

# IMPLEMENTING THE NEW COMPACT: INDIGENOUS PARTICIPATION IN THE MACHINERY OF GOVERNMENT

A policy discussion paper

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## Introduction

An outcome of the 2020 summit *Options for the Future of Indigenous Australia* stated:

“New accountability structures for governments and service delivery arrangements in Indigenous affairs are necessary. There was wide support for new, independent mechanisms with teeth and sanctions to monitor accountability of governments, involving significant Aboriginal and Torres Strait Islander representation.”<sup>1</sup>

The discussions at the summit have served to trigger and widen the debate on future constitutional and structural arrangements for Aboriginal and Torres Strait Islander people, including a treaty, a charter of rights, constitutional recognition, a national representative body, and closing the gap in Indigenous disadvantage.

These longer term aspirational goals need to be supported by immediate practical measures across the full range of functional areas and Indigenous disadvantage. One of these areas, itself constituting a gap in overcoming Indigenous disadvantage, is structured participation of Aboriginal and Torres Strait Islander people in government decision-making, now generally accepted as a fundamental aspect of empowering Aboriginal and Torres Strait people to manage their own well being. Participation, or being connected, is part of what has now come to be generally understood as “good governance” and “best practice” in implementing government policy.<sup>2</sup>

Building on the 2020 outcome, this paper proposes a structure of governance arrangements in Indigenous Affairs to advance implementation of broad government policies and the specific COAG framework agenda.<sup>3</sup>

The COAG framework, aimed at closing the gap on Indigenous disadvantage, embodies a partnership between all levels of government and Indigenous communities.<sup>4</sup>

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<sup>1</sup> Australia 2020 Summit *Initial Summit Report, 2008*

<sup>2</sup> *Connecting Government, Whole of Government Responses to Australia's Priority Challenges*, Management Advisory Committee No. 4, Canberra, 2004.

<sup>3</sup> Note: This paper was developed and written before the Prime Minister announced that there would be a bi-partisan forum, specifically in the first instance to consider housing. The Prime Minister has since confirmed the establishment of an Indigenous Policy Commission “to develop innovative proposals to improve the provision of housing in remote Indigenous Communities” (Prime Minister, Press Statement, National Policy Commission on Indigenous Housing, 22 May 2008). The proposal in this discussion paper both complements and differs from that Commission. The significant difference is that the proposed Indigenous Services and Accountability Commission has a broader statutory role than advising on “new approaches to addressing remote Indigenous housing.” It would be a more inclusive Commission with Indigenous and non-Indigenous membership that focuses on policy and the achievement of outcomes while ensuring Departments are responsive to government goals and the needs of Indigenous people.

<sup>4</sup> Council of Australian Governments (COAG) Meeting 20 December 2007

That partnership must have as its foundation equitable and meaningful participation, defined as the involvement of the primary stakeholders to guide development interventions. There is widespread evidence of the value of participation, both in Australia and internationally. As one practical example, the Murdi Paaki Region of New South Wales has demonstrated the value of Indigenous participation, resulting in a model of regional and community governance which has developed and manifested itself over some 10 years. One of the compelling arguments in the development of that model was the need for statutory recognition of Indigenous participation in the machinery of government informed by Aboriginal and Torres Strait Islander perceptions of their well being at the regional and community levels with benefits for government and Indigenous communities alike.<sup>5</sup>

The Murdi Paaki experience reflects government policy which recognises that solutions developed at the local level tend to work best. Good local solutions need partnerships linking communities, government, local businesses and industry, and service providers. It is important to have services that meet the needs of individuals and families. It is also important to have strong local Indigenous organisations to take a role in delivering services and to provide work for local people. The Government particularly wants to support sustainable organisations that develop younger generations of leaders and show quality in the services they provide for local people.<sup>6</sup>

The 2020 summit discussions now open the door on consideration of a statutory commission that would connect government and Indigenous people and ensure government service providers are accountable for the investment of public funds in accordance with priorities determined by Aboriginal and Torres Strait Islander people and the responsibility of agencies to perform effectively, efficiently and accountably in response to needs identified by Indigenous communities.

