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ATSIC

ABORIGINAL AND TORRES STRAIT ISLANDER
COMMISSION

QUEENSLAND STATE OFFICE

SUBMISSION
TO THE

Hands on Parliament: A Parliamentary Committee
Inquiry into Aboriginal and Torres Strait Islander
Peoples' Participation in Queensland's Democratic
Process

JUNE 2003

ATSIC QUEENSLAND STATE OFFICE (QSO)

Preamble

Australia has never formally recognised the unique and special status of Indigenous peoples in its Constitution.

The unique rights of Aboriginal peoples and Torres Strait Islanders need to be formally acknowledged by the Queensland Parliament and a process for meaningful and genuine engagement developed between the State and Indigenous Queenslanders. This approach needs to be based on a partnership between the State and Aboriginal peoples and Torres Strait Islanders.

The current Legal, Constitutional and Administrative Review Committee Inquiry: *Hands on Parliament: A Parliamentary Committee Inquiry into Aboriginal and Torres Strait Islander Peoples' Participation in Queensland's Democratic Process* provides an unique opportunity for the Queensland Parliament to recognise Aboriginal peoples and Torres Strait Islanders as the original owners and occupiers of the land and waters in the Queensland Constitution.

Aboriginal peoples and Torres Strait Islanders should not be perceived as a minority group or "special interest group" in Queensland. They are a special consistency with unique interests, rights and claims as Indigenous peoples of Australia.¹

ATSIC seeks constitutional reform and recognition of Aboriginal people's unique status at the federal and state/territory level.

Introduction

Legislative and administrative reform is needed to effect real change in the lives of Aboriginal peoples and Torres Strait Islanders. Government policy and programs have a long history of failing to deliver real outcomes for Indigenous Australians.

ATSIC's response to the Parliamentary Committee Inquiry contains a raft of measures to improve Aboriginal peoples and Torres Strait Islanders involvement in existing parliamentary and government processes. Measures supported by ATSIC include working with the current system of government and parliament to be more inclusive of Indigenous aspirations and rights, and the introduction of new strategies based on the principle of self-determination and self-management. The establishment of a joint committee of parliamentarians and Indigenous elected officials is posited as one means to reform the current parliamentary process to encourage partnerships and shared decision-making with Aboriginal peoples and Torres Strait Islanders.

¹ *Recognition, Rights and Reform: Report to Government on Native Title Social Justice Measures*. ATSIC, 1995, pg 48.

Any state-level parliamentary and government representation by Aboriginal peoples and Torres Strait Islanders also needs to be matched with Indigenous aspirations for regional and local self-management. Given the immediacy of local service delivery issues, self-management at the local level is an important issue for many Indigenous Australians. Indigenous people need to be the decision-makers about all matters that effect their lives at the local, regional and state level.

Barriers to Participation

There are a number of reasons why Aboriginal peoples and Torres Strait Islanders are under represented in the Queensland Parliament and choose not to be involved in the parliamentary and government process. Some of these reasons can be summarised as follows:

1. Under Representation in the Queensland Parliament

History: Historical factors need to be understood when looking at the under representation of Indigenous people in the Queensland Parliament. It has only been compulsory for Aboriginal peoples and Torres Strait Islanders to vote in Queensland elections for the last thirty-eight (38) years with the explicit exclusion of Aboriginal peoples and Torres Strait Islanders by virtue of the Constitution only repealed in the 1967 referendum.

Since colonisation and the dispossession of Indigenous peoples traditional lands and waters, past government policies have successively excluded, ignored and marginalised Indigenous people's involvement in decision-making and participation in political and government processes.

The legacy of institutional racism and personal experiences of discrimination are major barriers to Indigenous people under representation in the Queensland Parliament.

Economic and Social Disadvantage: Colonisation and the associated experiences of dispossession, dispersal and discrimination have resulted in economic and social disadvantage experienced by Aboriginal peoples and Torres Strait Islanders today.

Numerous government reports cite statistics showing significant health problems, high unemployment, low attainment in the formal education sector, unsatisfactory housing and infrastructure and high levels of arrest, incarceration and deaths in custody for Aboriginal peoples and Torres Strait Islanders.

All these factors have contributed to the entrenched level of disadvantage and poverty experienced by generations of Indigenous people and has resulted in a limited capacity to engage in the political process.

Culture of non-involvement: The legacy of exclusion from political processes and the recent inclusion of Indigenous Queenslanders in the legal and political

system of the State occurs against a background of intergenerational disillusionment and apathy towards the western political system.

The lack of genuine involvement and acknowledgement by the State of Aboriginal peoples in the negotiation of legislation and policies has resulted in resentment and distrust with the current political system.

Financial and Mentoring Support: The prohibitive costs associated with progression within political parties are compounded by the economic and social disadvantage experienced by many Aboriginal peoples and Torres Strait Islanders. These financial barriers reduce the participation of Indigenous peoples in the political system.

Mentoring support is also an important factor in progressing (and surviving) within the often hostile political landscape and the opportunity to develop networks is limited due to the small number of successful Indigenous parliamentarians (past and present).

