondents reporting that a staff member from the local ICC assisted in writing a community plan, with a further 3% providing resources as well. Respondents identified that a Solution Broker from the local ICC was used in 5% of cases. Solution brokers from the ICC, in addition to other support/ specialist consultant from the ICC were used in 16% of the cases reported. These results suggest that there is not an understanding of the concept of 'solution brokers' among Indigenous communities, as in most instances 'a staff member from the local ICC' will be a solution broker.

11% of the communities surveyed stated that they received no assistance to facilitate the SRA. Through a correlation of answers, it is clear that communities that received no assistance were more likely to be dissatisfied with the SRA process overall.



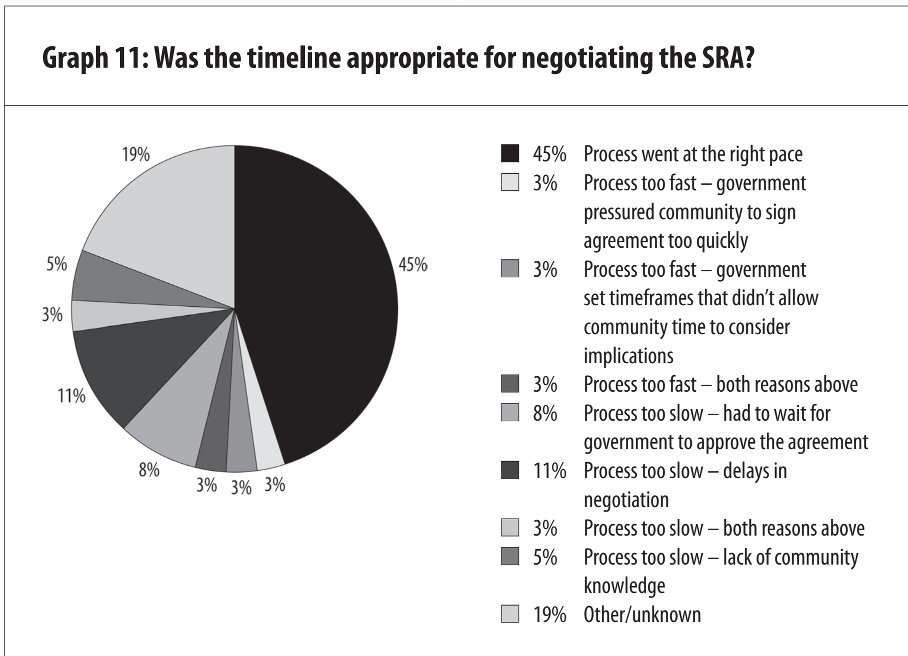
The federal government designed SRAs seems to be a responsive, flexible way for Indigenous communities to access government assistance. They aim to cut down 'red tape' and therefore should occur in a timely manner. **Graph 10** shows that 10 % took less than 1 month, 27% took up to 3 months to negotiate, 39% took 3-6 months and 24% took 6-12 months. Notably, one respondent indicates that the process has 'gone on for 18 months and there is still no sign off'.



While the amount of time spent negotiating the SRA is one indicator of efficient processes, another significant consideration is whether the community considered the negotiation timeline appropriate. If the process is too slow there can be frustration that can ultimately undermine the relationship between an Indigenous community and government. Conversely, if the process moves too quickly, a community may be unable to consider the full implications of the SRA, compromising their free, prior and informed consent to the SRA. The measure of efficiency must then be once the community has signed off on the SRA and the time it takes for the delegate to consider, approve and release funds.

Graph 11 shows community perceptions of the timeline for negotiating the SRA. 45% of the communities felt that the process went at the right pace for them. 27% felt the process was too slow; either as the community was ready to finalise the agreement but had to wait for the government to approve the agreement; there were delays during the negotiation process which meant that the agreement took longer than it should have; there was a lack of community knowledge; or a combination of all these factors. 9% of the respondents found the process too fast and felt either that the government had pressured the community to finalise and sign the agreement too quickly; that the government had set timeframes that did not allow enough time for the community to consider the implications of the proposed obligations; or both.

Graph 11: Was the timeline appropriate for negotiating the SRA?

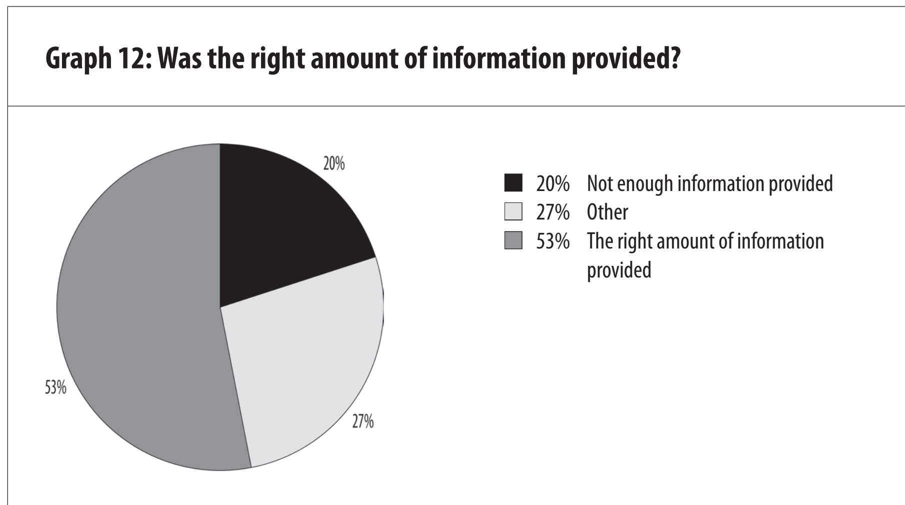


In order to ascertain whether the free, prior and informed consent of Indigenous communities was sought, the survey asked about the amount of information provided to the community during the SRA negotiation process. **Graph 12** shows that 53% of communities felt that they had received the right amount of information about SRAs; this is a disturbingly low figure for this question.

20% of the respondents didn't feel the community had enough information. For instance, one community specifically stated, 'All we knew was it was a funding grant, it only became apparent later that it was a SRA when they came visiting to monitor the activities'. This statement implies that the community was not aware of their respective obligations under the SRA until ICC staff visited to monitor the activities. 27% of respondents responded 'other', many of who acknowledged that the SRA process was new and not enough was really known by both sides at that juncture.

Some respondents commented that information needs to be in a more accessible format. This sentiment was echoed by the 6% of respondents who thought that too much information was provided about SRAs.

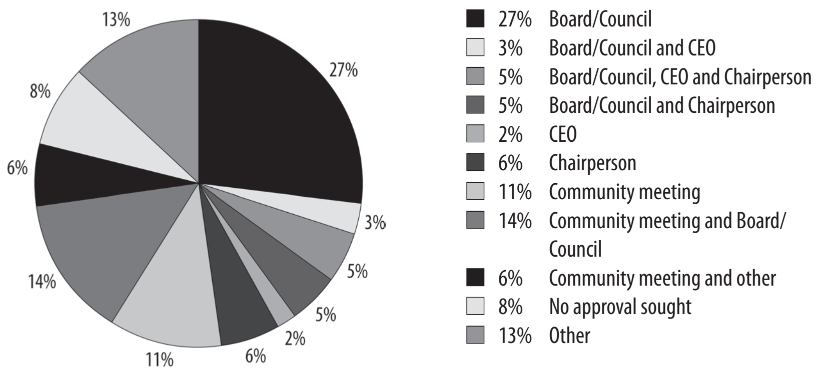
Graph 12: Was the right amount of information provided?



Relating again to free, prior, informed consent, the survey asked how approval was sought for the SRA and how community members were informed of their obligations. **Graph 13** below shows the results. The community board/ council approved 27% of the SRAs in the survey sample, and were involved in a further 27% of approvals, combined with approval from the CEO and/ or Chairperson, or a community meeting.

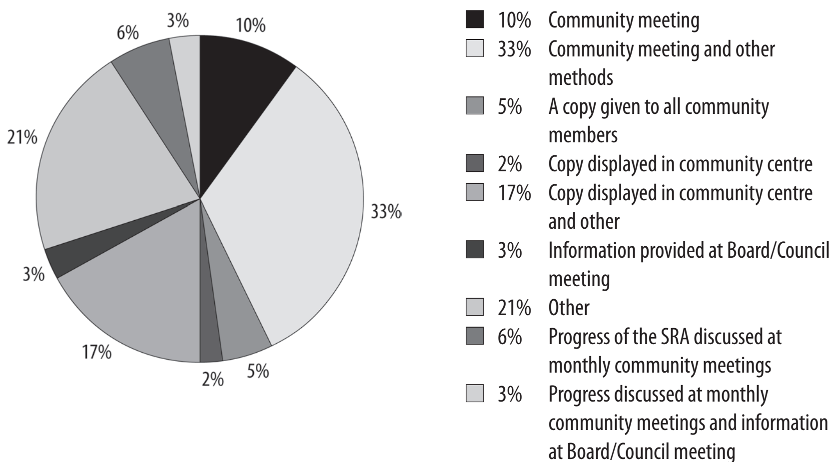
Significantly, 8% of the respondents reported no approval from the community. Two of the SRAs which did not receive community approval appear to have been negotiated by non Indigenous organisations. The survey does not, however, enable us to determine the quality of the consultation process leading to approval. In one reported case where a non-Indigenous organisation appeared to have negotiated the SRA, the only form of consultation reported was a morning tea to go through the SRA with stakeholders so that they could approve and sign the document.

Graph 13: How was the SRA approved?