The proposal outlined in this paper fits within and supports the government's broad new policy relationship and compact with Aboriginal and Torres Strait Islander people,<sup>7</sup> associated commitments and initiatives and consequential actions flowing from them.

An important contribution to such a policy debate has been made by two experienced observers, Neil Westbury and Michael Dillon, whose book *Beyond Humbug* emphasises the importance of institutional arrangements.<sup>8</sup> Summarising their approach in *Australian Policy Review*,<sup>9</sup> they present a case that over the past three decades there has been a fundamental failure in the governance of governments in relation to Australian Indigenous affairs. Symptomatic of that failure is that governments have failed to engage effectively at an institutional level with Indigenous citizens and communities. This, they argue, has been the key contributor to the downward spiral of dysfunctionality and disadvantage which so perplexes governments and others. They

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<sup>5</sup> Sam Jeffries and George Menham, The Murdi Paaki Regional Assembly: Indigenous Governance in Action, in Journal of Indigenous Policy, Issue No. 9

<sup>6</sup> Australian Government, Increasing Indigenous Economic Opportunity, A Discussion Paper on the future of CDEP and Indigenous employment programs, May 2008

<sup>7</sup> The Hon Jenny Macklin, Minister for Families, Housing Community Services and Indigenous Affairs, Media Release, Australian Government to Apologise to Members of the Stolen Generation, 30 January 2008; Prime Minister, Interview, Sunday Program, 10 February 2007.

<sup>8</sup> Michael C Dillon and Neil Westbury, *Beyond Humbug: Transforming Government Engagement with Indigenous Australia*, Seaview Press 2007

<sup>9</sup> APR 19 December 2007

see underlying institutional factors as a pre-condition for policies such as Indigenous capacity development or welfare reform.

The authors propose that one way to address this institutional failure would be to establish, through a bipartisan process, an independent statutory Indigenous Reform Commission comprised of eminent members from across the political spectrum and from the public, private and Indigenous sectors of society. This commission would have a charter to monitor national progress in addressing Indigenous disadvantage including the necessary reforms in program development and delivery and inter-governmental financial arrangements.

Pertinent to the similarity between their proposal and the arrangements outlined in this discussion paper is their conclusion that addressing extreme disadvantage among Australia's Indigenous citizens does not require extreme or radical policies. It does require a commitment by governments to substantively engage with Indigenous citizens and to remove the institutional constraints to addressing Indigenous disadvantage.

### **The policy framework**

Recent government budget statements and initiatives in Indigenous Affairs provide a starting point and policy framework for considering the proposal for a statutory commission.

The policy framework is based on "closing the gap" in Indigenous disadvantage, driven by the Australian Government's relationship with Aboriginal and Torres Strait Islander people "being recast through meaningful engagement, not just consultation for its own sake."<sup>10</sup> The stated foundation of this framework is that: "Not only is the Australian Government committing extra resources, it is introducing reforms within and across governments to ensure that resources are used strategically and effectively. In this endeavour, its most important partners are Aboriginal and Torres Strait Islander Australians and that they must be involved in developing and driving solutions."<sup>11</sup>

In the Government's own words, its overarching 'closing the gap' commitments require "effective engagement with Aboriginal and Torres Strait Islander people at all levels. Government needs to involve Indigenous people in the design and delivery of programs locally and regionally, and share responsibility for outcomes. Solutions developed on the ground must be driven by the communities that will ultimately determine their success or failure."<sup>12</sup>

The Minister has indicated she will be hosting Aboriginal and Torres Strait Islander stakeholder groups to advance the COAG agenda. At the same time, the Government "will soon begin" formal discussions with Indigenous people about the role, status and composition of a national representative body.<sup>13</sup> Underpinning the government's

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<sup>10</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>11</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>12</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>13</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

approach is strong leadership and good corporate governance to achieve long-term sustainable outcomes in partnership with Aboriginal and Torres Strait Islander people.<sup>14</sup>