Multiple methods have been used to inform community members of their obligations under the SRA, as shown in **Graph 14**. The most popular (33%) was a community meeting, combined with some other method such as displaying a copy of the SRA in the community centre, providing a copy to community members or providing information at board or council meetings.

Graph 14: What has been done to inform the community of their obligations?

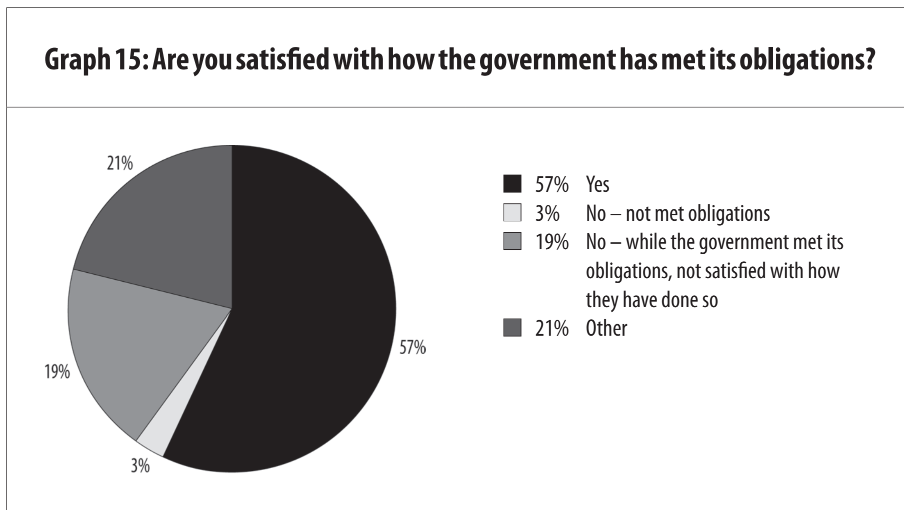


- ## Delivery of commitments and community satisfaction with the SRA process

One indicator of general community satisfaction was whether or not the federal government had met its obligations under the SRA. **Graph 15** shows 57% of communities reported that they were satisfied with how the government had met its obligations. Only 3% reported that the government had not met its obligations, but 19% reported that while the government had met its obligations, they were not satisfied with how they had done so. That nearly one quarter of respondents were unhappy with the nature of how government met its obligations is of significant concern.

When asked to explain their answer, very few respondents with positive feedback provided explanation. Those with less positive perceptions cited issues around lack of recurrent funding; unreasonable reporting and administration requirements; inflexibility once the SRA is signed off; lack of ongoing government support to make the SRA work and an unequal relationship between communities and government, with communities facing a heavier burden of obligation under the SRA than government stakeholders.

Graph 15: Are you satisfied with how the government has met its obligations?



Communities were also asked to identify and rate the three main positive impacts of SRAs on their relationship with the federal government. All but five of the survey respondents were able to identify some positive impact on the relationship. Common themes in the responses were:

- greater accountability of government to the community;
- local and accessible staff to assist the community from the ICC;
- greater awareness of government functions, relevant policies and programs;
- better communication between government and communities;
- greater understanding of the SRA process;

- more consultation; and
- improved linkages with other government departments.

When asked about the three main negative impacts on their relationship with the federal government, almost 70% of the respondents did not list any issues, implying that the majority of survey respondents ultimately saw the SRA process as having either no effect, or a positive effect on their existing relationship with the federal government.

Of those 30% that did report that the SRA had a negative impact on their relationship with the federal government, issues were raised around:

- Unclear expectations, according to two respondents, governments 'keep moving the goal posts' and therefore it is difficult for communities to understand and fulfil their obligations under the SRA.
- Lack of flexibility in the relationship between the community and the government. This was commented on by three respondents who noted that when circumstances necessitated that the SRA change, the government was unwilling to do so. For example, in one SRA the community had agreed to renovate an old building to be converted for use as a school. Once the agreement had been signed, it was found that the building would require repairs far beyond the capacity of the community and as agreed upon in the SRA. No additional funding was supplied to the project and the organisation was then required to 'pick up the pieces' and find the additional funds for the project to go ahead.
- Lack of cultural awareness and the unique needs of each community, or as one community described government practice, 'putting everyone in the same category'.
- Lack of recurrent funding impacting on the sustainability of project.
- Perception that a failure to enter into an SRA may jeopardise other funding applications.
- A perceived condescending attitude of government.

All but three communities were able to identify positive impacts on the community resulting from the SRA. Most were outcomes related to the actual SRA, ranging from modest impacts such as children being able to play basketball to increases in school support and retention, better access to nutritious food and reductions in juvenile offending. Some respondents also noted an increase in community pride and cohesion and a sense of ownership of the SRA. One community reported 'confidence in the government post ATSIC' and another suggested the process has encouraged them to undertake another SRA.

Some communities saw SRAs as a way to increase accountability, with one community stating:

> The SRA is a fantastic tool to develop a range of 'tied outcomes', not only for the Indigenous community/organisation but also for the other stakeholders such as federal departments, state and territory agencies and other stakeholders.

Other communities felt that the SRA was a good concept that could work, but had concerns about the implementation. For instance:

> The idea of SRAs is good but it has to be done properly. It has to help the community to have sole commitment to make sure that their part of the deal is done properly. If only there is enough money (because) this is the best way to in which the community can learn to stand on their own feet.

50% of the respondents reported some negative impacts as a result of entering into the SRA. The most common concern was the short term nature of the funding effecting the sustainability of projects and creating, according to one respondent, 'false hope'. One community in particular notes that if a SRA fails:

> … it effects other programs. They become very disappointed about everything…It is hard to start another project because the trust and the faith in doing something are not there anymore.

Particularly in remote areas, there was a perception among communities that support needed to be in place for 'at least three years' to yield any positive change. One respondent stated that:

> My concern is that SRAs are often short term fixes or band aid solutions. What most organisations need is reliable, ongoing and viable funding to enable forward planning to take place in projects to assist Indigenous communities.

Another common theme was under funding and under resourcing, with communities either needing to make up the short fall or reduce the scope and expectations of the SRA project. One example of this relates to a SRA for a swimming pool where the funding did not take into account the additional power costs and required staffing levels to operate the swimming pool. As a result, the community did not have adequate resources to meet all the swimming pool costs from the SRA and was required to keep the swimming pool operational through other funds.

Similarly, another community noted that during the time that passed between negotiating the SRA and actually commencing the project, the costs involved had substantially increased and the short fall had to be made up by the community. As most communities do not have ready access to discretionary funds, there is potential to misuse funding provided for another purpose to prop up the SRA.

Other negative impacts included confusion in the community about the SRA, and the amount of time and resources spent on administration. One respondent sums up this perception, 'SRAs are very time consuming for not a lot of return'. Some communities suggested that this could be overcome through additional support to assist in meeting reporting commitments, or reducing the frequency of reporting.

There is also a sense among a small number of communities that the SRA was not actually addressing the cause of the issue. One respondent stated that the SRA:

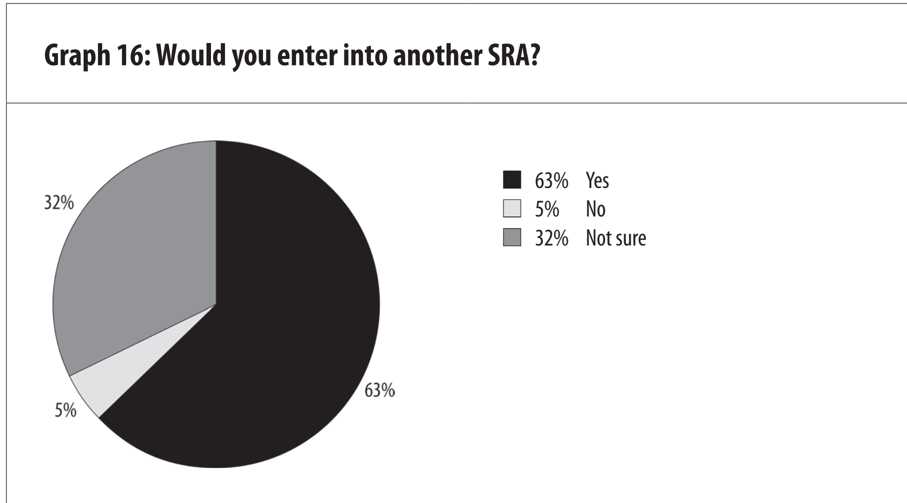
> … does not address the core issues - people raise their very real concerns, often pouring out their hearts, and think their views are being taken into account and then NOTHING (emphasis in the original).

In some ways, this may reveal more about community perceptions of SRAs and the lack of accurate information they have received about the scheme, than the actual SRA. Given that SRAs provide 'a discretional benefit in return for community obligations … (in) the form of extra services, capital or infrastructure *over and above*

essential services or basic entitlements'[57] it is unlikely that SRAs do in fact have the capacity to address complex, entrenched problems, at least in their current form. It is therefore imperative that government works with communities to properly inform them about reasonable expectations of the SRA scheme.

Finally, communities were asked whether they would enter into another SRA. **Graph 16** shows 63% stated they would, 5% would not and 32% were not sure.

Graph 16: Would you enter into another SRA?