There is also government recognition that improving outcomes for Aboriginal and Torres Strait Islander people requires reform of governance and accountabilities – new ways of working – to ensure that government expenditure is targeted, effective and accountable.<sup>15</sup> This requires a new partnership with Aboriginal and Torres Strait Islander people – “working with Aboriginal and Torres Strait Islander people rather than imposing solutions on them.”<sup>16</sup> To do this, the Australian Government will continue to break down its own silos, achieving “high-level coordination and a common purpose around Aboriginal and Torres Strait Islander policies and programs.”<sup>17</sup>

As part of this process, an Indigenous Affairs Committee of Cabinet, chaired by the Prime Minister, is setting directions. The Committee is assisted by a Secretaries’ Group on Indigenous Affairs which ensures coherent direction across government agencies in policy development and program implementation.<sup>18</sup> From 2009-10, the single Indigenous Budget process will determine strategic investment, directed by the Committee and focusing on the ‘building blocks’ endorsed by COAG. All new investment will be targeted at measures to close the gap.<sup>19</sup>

Specific government initiatives in Indigenous Affairs include:

- the Parliamentary apology to the stolen generation as “a first, necessary step to move forward from the past”<sup>20</sup>
- constitutional recognition of Aboriginal and Torres Strait Islander people<sup>21</sup>
- a common future between indigenous and non-indigenous Australians<sup>22</sup>
- practical outcomes across the broad areas of Indigenous disadvantage<sup>23</sup>
- ensuring that the implementation of other Commonwealth commitments in health, education and housing address Indigenous disadvantage where appropriate<sup>24</sup>
- the establishment of an elected representative body for Aboriginal and Torres Strait Islander people requiring an agreed process to develop a new representative body to strengthen links between Government and Indigenous communities<sup>25</sup>
- identifying duplication and overlap between the Commonwealth and States and framing recommendations on roles and responsibilities<sup>26</sup>

<sup>14</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>15</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>16</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>17</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>18</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>19</sup> Closing the gap between Indigenous and non-Indigenous Australians, Statement by the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 13 May 2008

<sup>20</sup> The Hon Jenny Macklin, Minister for Families, Housing Community Services and Indigenous Affairs, Media Release, Australian Government to Apologise to Members of the Stolen Generation, 30 January 2008.

<sup>21</sup> ALP Election Policy Commitment in response to Coalition’s policy statement.

<sup>22</sup> *The Australian*, Points to be included in the apology, 6 February 2008

<sup>23</sup> Prime Minister, Interview Network Seven Sunrise Program, 29 January 2008

<sup>24</sup> Council of Australian Governments (COAG) Meeting 20 December 2007

<sup>25</sup> The Hon Jenny Macklin, Minister for Families, Housing Community Services and Indigenous Affairs, Media Release, National Indigenous Council, 15 January 2008.

<sup>26</sup> Council of Australian Governments (COAG) Meeting 20 December 2007

- ensuring that new Commonwealth/State agreements in health, schools and housing contain specific targets for Indigenous Australians<sup>27</sup>
- involving local Indigenous people in the formulation of programs that support them<sup>28</sup>
- options for the future of Indigenous Australia<sup>29</sup>

With government departments now responsible for the delivery of all services to Aboriginal and Torres Strait Islander people, representation and participation by Aboriginal people in the decision-making process is a critical element in future policy-making. A major reason for continuing Indigenous disadvantage has been the limited engagement of, and opportunities for, Indigenous people to shape policies that affect their destiny.

The Rudd government aims to encourage wider participation in the processes of government from all parts of the community. By engaging the community more broadly it seeks to understand better how government policies impact on families, individuals, communities and businesses and to make the different parts of government “join up” so that services are not just delivered efficiently from the Government’s perspective, but effectively from the citizen’s perspective.<sup>30</sup> Supporting this challenge is a commitment to better engage Indigenous people and strengthen communities to tackle Indigenous disadvantage.<sup>31</sup> It is now timely to ask “how can this be done?”