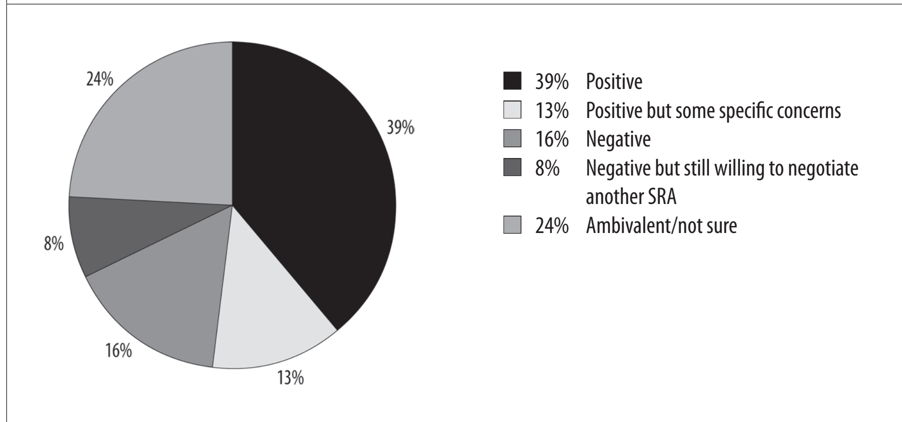


An analysis of quantitative and qualitative responses, looking at indicators of satisfaction such as any positive changes in the community, the relationship with the federal government, whether obligations have been met, whether the community would enter into another SRA and any other comments, is demonstrated below in **Graph 17**.

Accordingly, 39% of participants were generally positive about the SRA process. A further 13% were also positive but noted some significant areas of concern around the process or negotiation of community obligations. 16% were negative about the process and another 8 % also gave substantial negative feedback, but stated that they would probably enter into anther SRA. The remaining 24% were quite ambivalent about the process or there was not enough information in the survey response to categorise the feedback.

57 Australian Government, Australian Public Service Commission, Secretaries Group on Indigenous Affairs, *Bulletin 1- March 2005,* available online at: www.apsc.gov.au/indigenousemployment/bulletin0105.htm.

Graph 17: Overall feedback on the SRA?



• Lessons learnt from entering a SRA

In order for the SRA process to function it is important that communities are well resourced and have the capacity to negotiate an appropriate agreement. The survey asked respondents what communities or organisations need to successfully negotiate a SRA. While this varied across communities, commonly reported themes were:

- community input;
- community leadership;
- sufficient information about the SRA;
- good literacy skills;
- a professional/ skilled negotiator;
- sufficient time to consult and consider the implications;
- communication between the government and community;
- long term financial support to ensure the SRA project is viable;
- involvement of state and local government;
- a clear timeframe;
- outcomes that are realistic and can be measured;
- good management practices in the community/organisation, and
- experience with grant administration and financial accountability.

While the survey did not ask the respondents whether they in fact thought their community possessed these qualities, it is probably safe to assume that some capacity building and community development will need to take place if communities are to feel confident in negotiating SRAs.

Many of the respondents also noted how important a good, open relationship with the local ICC was in negotiating the SRA. Related to this, a few respondents called for greater 'backbone' for the ICC to make decisions rather than referring back to head office. However, it should be noted that financial delegation to ICC managers has increased in the past year which may partially address this in the future. There

was also a general concern that ICC staff needed to better understand community development principles to ensure that the SRA best addresses community advancement.

- **Survey conclusions**

The survey has provided valuable feedback about how SRAs are being negotiated and implemented in a wide range of communities across the nation. From the survey responses it appears that the majority are generally positive about the process and report improvements in the relationships with government. Many communities are enthusiastic about their ability to access flexible funding tied to their own initiatives and all parties should be commended for developing some innovative projects.

There are also valuable lessons to be learnt from the feedback provided in the survey. The quality of support, consultation and information is very important and could be improved. There were instances reported in the survey where no support was given to communities to negotiate the agreement and even more worrying, some communities report feeling rushed through the process with inadequate time to consider the full implications of the SRA. Communities need to give their free, prior and informed consent when they are negotiating these agreements. Support, consultation and accessible information are therefore imperative if this is to be achieved.

The effective participation of Indigenous communities in the negotiation process is not only important to achieve good outcomes, but is also an issue in human rights compliance. Those communities that report feeling rushed or ill informed may not have had the opportunity to give their full, prior and informed consent as required by human rights standards.

The role of the local ICCs has been generally praised by the respondents and seems to be working as an effective link between government and local Indigenous communities in this area of service delivery.

However, community confidence and satisfaction in the SRA process seems to be limited by the short term nature of the funding, the bureaucratic burden of additional paperwork, disproportionate accountability requirements, lack of flexibility once the agreement is signed and unrealistic expectations of the community party of the SRA.

Not all respondents had strong views, with the survey picking up on a significant degree of ambivalence towards the process. For these respondents, SRAs may seem to be just another government programme that may or may not assist them. Many were pragmatic, recognising that they had no real alternatives to access fund and were willing to utilise the scheme to the best advantage of their community.

A common theme among respondents is the need for communities to have significant capacity to consult with community members, strong leadership and governance, experience in management and administration and strong negotiating skills to gain a good, fair SRA. There seems to be considerable scope for further community development and capacity building (for community and ICC staff) to enable communities to make the most the SRA scheme and promote social justice for Indigenous communities.

Overall, the Survey results suggest that SRAs have the potential to create or improve relationships between the government and communities when they are done well. Done poorly or without adequate consultation, they have the potential to create disenchantment amongst the community that may prove difficult to shift in the future.

The potential benefits of SRAs can quickly dissipate, particularly where agreements relate to one off, short term projects and in the absence of ongoing interaction. SRAs can provide an entry point into genuine consultative processes at the community level – so long as the momentum and goodwill created in communities is acted upon in a timely manner and on a basis of mutual benefit and partnership.

Text Box 1: Selected quotes from survey respondents about SRAs

Positive impact on community relationship with the federal government

'Establishment of a positive professional relationship and networks with government departmental officers in several portfolios.'

'We see government officials more regularly.'

'Confidence in engagement with government post ATSIC.'

Positive outcomes from the SRA

'The children have enjoyed going to school because of the bikes and equipment.'

'Assisted with much needed accommodation.'

'Pride by the elders in the role they play.'

'*Improved self esteem for local Indigenous people and the delivery of practical and relevant training developments programs which have resulted in real employment outcomes for members of the local Indigenous community.'*

'Better health for community members.'

'A community response to solve issues in the community.'

Concerns about the SRA process

'SRAs are very time consuming for not very much reward.'

'The process of the SRAs has not been successfully explained. Key personnel deal with the bureaucracy and then have the task of explaining the process to communities. Not enough real education/promotional material available.'

'My concern is that SRAs are often quick fixes or band aid solutions. What most organisations need is reliable, ongoing and viable funding to enable forward planning to take place in projects to assist Indigenous communities.'

'I felt that the accountability should be proportionate to the amount of funds sought eg. Targets/reports/school visits etc for $10,000 seems over the top when schools have several small grants to manage.'

'Shared responsibility is only shared if both parties truly understand what they have negotiated. There is no way this has happened in this instance.'

Case studies of specific SRAs

This section contains the outcomes of three community consultations conducted in late 2006. My aim was to select three communities and organisations in which the SRAs reflect different subject matters and also to sample communities and organisations that represented different types of organisations and relative remoteness. The three case studies are:

- Girringun Aboriginal Corporation, Cardwell, Queensland;
- Cape Barren Island, Tasmania; and
- Baddagun Aboriginal Organisation, Innisfail, Far North Queensland.

The case studies provide a more detailed perspective on the specific challenges faced in negotiating an SRA from the perspective of Indigenous community organisations. They provide specific examples that complement the survey results. I anticipate that further case studies will be undertaken and reported in my 2007 Social Justice Report.

• Case Study 1: Girringun Aboriginal Corporation, Cardwell, Queensland

a) Background

This case study is based on interviews conducted with Mr Phil Rist, the CEO of Girringun Aboriginal Corporation.

Girringun Aboriginal Corporation, located in Cardwell, between Cairns and Townsville, is a community based organisation formed from nine cultural-linguistic groups (Bandjin, Djiru, Girramay, Gugu Badhun, Gulgnay, Jirrbal, Nywaigi, Waragamay and Warungnu) of that region, and representing the interests of the traditional owners of those groups.

Girringun entered into a SRA on 3 March 2005 with the Commonwealth Government through the Townsville ICC, and with the Queensland Government through the Department of Aboriginal and Torres Strait Islander Policy.

The SRA provided funding to enable the organisation to develop a corporate plan, to strengthen governance structures, provide a forum to negotiate with the different levels of government, and to develop a document that can be used as a community resource and which outlines a longer term vision for the community.

The SRA was also meant to enable Girringun to engage a project officer to develop the organisation's corporate plan. In this SRA, the Commonwealth provided $64,996, and the State Government provided in-kind support including training for a project officer to participate in a project steering committee.

Girringun works within a strong cultural context, and draws on this to develop innovative approaches to the many challenges its communities face. One such approach is based on outstations, which are community settlements on country. Phil Rist provided an idea as to how some of the many critical issues facing the community such as health, education and justice might be addressed by further involving these outstations:

> It's the fact that you're on country, contributing to the health of your country that contributes to your wellbeing. The outstation program, it could address this sort of thing, and make them feel good at the same time …. They're back on their country doing this stuff; but it's also a wellbeing thing, it's a health thing, and it's making them feel a lot better.

As with the other case studies, the SRA for Girringun was introduced into a context in which the organisation was already involved in negotiations with the Australian and Queensland governments for a range of issues. As Phil Rist recalled:

> … our SRA was for extensive consultation with the community to gauge what the community's concerns were regarding a whole range of issues: health, justice, education, the whole box and dice.

Prior to the introduction of the SRA, Girringun had already been participating in a 'negotiating table', which is a forum established to enable the community organisation to conduct ongoing discussions with government. As Phil Rist explained:

> Our SRA complemented the 'negotiating table'. In this context, we negotiated with the commonwealth about money for a corporate plan before the SRA was even mentioned. So we got the money, and that process was happening.

b) Positive aspects of the SRA

For Girringun, there was a positive aspect to the SRA in that it presented a good opportunity to facilitate community discussions, and the preparation of a community plan that dealt with a range of important issues:

> So in that document (the corporate plan), through the consultation process, within our crowd, we raised those issues, but we also looked at within the plan, hopefully, ways of addressing some of those issues. So on that aspect it was good, and yes I would go for another SRA …. We've got a document; we've gone through the community consultation, we've got a document that highlights their concerns, and possible ways of how we can address them. So from that sense it's been a success.

Another benefit of the SRA 'is that it informs the community negotiating table'. Phil Rist explained that: 'So we've done that; we've completed that. That particular SRA is finished. It continues to direct and inform the negotiating table as far as state agencies go. So although it's finished, it still has a life as far as directing where we go with the whole thing, you know'.

Although in principle the SRA had presented a useful opportunity to further focus the ongoing discussions, the CEO expressed some cynicism at the introduction of these kinds of agreements: 'Then all of a sudden, 'hey, I know what, why don't we make this a SRA!"

A similar view had been put by other communities and organisations regarding their perspectives on SRAs. There was a sense in which the SRA is regarded by Girringun as an opportunistic device introduced by government to promote its own achievements in Indigenous affairs:

> So there was already that process, which had been going for two or three months at the time. And to be honest, that SRA could not have happened at all, because we were going to achieve it (the corporate plan); we were going to have a document

> anyway, whether we signed off on this SRA or not. I think this was just a way of the government saying 'we've got another SRA; we've signed an SRA with Girringun'. It was going to happen anyway.

This cynicism was supported by the fact that for Girringun, the SRA to develop its community plan was not an initiative from the community. As Phil Rist explained: 'Government came to us'. This in itself was not necessarily a problem, especially in the vacuum left by the loss of ATSIC, and as long as the opportunity presented by an SRA could be effectively harnessed by Girringun in order to meet its own goals. Phil Rist elaborated:

> With the demise of ATSIC, a lot of us in the community thought this might not be a bad thing. They've taken away our entitlements, our government structures; they've taken away our national voice. This might be an opportunity for us to get some direct funding into the organisation and some direct outcomes.

It was in this context that the Australian government seemed to be articulating views that were in accord with Girringun's own notion of how funding should be provided to Indigenous organisations:

> …the government were saying all the things we wanted to hear, 'oh, we want grass roots … so that money can easily flow to the grass roots mob, and where there's good governance structures in place, good accountability, and well functioning boards in place, that's where we want the money to go'. So all the rhetoric was there, and we thought, 'oh this is not too bad, might turn out to be alright after all'.

c) Concerns about the SRA

Despite this positive sounding 'rhetoric', in Phil Rist's view, Girringun nonetheless faced many problems in translating rhetoric into effective actions from the government: 'we're still waiting. We're a grass roots organisation, but we still struggle to find where the money is'.

A major concern expressed by Girringun, which was also found in discussions with other Aboriginal organisations for these case studies, is that the SRA process introduced into the community a sense that some real actions might be forthcoming from government to address the community problems.

As Phil Rist explained: 'What we do is raise peoples' expectations through this consultation process; so we've got to be careful how we manage that'. Yet these raised expectations also have the potential to bring about great disappointment and frustration:

> So if our mob have said 'we've talked about this, we've gone through this process, we thought we were going to get some outcome from this thing, but we're still none the better off, what the hell is going on here?
>
> And then that dissatisfaction starts to eat away at our mandate, for whatever reason. And then no longer have we got the mandate to negotiate on behalf of our mob, and it really becomes a problem.
>
> The government, to some degree, both the state and federal, have backed us into a corner … but they've also raised expectations with this SRA. So it really calls for a strategic approach on out part, how we sell that process to our mob, with the view of not raising expectations, maintaining our mandate, and trying to implement a process that will deliver some good outcomes for us.

The ways in which these unmet expectations were experienced by Girringun is illustrated by the establishment of the negotiating table. Phil Rist explained this point:

> I'll give you my view of what I thought the negotiating table was. The SRA with that document (the corporate plan) has achieved its goal. We've got a document there, so that's fine, and it's informed the negotiating. My idea of the negotiating table was that at the end of the day was that more resources were going to come to this sort of thing because we've jumped through the hoops of government monitoring; we've got a community or corporate plan. We've got a good board, we've got financial accountability; we've done all that sort of stuff. But we still struggle to attract funds for long term sustainability.

The problem for Girringun is that the SRA had provided funding and support for a negotiating forum for the community to discuss a range of issues of critical importance, and to develop a community or corporate plane based on these discussions. But there was inadequate scope within the SRA to provide follow up implementation and ways of addressing the issues raised during the negotiations and in the corporate plan:

> We've got the document, the corporate plan. It's raised issues. … What I thought would be an outcome of the negotiating table was the position at Girringun (to deal with education issues). We've highlighted the problem in the corporate plan; let's negotiate through the negotiating table about ways of fixing that. And what I thought was a way of fixing it was for a position based here at Girringun that would go and talk to education providers, and investigate ways of addressing that problem, and start to implement, start to initiate some of that stuff.

One of the major flaws, from Girringun's perspective, was that the SRA provided no for ongoing positions within the organisation. This meant that the Girringun has been unable to achieve its longer term goals, thus casting considerable doubt on the usefulness of the SRA process:

> But what we've got through the corporate plan, through the negotiating table is again, expectations. Well, we've come to a full stop, because they (government) say we can't employ someone to do it; and what we've got instead is already stretched personnel here trying to fulfil those expectations, and trying to look at implementing programs. So it's compounded the problem even further, and that's right across the board, whether it's education, whether it's health…

The negotiations to develop SRAs exposed many of the problems Indigenous people encounter in their dealings with government:

> In spite of all the problems out there – government keeps changing the goal posts … in spite of all that we still managed to progress, to go forward, with no uncertainty about positions here; uncertainty about whether they're going to be here next year.

This ad hoc nature of government relations with Girringun creates an uncertainty that impacts significantly on the latter's capacity to operate over the long term as a viable community organisation. Girringun operates on project based funding, which covers wages and on-costs, but does not provide for core funding for the organisation's long term economic sustainability:

> The way the government's dealt with it at the moment, with project based funding, we can put in for a project, but we get a person on board, and it's only for the life of that project, and that person's gone again.

A common problem for organisations such as Girrungun is that many members of the community of which it is a part feel alienated from government. As Phil Rist put it:

> But governments have got to remember that we're dealing with people – a lot of our people haven't got the basic understanding of the … I'm not saying that in a bad way … but it's a fact that a lot of our people don't have a basic understanding of government protocol.

This is an ongoing concern: 'That's the sort of stuff that we've got to be careful about, because we have been consulted to death, and there are no real outcomes'.

During the negotiations with government Girringun had argued for funding support for the ongoing economic and cultural sustainability of the organisation. Phil Rist said:

> One of the main things we said we wanted through the negotiating table was core funding for the long term sustainability of this organisation. The Plan is great; put that Plan on the table here. But if we don't address the long term sustainability of this organisation it's worth nothing…
>
> It's been a struggle at times to maintain the enthusiasm, commitment to the long term sustainability, to maintain (a) relationship with the ICC. But we have to maintain a relationship: what hope do we have if we start bagging them? … There's no point doing that. So it's really stretched the relationship at times. But we have to (maintain a relationship), we have to keep going. Because it's not in the best interests of everybody if we started bagging ICC staff; they're guided by guidelines and policies as well.

Although the SRA provided a useful avenue through which the ongoing negotiations with government could be focussed, there were some issues raised about the relative mandates of the community, and of the government when negotiating. Phil Rist explained that the government had indicated it had some concerns about the nature of Girringun's authority, or mandate for negotiating:

> Government always comes to us and says to us, when (Girringun's CEO and Chairman) walk into a room, we want to be comfortable with the fact that you blokes have the mandate from your mob, to talk to us at the negotiating table. And that's always one of their fundamental expectations of us as office bearers of this organisation.

In other words, the government had indicated that it thought Girringun's representatives at meetings did not have sufficient authority from the wider Aboriginal community of which it is a part, to participate in negotiations with government. This suggests a fundamental inequality in negotiating, which goes to the heart of prior informed consent issues. However, as Phil Rist elaborated, Girringun in turn, also had some concerns about the government's mandate:

> It's a problem, because they demand a mandate of us, but they themselves (government) don't have a mandate. We've managed to get together nine traditional owner groups, and elected a board that represents those nine groups, and speak

> with one voice. In some places you're flat out getting two families together. But here we have made a major achievement getting nine groups together.

Phil explained that there are some problems with the same ICC officers not attending meetings, and a lack of continuity:

> Surely, if the CEO and Chairman of our organisation can go to those meetings as decision makers on behalf of our mob, surely we can expect our equal from those organisations to do the same. What it tells our Board and our hierarchy is that – or it could be perceived as … they're (the government) not taking us seriously, if they just send a junior officer to deal with it.
>
> …in the light of what could be seen as lack of actions or outcomes, we still have to maintain our relationship with those officers.
>
> Girringun had its mandate questioned; which they (the Board? the Elders?) found ironic, when they (the government) themselves don't have the mandate.

The Girringun CEO made another observation about the unequal relations between the government and Girringun in terms of mandate and authority:

> Girringun operates over a huge area based on traditional boundaries that go into the Cairns region and into the Townsville region. When we get DATSIP (State Department of Aboriginal and Torres Strait Islander Policy) come along, and they're from the Townsville office, and we put a question to them, we say 'Mr DATSIP, how are you going to address this problem in our area to the north here?' (and DATSIP says) 'Oh, well, we're going to have to talk to Cairns DATSIP'.