Indigenous participation goes beyond the administrative and advisory structures which replaced the Aboriginal and Torres Strait Islander Commission. These replacement structures were primarily “top down” arrangements to improve the way governments connect with each other to provide services for Aboriginal and Torres Strait Islander people. Participation has become a missing link in the chain of policy making and service delivery.

Present arrangements in their various forms can be improved. Such arrangements must have real legislative power to make a difference, be practical in their application, reflect government policy, and have legitimacy with Aboriginal and Torres Strait Islander Communities. Any national legislative framework could recognise individual State, regional and community structures as an integral part of the framework to avoid overlap and duplication.

In support of government initiatives, the proposal, as part of a staged approach to implementing the new relationship with Aboriginal and Torres Strait Islander people, seeks to provide for:

- the direct participation of Aboriginal and Torres Strait Islander people in the machinery of government;
- a legislative policy and service delivery interface between government and Indigenous people; and

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<sup>27</sup> Council of Australian Governments (COAG) Meeting 20 December 2007

<sup>28</sup> Council of Australian Governments (COAG) Meeting 20 December 2007

<sup>29</sup> The Prime Minister, Australia 2020 Summit, Press Statement, 3 February 2008

<sup>30</sup> The Prime Minister, Address to Heads of Agencies and members of the Senior Executive Service, Parliament House, Canberra, 30 April 2008.

<sup>31</sup> The Hon Jenny Macklin, MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Report on the Health and Welfare of Indigenous Australians, Press Statement, 29 April 2008

- robust oversight of the implementation of government policies in Indigenous Affairs and the accountability of Departments in the delivery of publicly funded services.

The structure envisages a facilitative and enabling accountability framework to monitor, engage with, improve and report on the performance and outcomes of programs and services provided by government agencies for Aboriginal and Torres Strait Islander people in accordance with government expectations and community need.

It is not a proposal to revisit ATSIC or at this time for the establishment of a national representative body. This latter must be subject to more extensive discussion and modelling among Aboriginal and Torres Strait Islander people and negotiation with government in accordance with a government commitment to pursue all the possibilities.

The proposal draws down on and builds on the most recent findings of the Australian National Audit Office in its assessment of the outcomes of the former government's arrangements in Indigenous Affairs.<sup>32</sup> Because the proposal can only be offered here in policy outline, implementation might involve further detailed consideration by a task force of Departmental officers and Aboriginal and Torres Strait Islander people. Consideration by the task force would involve an audit of existing arrangements and structures and options to rationalise them. The outcome of this examination could be a government white paper as an important step in substantive reforms in Indigenous Affairs.<sup>33</sup>

The central theme is that there is a need for an independent lead agency, constituted by Aboriginal and Torres Strait Islander people, senior public servants, and experts in relevant areas of Indigenous need, reporting directly to the Minister, to provide a policy and service delivery interface between government and Indigenous people at the national and regional level.

The primary function of an independent lead agency (i.e. independent from a mainstream government service delivery Department) would be to provide for the participation of Aboriginal and Torres Strait Islander people in the government's management of its relationship with Indigenous people across the full spectrum of need and opportunity. As an instrument of Indigenous governance, it would add to the governance of individual agencies in their relationships with Aboriginal and Torres Strait Islander people, perform an important "whole of government" facilitation and coordination role in a complex administrative environment, and provide a value adding strategic role as distinct from a traditional compliance role.

Implementation of the initiative could be cost neutral with offsets from both the incorporation and rationalisation of existing arrangements, and the transfer of relevant functions from the Department of Families, Housing, Community Services and Indigenous Affairs to the Commission without detracting from that Department's comprehensive service and program delivery obligations. The proposal would be implemented through amendments to the *Aboriginal and Torres Strait Islander Act*

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<sup>32</sup> ANAO Audit Report No. 10 2007-2008 *Whole of Government Indigenous Service Delivery Arrangements*.

<sup>33</sup> The proposal stems from a detailed analysis of the lessons learned from regional governance arrangements in the Murdi Paaki Region of New South Wales and an analysis of past policies and government arrangements in Indigenous Affairs. See Sam Jeffries and George Menham, *Reconnecting government and Aboriginal and Torres Strait Islander People: Implementing a new order of Indigenous governance*, under the auspices of Jumbunna, Indigenous House of Learning, University of Technology, Sydney

2005 to provide a radically new, sustainable and enduring approach to Indigenous development.

### **The ANAO Report**

The conclusions<sup>34</sup> of the ANAO Audit relevant to this proposal can be divided into two streams – governance and the role of a lead agency.

The ANAO report confirmed that governance arrangements are critical to managing the successful implementation of policy changes and service delivery. It argued that Australian Government departments have the opportunity to develop more integrated solutions to entrenched Indigenous disadvantage and streamline administrative arrangements supporting the delivery of services.

Among the report's recommendations was that a stronger collective focus by Departments on performance against priorities established by the government is required to assess progress and inform decisions relating to the effectiveness of on-going administrative arrangements. There thus needed to be a better aggregation of performance information.

Significantly, the ANAO report found that insufficient attention had been given to policy implementation to reflect the intentions of government.

The successful implementation of a broad reaching, ambitious policy goal resulting in the efficient and effective delivery of services required governance arrangements which better suited the service delivery phase of a collaborative model of operation.

On the issue of a lead agency, the ANAO argued that a lead agency requires "clearer authority to escalate issues for timely and efficient resolution and to establish stronger horizontal relationships among government departments." It was deemed necessary for the lead agency to articulate the way forward or establish a timetable within which events are expected to occur. This could be achieved through monitoring the performance of all departments involved to ensure their commitment meets the government's objective in Indigenous affairs. As a last resort Ministerial intervention may be required.

The ANAO argued that the present annual report was predominately descriptive. Reporting of the contribution of individual departments had not kept pace with the new way of working. It was not possible to obtain a clear picture of whole of government indigenous expenditure and performance information. Such reporting needed to be made to the Parliament to ensure departments were addressing the priorities in Indigenous service delivery and to provide an overview of Australian Government investment and the performance of government departments. The reporting needed to be sufficiently robust to provide Parliament with assurance that Departments are addressing the government's priorities in Indigenous affairs in a whole of government manner.

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<sup>34</sup> ANAO Audit Report No. 10 2007-2008 *Whole of Government Indigenous Service Delivery Arrangements*.

## **An Indigenous Services and Accountability Commission**

The preamble to the *Aboriginal and Torres Strait Islander Act 2005* states that it is appropriate to establish structures to represent Aboriginal and Torres Strait Islander people to ensure their maximum participation in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government.<sup>35</sup> In this way the Parliament seeks to increase their economic status, promote their social well-being and improve the provision of community services.

The objects of the *Aboriginal and Torres Strait Islander Act 2005* are, in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society:<sup>36</sup>

- a) to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;
- b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;
- c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders; and
- d) to ensure co-ordination in the formulation and implementation of policies affecting Aboriginal persons and Torres Strait Islanders by the Commonwealth, State, Territory and local governments, without detracting from the responsibilities of State, Territory and local governments to provide services to their Aboriginal and Torres Strait Islander residents.

Structures of participation within the current Act are now limited to the Torres Strait Regional Authority and the incorporation of Indigenous Business Australia and the Indigenous Land Corporation. Building on the existing administrative institutions and absorbing them, the act could add a statutory representation and participation element consistent with the objects of the Act.

In filling the participation gap in the present legislation, an independent statutory lead agency - an Indigenous Services and Accountability Commission - would comprise a mixture of professional expertise and representation by Aboriginal and Torres Strait Islander people appointed by the Minister. It would bring together Indigenous participants, senior public servants, and experts in relevant areas of Indigenous need, report directly to the Minister on the achievement of public investment outcomes for Aboriginal and Torres Strait Islander people, and drive further reform. The Commission could be chaired by the Minister, by an Aboriginal and Torres Strait Islander person of standing, possibly, if one should eventuate, the elected Chairperson of any new national representative body, or jointly.