Girringun's concern here is that the government officer from a specific regional office felt a need to obtain authority from another office before being able to make a decision, or to have the authority to voice an opinion; whereas Girringun already has the authority for its whole organisation and region. Phil Rist continued:

> So that is another problem; they're broken up into administrative boundaries, and the problems associated with that. They demand it (the mandate) of us, but they haven't got it themselves. And that's even with education, health, the whole lot.

There were also concerns at the lack of understanding about community and cultural matters by government. Girringun is under increasing pressure to conform more closely to the requirements of a white business entity, with little or no scope for integrating community or cultural matters into its operation. It used to be a place where Elders could meet around a campfire, and where they had felt a sense of place and belonging. As Phil Rist explained:

> We've got a fireplace at the back here, and very early in the piece when a lot of our Elders were still alive – there's a few left, but a lot of them have gone, and there's a fireplace at the back there, and it's there for a reason. They said to us here, said to me, 'we don't want this place to become another big white bureaucratic thing. We want to be able to come down here, and to sit down near that fire there, and smell that smoke come through it, feel that smoke there, so we know that this is still our place'. So that's a very symbolic thing, that fireplace; it's there, but it's never been lit for a long time. And we're kicking and screaming, trying to fight this government urge to make us another white bureaucratic system. We're being dragged further and further away from that campfire. And that fire's out; and now we're becoming this office –where's our human rights in that? And I don't know how we get that back; I don't know how we make government understand that. We can find a balance, but we have got to also give a bit. I know it is taxpayers' money.

d) Follow up by government

As with the other case studies, governments had not provided sufficient follow up of the SRA:

> It's sort of ad hoc. There was no structured follow up to it; there was no structured lead up to it. That's the way government is doing business now. They just get people to sign it: 'that's another SRA signed with people'.

Asked if Girringun would pursue a different approach in negotiating with government for another SRA, Phil Rist replied:

> … well, I would have a very clear direction going into one, with always the option of pulling out. We'd have to be very clear about what this SRA is going to achieve for us, how it's going to achieve it, and some clear product including implementation, a whole process. I think it would work; I think you can make it work.

Girringun's CEO expressed some frustration at the government priorities being directed to Cape York Peninsula:

> The government is looking at long term sustainability but they're focusing on Cape York. What about organisations outside the Cape?
>
> I don't have a problem with my brothers and sisters on the Cape. What I do have a problem with is that rural traditional owners are falling through the cracks, because they think we can access mainstream services. I know people in our communities who won't go to the doctor because it's not culturally appropriate. And they've got mens problems or womens issues; they die because its not culturally appropriate for them to access mainstream services.
>
> But there isn't a focus on rural traditional owners, because the common thinking is that they can access mainstream just like everybody else.

These comments echo those by Gerry Surha of Baddagun organisation in Innisfail (in case study 3 below). Similarly, that organisation seems caught in a situation in which there is a perceived priority given to Cape York Peninsula communities. For Girringun, location is thought to be a problem, as Cardwell is between two major centres, Townsville and Cairns, which impacts on the relative access the organisation has to services:

> We're remote. Townsville don't want us, so their services don't come up as far; Cairns don't want to come down. There's a high population of Aboriginal and Torres Strait Islander people living in this area here that aren't being serviced properly.

Phil Rist explained that this remoteness is one of the reasons Girringun has taken on a role in the region as a provider of services for the Aboriginal and Torres Strait Islander community. Phil Rist mentioned another project that Girringun is involved in which had some more positive features than the SRA process.

The example given is called the Cardwell Indigenous Ranger Unit (CIRU) project, which is aimed at developing a partnership between Girringun, the Great Barrier Reef Marine Park Authority (GRMPA), and Queensland Parks and Wildlife Service, for joint management in conservation and Indigenous heritage. The approach used for CIRU is called 'adaptive management': 'there's always a commitment by those agencies to get there … and we adapt as we go along'.

For this CIRU project: 'one of the good things about it is that the ownership is shared amongst us all; there's another reason why people are committed to that, is because we share ownership of it; it's not just Girringun, it's all of us'.

The problems in program and service delivery by governments in the region prompted Phil Rist to comment further on the role of Girringun. He suggested that this organisation is well placed for government to enter into negotiations with. He said that Girringun can play a key role, following the loss of ATSIC as a peak Indigenous organisation. As a regional, community based organisation with a good record in the region, he argued, Girringun presents a good opportunity for the government to invest in for the provision of services and other community based initiatives:

> There's a really good opportunity for the government to fill that void to some degree with the demise of ATSIC and regional councils. At the moment, who do they have if they want to talk to Traditional Owners? They might go to land councils. Apart from that, where do they go to? And there's no peak organisation at the moment. There's no structure in place where they can go. It's in their best interests as well to look at organisations like Girringun. Because they've got a problem, and staring them right in the face is a solution, a possible solution, but they're not prepared to invest in it, for the long term sustainability of the organisation that could fulfil that role. Girringun here, we're a land and sea centre, but we do so much else as well, for a huge geographical area. It makes very good sense to invest in that organisation, because in this particular area we are a point of contact, and we are grass roots. So it makes good sense to invest in an organisation, that's if you want us.

• Case Study 2: Cape Barren Island Aboriginal Association, Tasmania

Cape Barren Island Aboriginal Association is an organisation formed in 1972 representing the approximately 80 members of the Aboriginal community on the island. The Association is managed by an Aboriginal management committee.

Cape Barren Island Aboriginal Association negotiated 3 SRAs with the Australian Government, although only two of the SRAs were community based initiatives. One SRA was for 'economic sustainability growing from a stable and affordable power supply'; another was for a 'community wellbeing centre'; and the third, to address family violence.

Both the SRA for the community wellbeing centre, and the one to address family violence were signed on 2 June 2005. The former was with the Australian government, represented by the Departments of Health and Ageing, and Education, Science and Training, and the Office of Indigenous Policy Coordination (OIPC). The family violence SRA was agreed with the Australian Department of Immigration, Multicultural and Indigenous Affairs (now the Department of Immigration and Citizenship and whose relevant responsibilities have been transferred to the Department of Families, Communities and Indigenous Affairs), and the Tasmanian Department of Premier and Cabinet.

Sue Summers, the Administrator of the Association, provided detailed background to the three SRAs that were negotiated by this community. Other members of the community were also present and participated in the interviews.

a) Process for negotiating a SRA for power supply

Because of its remoteness, the cost of supplying electricity to Cape Barren Island is high. It is for this reason that the community had sought to obtain subsidised costs.[58] Despite ongoing discussions and negotiations over a considerable length of time, and with a wide range of stakeholders, the SRA for the power supply was not concluded, for reasons that Sue Summers explained in some detail.

The history of Cape Barren community's attempts to negotiate for a more affordable power supply go back some years, to the late 1990s or early 2000s. The existing power station, utilising a combination of diesel and wind, was built from infrastructure funding resulting from the 1991 *Aboriginal Deaths in Custody Report* recommendations:

> However, 'no recurrent funding was ever provided to maintain or run the power station. To this day it runs purely on what we can get in revenue from our customers. So we own the power station and we run it'.

Sue explained that when Tasmanian power was privatised in the mid-nineties, and split up into Hydro Tasmania and Aurora Energy, a Community Service Obligation Agreement (CSO) was drawn up for the islands of Bass Strait, 'but apparently this is the islands of the Bass Strait except Cape Barren'.

King and Flinders Islands, known collectively as the Bass Strait Islands (BSI), have an arrangement with the power supply authorities that enable them to receive power at subsidised costs. Electricity is supplied by Hydro Tasmania, using a combination of wind and diesel, while the business arm, Aurora Energy provides 'operational, distribution and retail services under contract to Hydro Tasmania'. Since 1998 the BSI have had subsidised electricity supplied to them under a CSO contract with the Tasmanian Government.[59] Sue Summers remarked on this: 'no one had questioned before why Cape Barren wasn't part of that CSO'.

When this question was put to the relevant authorities, the reply was that this was because responsibility for Aboriginal communities rested with the Commonwealth government (the CSO was with the Tasmanian State Government). The Commonwealth did, however, pursue discussions with Cape Barren Island community in regard to a Council of Australian Governments (COAG) trial site:

> That was the beginning: they came and they talked about COAG and about all the great things they were going to do, and a new way of doing business, and how levels of government were going to work together to provide really good outcomes for Aboriginal communities.

Sue Summers commented that 'I took it for somewhat of a test case as to how levels of government were going to work together to provide really good outcomes for Aboriginal communities'. It was thought that the COAG trial, and the then newly introduced SRAs might offer an opportunity for the Cape Barren Island Aboriginal community to work with governments to obtain a CSO in order to receive subsidised power. The Administrator explained the importance of obtaining subsidised costs for power to the community:

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58 Tasmanian Department of Infrastructure, Energy and Resources, *Review of Electricity Arrangements on the Bass Strait Islands*, Discussion Paper, Working Group of Officials, September 2006, p14.

59 Tasmanian Department of Infrastructure, Energy and Resources, *Review of Electricity Arrangements on the Bass Strait Islands*, Discussion Paper, Working Group of Officials, September 2006, p14.

> Very early on in the piece, for all of the people that live here, the cost of providing energy to their household is probably something in the area of forty to fifty percent of their net income. That's because ... the power here only really provides for electric lights and appliances. You couldn't afford to use power for heating or for hot water.

While the idea of a SRA for affordable power seemed reasonable at first, as Sue Summers pointed out, '…it was later on that I realised, well, no, they're not going to come to the party on this because you can't have a SRA for essential services'.