Desirably future governance arrangements should involve the separation between direct participation in the machinery of government and advocacy by an elected representative body, with scope for the two ultimately to be connected, as was the case with the original National Aboriginal Conference and the Council for Aboriginal Development.<sup>37</sup>

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<sup>35</sup> *Aboriginal and Torres Strait Islander Act 2005*, Preamble.

<sup>36</sup> *Aboriginal and Torres Strait Islander Act 2005*, Objects.

<sup>37</sup> National Aboriginal Consultative Committee: Report of the Committee of Inquiry 1976.



The principle of the NAC-CAD structure has merit in today's climate of mainstreamed services and a focus on separation of powers between an elected and executive body.

The legislation would represent a significant change in the machinery of the federal government at it relates to overseeing and improving the performance and accountability of agencies in the provision of programs and services for Aboriginal and Torres Strait Islander communities. It could also provide a legislative framework for regional and community governance structures for Aboriginal and Torres Strait Islander people.

A legislative precedent for such an arrangement exists in the *Queensland Service Delivery and Performance Commission Act 2005*.<sup>38</sup>

The object of the Queensland Act is to help the government:

- a) meet the expectations of the community about the delivery of government services; and
- b) reduce inefficiencies, duplication and wastage in the delivery of government services; and
- c) improve the accountability of agencies for their delivery of services; and
- d) improve the delivery of government services by ensuring agencies use resources effectively and efficiently and adopt best practices; and
- e) encourage agencies to be proactive about establishing effective and appropriate performance frameworks, including planning and reporting practices; and
- f) promote in agencies a culture of continuous improvement and performance management, including risk management.

The Queensland Service Delivery and Performance Commission was established for this purpose.

Creation of a Commonwealth Commission without program responsibility would ensure the government is informed in a coherent and structured way, according to evidence-based policies and strategies developed in consultation with Aboriginal and Torres Strait Islander people and in negotiation and partnership with government agencies. It would analyse the Indigenous situation with the resources available to it, monitor and drive performance and outcomes, and report to the Parliament on the achievement of government objectives.

There is a demonstrable need for such a lead agency to advise and inform the management of the interface between government and Indigenous people.

The ANAO report<sup>39</sup> observed that for whole of government initiatives, a lead agency should have the role of ensuring that:

- program implementation is meeting the Government's objective;
- a process has been established where information is shared and flows between the agencies involved;

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<sup>38</sup> *Service Delivery and performance Commission Act 2005* (Q'ld)

<sup>39</sup> ANAO Audit Report No. 10 2007-2008 *Whole of Government Indigenous Service Delivery Arrangements*.

- performance is monitored; and
- the commitment by agencies is being met.

At present the Department of Families, Housing, Community Services, and Indigenous Affairs is the recognised lead agency for the delivery of national Indigenous programs and services. This is because of the scope of its programs of both a mainstream and Indigenous specific kind. There is a potential conflict of interest in an agency with specific program responsibilities also being the lead agency across government responsible for external scrutiny and review of Departmental responsiveness to government policy.

### **Rationalising governance arrangements**

An Indigenous Services and Accountability Commission would provide a legislative structure for the support, operations and functioning of key components of the present arrangements, taking the place of the National Indigenous Council but with increased authority.

The key components of the present governance arrangements are:

- Indigenous Affairs Committee of Cabinet
- Secretaries Group
- Indigenous Coordination Centres
- Council of Australian Government's service delivery framework
- Productivity Commission and the reporting process associated with *Overcoming Indigenous Disadvantage*
- Commonwealth Grants Commission
- Office of Indigenous Policy Coordination
- Other dispersed arrangements within the Department of Families, Housing, Community Services and Indigenous Affairs which have a specific performance application
- Regional and community participation arrangements
- National Indigenous Affairs budget
- Regional public investment strategies
- The negotiation of bi-lateral and regional partnership agreements

Other existing agencies which would come within the broad policy influence of the Commission would be:

- Torres Strait Regional Authority
- Australian Institute of Aboriginal and Torres Strait Islander Studies
- Indigenous Business Australia
- Indigenous Land Corporation
- Aboriginal Hostels Ltd.
- ABS
- Office of Evaluation and Audit (Indigenous Programs)

A cluster of activities currently being performed by the Department of Families, Housing, Community Services and Indigenous Affairs could provide the core administrative foundation of the new Commission.