The problem now was that both state and federal governments were saying that they did not have responsibility for providing recurring funding to the Cape Barren Island community for power generation:

> … it is conflict between the state and federal levels of government; where there is conflict, well, if your Shared Responsibility Agreement is not the right mechanism to bring into practice the COAG way of doing business, what is?

As with many Indigenous communities and organisations, Cape Barren had already been engaged in discussions with governments and others before the introduction of SRAs. Sue Summers explained:

> The timeframe with the Shared Responsibility Agreement in its various forms really wasn't that long. But there had been, over time, even before we started talking about SRAs, many community discussions with what was then ATSIC, and the senior management of what was then the National Community Housing and Infrastructure Program (CHIP), and community consultations with Hydro Tasmania and Aurora and all sorts of things; so there had been a lot of consultations.

The Administrator thought that one of the problems is that although there may be discussions at one level through the COAG process 'I'm sure that they are not filtering it down properly through either the federal or state bureaucracy'.

Although there had been lengthy discussions between the Cape Barren Island community, the electricity supply companies, the State Government, and the Australian Department of Families, Communities and Indigenous Affairs (FACSIA), eventually these failed to reach any agreement regarding power supply to the island. This was despite the community having provided some funding to support those negotiations. Overall, the Administrator felt that, through the community's experiences with SRAs 'I'm not sure they're necessary', she had the feeling that 'they've actually run their course'.

b) Negotiating a SRA for a Health and Wellbeing Centre

The community achieved more success negotiating a Shared Responsibility Agreement for a Health and Wellbeing Centre. This SRA was signed on 2 June 2005.

The community had funds it had acquired from the Office of Aboriginal and Torres Strait Islander Health (OATSIH), and some for an aged care program. For a long time, the Administrator explained, the community had wanted to develop an appropriate space where community health and wellbeing activities could take place. When SRAs were introduced, the community thought this might present an opportunity to work with a number of government departments, to move ahead with the health and wellbeing centre:

> What the idea was – having discovered that no way could I get these government departments to agree to put their money in together – then came Shared Responsibility Agreements. Let's have the State, the Feds, and everybody help us to use up this surplus, give us a bit more if we need it, to get up the building that would in fact be able to be used for the oldies, and for the councillors if they came in – a whole range of, if you like, social health and wellbeing stuff.

There were discussions and negotiations about coordinating government departments, and some additional offers of funding. However, the negotiations ran into some difficulties.

The community wanted to renovate an old building in order to develop the health and wellbeing centre, but had some difficulties reaching agreement with government departments in regard to the way this would proceed. Another problem occurred when the project was already at a relatively advanced stage. Work on the development of the centre was delayed because difficulties were experienced with regard to dealing with ATSIC over the assets that were held in the building. The community at that stage experienced very real frustration, as Sue Summers explained:

> It didn't really impact on the community, except that people were getting very anxious towards the end, (wondering) 'is this really going to happen?' We'd been talking about this Health and Wellbeing thing for quite a long time before, and even before we started… SRA was the way to go. Before that we couldn't get anybody to talk together about pooling their funds. And so again, this reinforced for me that idea that, alright, you know, the (commonwealth) government think tank comes up with an idea – this is a great way to do business: 'Let's sort out our own issues with the state, and how we spend what Aboriginal funding, and so on … but it wasn't really happening.

For Sue Summers, and the Cape Barren Island community generally, although there was much benefit in pursuing a SRA in order to develop an idea that had arisen from the community, there were many hurdles in actually bringing this about, and working with governments.

> With the Health and Wellbeing stuff, that was the stupidest thing. The community had a really good idea. It was going to be something that was of value to the whole community. It was going to save money for governments at all levels. And right at the eleventh hour, the federal government departments decide to start arguing among each other about petty things like 'It's our house (the building that the community wanted to redevelop), you can't use it for that; you cant use OATSIH money to do up our old ATSIC place'.

c) The Family Violence SRA

The third SRA that the Cape Barren Island community signed was the only one of the three that had not been negotiated as a community based initiative.

The impetus for a SRA to deal with family violence grew out of a COAG trial within North Eastern Tasmania that commenced during the latter part of 2003 and into 2004. In a parallel development, the Tasmanian Government, through the Department of Justice, was initiating a program called *Safe at Home*, as a series of measures aimed at supporting the *Family Violence Act 2004*. Sue Summers explained

that there was a sum of $140,000 allocated to address family violence, which was 'part of these elusive pooled funds from the COAG trials'.

However, according to Ms Summers and other community members, this was an inappropriate allocation of funding, because Cape Barren Island community does not have problems with family violence (although it would no doubt benefit from preventative measures); and also because the idea for this SRA was not initiated by the community. As Sue Summers put it:

> It's a waste of the taxpayers' money to put $140,000 into a community – and we only got it during this year in the finish, and we are now being harassed to spend it before the end of the financial year, and we are trying to find meaningful ways of spending that money, that relate to the COAG Family Violence trials.

There was a concern that the wider community may have developed an adverse and incorrect image of the Cape Barren Island Aboriginal community:

> This was all going to be to reduce the level of family violence; we kept saying, you can't reduce what isn't really there. And we said 'let's say that we're going to develop programs that address the underlying causes of …. What we didn't want was to have on anybody's website, or publicly, or in the Social Justice Commissioner's report, that gives the impression that Cape Barren Island was absolutely awash in all sorts of drugs, alcohol and violence.

As another community member said:

> We're stuck in the middle of this. The SRA came along and it has nothing to do with what we're about. We've always been vulnerable. It's just another mechanism to keep us suppressed.

• Case Study 3: Baddagun Aboriginal Organisation, Innisfail, Far North Queensland

a) Background

This case study is based on interviews with Mr Gerry Surha, the CEO of Baddagun Aboriginal Organisation at Innisfail in far North Queensland. Baddagun is a small family owned and operated Aboriginal organisation, with five members involved in the business.

Baddagun was established in 2002 to provide business and training opportunities for the community, especially young people, and to promote cultural activities, including dance and other cultural performances. The Baddagun Performers perform at Paronella Park, a tourism operation a few kilometres north of Innisfail town. The Performers are seven people, drawn mainly from the Jirrnul/Ma:Mu group: 'they're doing all right; that's seven young people that are not sitting around at home and don't smoke'.

The Baddagun Aboriginal Organisation entered into a SRA with the Cairns Indigenous Coordination Centre (ICC) on 9 May 2005. The purpose of the SRA was to provide funding to upgrade community facilities for cultural performances; a bus to transport performers, and a project manager. The organisation also obtained funding from the ICC for some printing machines to print designs on canvas and

other materials, as part of its goal of establishing itself as a viable Aboriginal business and cultural organisation.

The community in which Baddagun operates is based predominantly on Ma:Mu/ Jirribul and Yidintji language groups, as with many Aboriginal communities, suffers from lack of opportunities, drug and alcohol abuse, crime and low self esteem. Gerry explained:

> We have these issues too with our own people. We have to get off from keeping our people in that safety zone (of dependency). Because that safety zone entails money from my bank. Bottom line, straight to the point: we're all coming from hardship, drugs and alcohol. My people are dying every day. But we have to put our hands up now, and a lot of people don't like that… because the future is not having that safety net all the time for my countrymen.

In Gerry Surha's view it had been hoped that the SRA might provide an opportunity for Baddagun to address some of these difficult community social problems.

When interviewed, Gerry Surha had quite a negative view about the SRAs. In part this was because the cyclone that hit Innisfail in March 2006 had had a devastating impact on not only the entire community, but also on Baddagun.

b) Process in negotiating the SRA

For the SRA that provided a community bus for Baddagun, Gerry explained that his organisation had been approached by an officer from the Cairns ICC to commence the negotiations that led to the agreement. This is the case in many SRAs: there was a pre-existing level of engagement between individuals in the ICC, who had perhaps been in ATSIC previously, and who had built up a long term relationship with Aboriginal communities, and members of the Aboriginal community.

In the discussions between Baddagun and the ICC, Gerry explained, there were some concerns about the SRA guidelines, and a perceived lack of fit between those guidelines and the requirements of the community. Gerry expressed frustration at the overall involvement from the ICC, commenting that the SRA was 'just a cover for the government to say 'look, we're doing this for the community', whereas 'behind the scenes, it's not the real thing … because they don't follow up on anything'.

The comments by Baddagun about a lack of follow-up from government perhaps reflect a common concern among many Aboriginal communities and organisations that have entered into SRAs, that these agreements had raised expectations within the community, including longer term aspirations, which in the end are unfulfilled. The SRA with Baddagun resulted only in the government providing the community bus. The organisation had also sought capital for infrastructure, and for ongoing funds to operate the business, but was unsuccessful. According to Gerry Surha, 'they (government) came up with the bus, and that was basically it'.

There were also some positive aspects about the SRA. The introduction of these kinds of agreements presented an opportunity for the Aboriginal community to negotiate directly with individuals from the government, as Gerry explained:

> …. you could speak one on one, you know, in regards to what your family group or the individual wanted to do. In that regard, to a lot of us in the community, that was a breakthrough – dealing with individuals. You're talking directly with that person. That was one of the good things about it, because you didn't have

to get permission from the community, because no-one agrees anymore in the community; there are all different factions: same as this one – there's six different family groups.

c) Negative aspects of the SRA

Baddagun's experience generally with SRAs was negative. Gerry Surha felt that the process took too long. The negotiations were difficult and lengthy, and the organisation had some doubts about it succeeding. A very real problem is that once the equipment (the bus, and subsequently the printing machines) has been successfully agreed to and acquired by the organisation, there was then no possibility of trading it or selling it, should the community no longer require it or be able to use it. The SRAs, according to Gerry, had a caveat stating that the equipment cannot be used as assets: 'What is the use of giving it to us and putting a caveat on it: you can't use it as assets'.

Gerry Surha had many concerns about the nature of engagement with the ICC in Cairns. The lack of information provided by the government about SRAs is 'pretty horrific'. He thought there are insufficient Aboriginal people employed in the government agencies, who have the 'knowledge to give us feedback, updates and basic information'. There was a lack of incentives for Aboriginal people, especially young people, to work in the ICC and its predecessor ATSIC, 'because there's too much crap going on; young people say we want a job that's 'real', where we know we can be looked after'.

In Gerry's view, the government's dealings with the community had caused some frustration: 'You ring Canberra and ask for information, and they say 'go through the Regional Office''. He said 'they say they have a capacity to do a number of things, but they're limited in what they can deliver in regards to what they say they can do for you. So they contradict themselves. You've got to chase them up all the time'. This is particularly a problem for the Elders, as Gerry said, 'you know, they're shy, they won't deal with them (the government)'.

There was a greater need for the government to 'sit down and talk with the grass roots people and see what they want'. Aboriginal people are seeking opportunities; including running their own businesses, which in turn can provide employment opportunities for the community. A lot of young Aboriginal people are leaving rural areas such as Innisfail for the cities in search of employment. Gerry Surha thought that the government should provide incentive schemes to attract young people.

A real frustration for Baddagun is that because it is operated as a business organisation, rather than as a not for profit, it is not eligible for funding under certain government defined social program categories. Yet it also misses out on funding under economic programs, because it does not have the ongoing income required to be eligible under that scheme. This raises a problem in that the funding and projects available through the SRA for Baddagun is short term, and very limited in what it provides, so ongoing, long term funding is difficult to access: 'you're stuck in between again'.

After cyclone Larry, Baddagun was in a particularly precarious situation in regard to its capacity to operate as a viable business organisation. It had received no funding from post-cyclone recovery sources, to enable it to re-establish itself following

the devastation from the cyclone. This created a difficult context in which to seek funding from government to facilitate its day to day, and longer term goals.

Gerry Surha commented on problems with the government funding that is provided generally for Aboriginal community programs and projects, and on the government's poor coordination of them. For the SRA, the levels of funding were not agreed to as a result of equitable negotiating processes. Although Baddagun had submitted a budget for the project, ultimately it was the government that then decided on the amount that would be provided. Government support for Baddagun has been problematic, with only partial or inadequate funding. Baddagun needs sufficient funding to enable it to become established as a viable business entity – an outcome that could take some years to achieve.

Gerry Surha thought that much of the government funding goes to the wrong projects: 'a lot of those have crashed already'. He said the way that programs and projects had been funded by the government has the potential to cause division in the community: 'we get the feeling that what this is going to create is a division between black and white communities again'. He elaborated:

> We're feeling alienated, that because we're black, we're not going to get that help; and then for all the white fellas in the community they're feeling pissed off because a lot of the money that the tax payers dollars are going into goes down the streets, are white elephants, and that's the community programs. There are some good community programs that are really honest, and keep their books up to scratch; but there's a lot out there that the government needs to pull the whip out and take people to court.

Baddagun had experienced many problems not only with funding from government, but also with lack of coordination by the ICC. Gerry Surha felt that the ICC should have worked more closely with the CDEP 'to get a better deal with us'. He expressed his disappointment at this, as he thought that it should have been the ICC's responsibility to coordinate the funding from different government departments and agencies. He explained his frustrations:

> They're (the ICC) supposed to coordinate that, but they're not good at coordination, because I personally coordinated everyone else – DEWR, CDEP, etc. That's their job; it's a huge job, and so much pressure; I'm really worn out now. Because the cyclone hit, we had a big clean up job, we've got no income coming in now. With the bus, we can't hire it out, trade it, up-grade it. It's only 16 months old, but what will we do with it? It costs that much in fuel, insurance, to register: the tyres alone…
>
> 'I mean, we don't know the workings of government; that's what the ICC is there for, to help us put together the deal. Why is it called the ICC? It should have been called something else. I don't think that name is appropriate'.

Gerry outlined what he perceived to be additional problems in the ICC, stating that that organisation 'has a lot of influence over other organisations' (such as housing). He thought the ICC should be more focused on its core task of coordinating, and his frustration was in the fact that he felt he had to do a lot of the coordinating work that the ICC should have been doing.

An important issue concerns the need to have Indigenous people working in the ICC who understand the community:

> You only talk to white fellas now (who) only see you as numbers – there's no looking beyond that. The numbers, to keep their jobs. The government has to put their thinking cap on and start listening, because you have to look beyond numbers.

Another concern was about the lack of real training and long term goals in SRA projects. Gerry Surha said '99% of the people that are part of these projects will come out of these projects in twelve months time, and be lined up at the dock here'. He elaborated:

> And you ask them what they've done, and they'll say 'oh, we planted a tree'. But what did you learn about that tree when you planted it? What was the name of that tree? What process did you use? The learning capacity has been taken out of the projects through lack of information, communication and supervision.

d) Follow-up by government

A theme common to all the case studies is the inadequate follow up by government departments following the signing of a SRA. While Baddagun engaged a voluntary project manager under the auspices of the SRA, the government did not follow up on outcomes and progress.

Gerry Surha explained: 'when the project manager finished, DEWR changed its rules and regulations; we only got money for the bus'. Baddagun had quite a lot to say about the lack of follow up by government: 'our predicament is twofold, because we're not a community organisation, so there's less chance that they're going to follow up, because we're a business'.

Baddagun is focused on creating the potential for individuals within the community, especially young people so that they are able to gain skills, training and employment opportunities. In Gerry Surha's view there was a strong sense that funding had been misdirected under ATSIC, and since, with money going to organisations and individuals who were not progressing the projects and programs for which they had received the funding. He felt that government should instead be funding 'people who are genuine'. As he explained:

> A lot of people think they're just going to get handouts, and get their business going … There is a need to look at people who are genuine. As you know, as we all know in the community, there were a lot of businesses set up under ATSIC that were totally dependent on handouts.

Baddagun aims to earn its own money:

> For that to happen it (government) has to address all the issues now that we're talking about, SRAs, …. Lack of information, lack of consultation. They need to talk to the real people on the ground; specifically targeting the people in the communities that are proactive, not talk to the people that are sitting on the riverbank drinking all the time..

There are also some issues about the geographical locations of communities and organisations in which SRAs have been signed, and which organisations and communities engage with government in regard to the SRAs. Gerry explained that

Baddagun had been rated a low priority, in contrast to Cape York Peninsula: 'We keep getting told (by DEWR and others) that the Cape's a priority'.

Baddagun's experience mirrors that of others, and suggests that the SRAs are limited in terms of their capacity to provide real, long term funding, capital and opportunities. The SRAs are, in this view, 'short-sighted'. Gerry Surha explained:

> Our frustration with the SRAs is that the amount of money that they (government) continually put into the same community organisations for programs that are continually going nowhere. It's just another ATSIC in some respects. Because those programs – they only go about six months; blackfellas aren't going to get any work out of it. They need to close it up and look at something else.

• Shared Responsibility Agreements – some common elements

The case studies vividly illustrate in practical terms the benefits and problems that are being encountered through SRAs. They reflect a number of similar concerns and issues. For example, they reveal a preparedness for Indigenous communities to engage with the government to address longstanding concerns at the community level. The direct engagement of the SRA model, free of intermediaries, offers much potential to improve the reach and outcomes of government programs and services.

This is, however, a double edged sword. It means that when communities engage in the SRA process they have high expectations about what will be achieved. Having been listened to, communities expect government to act and to do so in a sustained manner, not just as a one off. The risk of the SRA process is that it will raise expectations that the government has no intention of ever meeting, leaving communities frustrated and potentially feeling disempowered.

Community perspectives on what their SRA was about also suggest that Indigenous communities view their circumstances in a more holistic manner. So where the government may see the SRA as being a 'single issue' or one off project, the community sees the SRA within the broader context of the overall needs of the community. The SRA process overall was seen to be ad hoc, short sighted, and devoid of meaningful approaches that can address fundamental economic viability and sustainability for Indigenous peoples. This was also borne out in the survey (though in less explicit terms than through the interviews).

The Girringun SRA provides a perfect example of the challenges for government in this regard: having engaged in an extensive process to identify the needs of the community, the SRA was then incapable of delivering on the aspirations of the communities involved. The damage this can result in is not limited to the trust relationship with government – it has a consequential impact on community organisations such as Girringun, who can lose credibility within their community for not delivering. This devalues a valuable community resource and does not capitalise on the existing capacity within the community.

The Government must avoid the trap, as set out in the words of Phil Rist of Girringun, where Indigenous communities are 'consulted to death and there are no real outcomes.' So-called 'single issue' SRAs in particular have an increased risk of alienating Indigenous communities in this way.

Outcomes of SRAs also need to be defined in a way that they are delivering the maximum benefit to the community, not merely based on a strict compliance mentality. For example, once a SRA has been entered into, there can be a lack of flexibility to amend the terms and conditions, even notwithstanding the very real possibility of changed circumstances and/or needs by the Aboriginal community or organisation. In Baddagun's case, Cyclone Larry had had a devastating effect on the community, and on the Aboriginal peoples' capacity to use the bus for the cultural performances; yet the SRA was unable to provide for renegotiating the terms and conditions for the bus.