In broad generality, these activities, identified from the Department's organisation structure, include Indigenous Policy Coordination, Indigenous Program Support, Indigenous Leadership and Engagement, Program Performance and Network, Intergovernmental Relations and Policy, Flexible programs and agreements, Leadership, Program Advice and Compliance, Network Support, Performance and Information Planning, Funding Reform, Reconciliation, Service Delivery and Performance. Indigenous Coordination Centres supporting Indigenous participation at the regional and community levels would be a key component of the operation of the commission.

A statutory commission would integrate and give greater coherence and continuing focus to connecting the disparate current functions without also having to manage programs. In this way the commission would be better placed to support the Minister in the coordinating role prescribed under the Act. Direct linkage could be established with a national representative body when it emerged.

### **Summary of key points**

- the proposed Commission integrates Indigenous participation within a legislative structure to engage with government decision-making and inform and oversee the implementation of government policies in Indigenous Affairs without detracting from the roles and responsibilities of those who deliver the services. In this way it would fill an important gap in overcoming Indigenous disadvantage.
- the Commission would not have a program or funding role, thus, in this and other respects, distinguishing it from ATSIC
- it would add to the governance of individual agencies in their relationships with Aboriginal and Torres Strait Islander people, perform an important "whole of government" coordination role in support of the Minister, provide a value adding strategic role based on a global view of the Indigenous situation, and negotiate practical "joined up" interventions
- it ensures there is an evidence-based independent assessment drawing on all available resources of Indigenous disadvantage and how agencies are achieving government objectives
- it is not meant to be or take the place of a representative body, but an instrument of Indigenous governance within the machinery of government, ultimately with a direct linkage with an elected representative body when it emerges
- the Minister would appoint Commissioners after consultation with Indigenous people. The constitution would comprise both Indigenous and non-Indigenous people chosen for their backgrounds, experience and expertise.
- the government would determine policy in consultation with and on the advice of the Commission.
- it would then be the role of the Commission to ensure agencies meet the requirements as determined by government and to report to the Minister and the Parliament on how agencies have performed and where adjustments might be made both in policy and delivery, informed by an Indigenous perspective at the policy-making table.

- the Commission would advise the government on the recognition of associated regional governance structures in accordance with government policy on such recognition, thus establishing an important linkage between the Commission, the regions and State bodies in whatever form the regional structures emerged and promoting flexibility in regional constitutional arrangements.

## **Conclusion**

Participation has many dimensions to it. Being able to take responsibility requires appropriate structural arrangements to ensure the participants can inform and exercise that responsibility. Where such arrangements exist the relationship between Aboriginal and Torres Strait Islander people and government is one of equality in a shared partnership built on reciprocal responsibility and obligation.

An Indigenous Services and Accountability Commission could fulfil the role of a lead agency with independent powers to support the Minister in the management of the relationship between government and Aboriginal and Torres Strait Islander people and to ensure the responsiveness and accountability of government agencies.

Establishment of a Commission would remove from Ministers the responsibility for the micro management of programs for Aboriginal and Torres Strait Islander people. Ministers should set broad policy objectives and ensure accountability of their Departments within an agreed governance framework.

Rather than being a return to the old ATSIC, the arrangements would build on what ATSIC achieved, what is currently working under the former government's arrangements, and what has the potential to work better. The proposal moves from doing more of the same to a new direction to maintain the momentum of current initiatives in Indigenous Affairs. It represents a return of legislative authority and responsibility to Aboriginal and Torres Strait Islander people.