As the case studies suggest, some SRAs relate to projects that were either underway or where the community had already been looking for assistance. They can in some instances amount to a 're-badging' of an existing process. This is not a problem *per se*, particularly as it may reveal an ability from the ICC to tap into the expressed needs and wants of a community. On the other hand, it may also reflect a lack of genuine engagement which may also mean that it is less easy to build on the foundations of the SRA within a community.

The Cape Barren Island experience also suggests that communities are crying out for direct engagement by governments. This can also lead to an inappropriate use of the SRA process, such as the discussions on the power station. Having identified an issue of such importance to the community, the ICC should be working to address the complex jurisdictional issues involved in exercise of its whole of government coordination role – boundaries need to be clearer to ensure that SRAs are not seen as the default process for addressing such complex issues for which the SRA program is clearly not designed.

The interviews also demonstrate the enormity of the task being undertaken by Government through SRAs. The process would benefit from a clear focus that recognises the importance of building on the existing resources and capacity within communities; on adopting a development approach to nurture and grow this capacity; and of committing to a long term engagement and investment in communities, rather than seeing outcomes as 'one-off'.

Addressing the fundamental flaw of the new arrangements – Ways forward

> As Indigenous peoples, we must be able to effectively participate in decision making that affects our lives. This is not merely an aspiration or something that would be desirable – it is more than this. It is an essential element for successful Indigenous policy. This requirement… is (also) strongly supported in international human rights law.[60]

This chapter has revealed significant flaws in the current administration of the new federal service delivery arrangements. The absence of processes for Indigenous participation at the regional level connected to broader policy development processes at the national level is a contradiction at the heart of the new whole of government approach. Despite the relative newness of the whole of government

60 Calma, T., *Launch of the Social Justice Report 2005 and Native Title Report 2005*, Sydney, 31 March 2006, p4, available online at: www.humanrights.gov.au/speeches/social_justice/sj_nt_reports_05.html.

arrangements, there has been sufficient time for this issue to be addressed. The failure to do so reflects the insufficient efforts of the Government and the lack of priority that they have afforded to address this fundamental issue.

As outlined at the beginning of this chapter, this situation is inconsistent with the legislative requirement 'to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.[61] It is also inconsistent with the repeated commitments of the Government, including at the level of the Council of Australian Governments.

The making of commitments to the Australian public and to Indigenous peoples matters. Such commitments are not intended to make the government feel good by their mere existence. The satisfaction and pride should come from solemnly upholding the commitments that have been made – by proving that this time, the commitments actually matter.

The lack of effective participation of Indigenous peoples in decision making processes is also inconsistent with Australia's human rights obligations and inconsistent with a human rights based approach to development.

Requirements for effective participation relate variously to the rights to self-determination, non-discrimination and equality before the law, as well as to the right of cultural minorities to enjoy and practice their culture. It is also central for the effective enjoyment of economic, social and cultural rights – such as the right to the highest attainable standard of health and education.

When Australia most recently appeared before the United Nations Committee on the Elimination of Racial Discrimination in March 2005, they expressed concern that the abolition of ATSIC may lead to inadequate processes to comply with Australia's human rights obligations. The Committee stated:

> 11. The Committee is concerned by the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the main policy-making body in Aboriginal affairs consisting of elected indigenous representatives. It is concerned that the establishment of a board of appointed experts to advise the Government on indigenous peoples issues, as well as the transfer of most programmes previously provided by ATSIC and Aboriginal and Torres Strait Islander Service to government departments, will reduce participation of indigenous peoples in decision making and thus alter the State party's capacity to address the full range of issues relating to indigenous peoples. (Articles 2 and 5)
>
> The Committee recommends that the State party take decisions directly relating to the rights and interests of indigenous peoples with their informed consent, as stated in its General Recommendation 23 (1997). The Committee recommends that the State party may reconsider the withdrawal of existing guarantees for the effective representative participation of indigenous peoples in the conduct of public affairs as well as in decision and policy-making relating to their rights and interests.[62]

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61 *Aboriginal and Torres Strait Islander Act 2005* (Cth), section 3(a), Available online at: www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/889B9887C357132ECA257227001E0801/$file/AbTorStrIsland2005.doc.

62 United Nations Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States Parties under Article 9 of the Convention – Concluding observations of the Committee on Australia*, UN Doc: CERD/C/AUS/CO/14, March 2005, available online at: www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/fff3368f665eaf93c125701400444342/$FILE/G0541073.pdf.

There concern that the new processes 'will reduce participation of indigenous peoples in decision making and thus alter the State party's capacity to address the full range of issues relating to indigenous peoples' has been borne out.

The necessity to ensure the effective participation of Indigenous peoples also comes from practical experience.

Much of the failure of service delivery to Indigenous people and communities, and the lack of sustainable outcomes, is a direct result of the failure to engage appropriately with Indigenous people and of the failure to support and build the capacity of Indigenous communities. It is the result of a failure to develop priorities and programs in full participation with Indigenous communities.

Put simply, governments risk failure if they develop and implement policies about Indigenous issues without engaging with the intended recipients of those services. Bureaucrats and governments can have the best intentions in the world, but if their ideas have not been subject to the 'reality test' of the life experience of the local Indigenous peoples who are intended to benefit from this, then government efforts will fail.

More importantly, if bureaucrats or governments believe that their ideas are more important or more relevant than those of local Indigenous peoples, or that they can replicate policies that have worked in different contexts – such as functional or urbanised communities, or communities which have the necessary infrastructure and support mechanisms in place, then again, they will fail.

In the *Social Justice Report 2004,* I set out the challenge for the new arrangements to ensure that obligations relating to the effective participation of Indigenous peoples are met as follows:

> 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 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; and
> - 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…

Under the International Convention on the Elimination of All Forms of Racial Discrimination… Australia has undertaken to provide equality before the law and not to discriminate on the basis of race…

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'.[63]

When Australia… 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'.[64]

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.[65] 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.

One of the principle findings of the ATSIC Review was the lack of connection between ATSIC's national representative structure (the Board of Commissioners)

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63 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), available online at: http://www1.umn.edu/humanrts/gencomm/genrexxiii.htm

64 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, available online at: http://www.unhchr.ch/tbs/doc.nsf/0/eb3df96380faaf97802568ac00544c55?Opendocument

65 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.

> and regional representative structures (Regional Councils) and local communities. It considered a number of options for creating a continuum of representation 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'.[66]
>
> 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.[67]

Two years on from this statement, it is now clear that the new arrangements are fundamentally flawed and do not ensure the effective participation of Indigenous peoples in decision making that affects our daily lives.

The 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.

This pre-empts the outcomes of such engagement and negotiation. It also has the potential to undermine a sense of ownership and responsibility at the community and individual level. This in turn, is fundamentally inconsistent with a policy agenda that promotes mutual obligation and reciprocity.

When we consider the benefits and problems of the Shared Responsibility Agreement making process, we need to be aware of these broader, structural problems at the regional and national levels. As this chapter shows, there have been some positive developments through the SRA process – although these are tempered by concerns about the ad hoc and short term nature of the program, and its limited potential to create sustained improvement in communities.

Put bluntly, we need to ask: is this focus of the Government on the absolute minutia of detail in communities appropriate given the absence of the necessary systems to support long term improvements at a regional and national level? In other words, is the focus on SRAs akin to shuffling the deckchairs while the Titanic sinks?

Indigenous communities and the Australian public alike needs to be satisfied that the time spent by government on SRAs is well spent and that they would not be better off focussing on the systemic problems of the new arrangements.

While SRAs are a relatively low cost program, making up a tiny proportion of federal expenditure on Indigenous issues, they are resource intensive in terms of the time and capacity of government officials and of communities. Unless they can

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66 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, pp104-105.

67 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, p105.

demonstrate long term and sustained improvements for Indigenous communities they may not represent value for money.

There remains an urgent need for staffing and resources to prioritise the development of mechanisms for engagement with Indigenous communities at the regional and national levels. SRAs should not detract from this priority.

Recommendation 4: Directed to the Australian Public Service Commission (APSC) and Secretaries Group on Indigenous Affairs

That the Secretaries Group request the Australian Public Service Commissioner to conduct a confidential survey of staff in Indigenous Coordination Centres to identify current issues in the implementation of the new arrangements and the challenges being faced in achieving whole of government coordination. This survey should be conducted by the APSC in furtherance of the Management Advisory Committee's *Connecting Government* report.

In light of the concerns raised in this chapter, I have chosen to make the following recommendation. The content of the recommendation is similar to that of recommendation 4 of the *Social Justice Report 2005*.[68] I have also chosen to identify some mechanisms for achieving the recommendation.

Recommendation 5: Directed to the Ministerial Taskforce on Indigenous Affairs and National Indigenous Council

That the Ministerial Taskforce on Indigenous Affairs acknowledge that the absence of mechanisms at the regional level for engagement of Indigenous peoples contradicts and undermines the purposes of the federal whole of government service delivery arrangements.

Further, that the Ministerial Taskforce direct the Office of Indigenous Policy Coordination to address this deficiency as an urgent priority, including by:

- consulting with Indigenous communities and organisations as to suitable structures, including by considering those proposals submitted to the government for regional structures;
- utilising the Expert Panels and Multiuse List of community facilitators / coordinators to prioritise consideration of this issue; and

68 That recommendation stated: 'That the federal government in partnership with state and territory governments prioritise the negotiation with Indigenous peoples of regional representative arrangements. Representative bodies should be finalised and operational by 30 June 2006 in all Indigenous Coordination Centre regions'.

- funding interim mechanisms to coordinate Indigenous input within regions and with a view to developing culturally appropriate models of engagement.

Further, that the National Indigenous Council request the OIPC to report quarterly on progress in developing regional engagement arrangements and the mechanisms put into place to facilitate Indigenous participation in this process.