2. Non-involvement in the Queensland Parliament and Government

Sovereignty Rights: Many Aboriginal peoples and Torres Strait Islanders assert that they have never ceded their inherent sovereignty rights and responsibilities. Involvement in the various constructs of the Westminster system of government is seen as legitimising the colonial state and its institutions and is therefore avoided. This conscious objection is the reason for some Indigenous peoples non-involvement in the workings of Parliament and the government.

Disillusionment with the Status Quo: Existing government legislation, policy and programs have a long history of failing to deliver real improvements in the lives of Aboriginal peoples and Torres Strait Islanders. Indigenous people may choose not to be involved in the democratic process if they continue to perceive the State paying lip-service to improving the economic and social standard of Aboriginal peoples and Torres Strait Islanders whilst retaining the same ineffective government practices.

The most recent mechanism for state-wide policy advice to the Minister for Aboriginal and Torres Strait Islander Policy on issues of importance to Aboriginal peoples and Torres Strait Islanders was the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB). The political appointment of representatives to ATSIAB in May 1999 was strongly criticised by Indigenous peoples in Queensland. In addition to policy advice, this body was given the responsibility to provide state-wide endorsement of government initiatives and broker partnerships with Indigenous Queenslanders. This responsibility was extremely difficult for ATSIAB to achieve, resulting in political factionalism between this body and other agencies, and within the wider Aboriginal and Torres Strait Islander population. The recent collapse of ATSIAB can be partly attributed to the process of nomination to the Board.

The Non-participative Relationship between Government and Aboriginal peoples and Torres Strait Islanders: The use of other existing processes to influence government (lobbying; petitions to parliament; raising matters with local members; and through consultation processes) are not meaningful examples of partnerships between the State and Aboriginal peoples and Torres Strait Islanders.

A new method of engagement between the State and Indigenous peoples needs to be developed that is based on mutual respect, real commitment and partnerships. Aboriginal peoples and Torres Strait Islanders need to be decision-makers about legislation, policy and service provision that affect their lives. As outlined in the *ATSIC Rights Framework* (2001) and *Recognition, Rights and Reform* (1995) the right of Aboriginal peoples and Torres Strait Islanders to self-determination in government policy and service provision is tied to Indigenous peoples realisation of economic and social equality.

Strategy 1: Enhance Participation in the Existing Processes

All the initiatives presented in the Inquiry to encourage greater participation in the existing democratic process (Parliamentary Fellowships, Mentoring Program, Youth Parliaments and political party encouragement) have merit and should be implemented in Queensland.

However legislative and administrative change needs to occur for Aboriginal peoples and Torres Strait Islanders to have effective and meaningful participation within the parliament and government and to have real decision-making power in managing their own affairs.

1. Civics Education and Voter Education

The expansion of civics education and voter education to all young people and adults, including Indigenous and non-Indigenous Queenslanders, is supported. The current curriculum in the primary and secondary school system should be made compulsory with a dedicated focus given to the secondary school level to educate young people about the system of government. A compulsory education stream at secondary schools encompassing political affairs would facilitate the future generations' awareness of their rights and responsibilities under our current system of government and develop their critical capacity to analyse information.

Voter education to promote awareness and discussion is also important. Citizen education should be continually conducted for all members of society and not be time specific or targeted specifically around the election period.

Any civics education or voter awareness programs developed specifically for Aboriginal peoples and Torres Strait Islanders need to ensure Indigenous people are involved in the design and delivery. To date this has been lacking and the active involvement of Aboriginal peoples and Torres Strait Islanders in the design and delivery of programs would ensure programs are better targeted.

2. Active Engagement of Aboriginal and Torres Strait Islander Constituents by Parliamentarians and Cross-cultural Training

An essential strategy to improve the representation of Indigenous issues in Parliament is ensuring elected parliamentarians actively and responsibly represent the interests of all their constituents, including Aboriginal peoples and Torres Strait Islanders. Ministers and State members need to meaningfully engage with Aboriginal peoples and Torres Strait Islanders and represent their interests and views to the Parliament. Cross-cultural training about Indigenous history and contemporary issues to State members should also be implemented to maximise the effectiveness of engagement strategies with Indigenous constituents.

3. Political Party Support for Aboriginal and Torres Strait Islander Candidates

Major political parties should preselect larger numbers of Indigenous candidates and ensure candidates are supported in winnable seats as was done in New South Wales (NSW) with the successful ALP candidate Linda Burney for the western Sydney seat of Canterbury. Political parties could also be encouraged by the Parliament to conduct internal reviews to ascertain barriers, opportunities and obstacles for Indigenous people to progress within the party. To encourage wider Indigenous involvement in politics, party initiatives such as Emily's List (which actively recruits women candidates and provides mentor support from veteran women activists) could be adapted to focus on the recruitment and support of Aboriginal peoples and Torres Islanders to winnable seats in Parliament.

Strategy 2: Direct Input into Parliament

There is an important role for state-level Indigenous representation to the Parliament and Government. This strategy is supported as it can improve representation, participation and decision-making by Aboriginal peoples and Torres Strait Islanders in the democratic system in Queensland.

1. Establishment of a Parliamentary and/or Cabinet Standing Committee on Indigenous Social Issues with membership of Parliamentarians and Elected Indigenous Officials

The Commitment to Partnership (July 2002) between ATSIC and the Queensland Government is one mechanism to improve the relationship between the Government and Aboriginal peoples and Torres Strait Islanders, particularly in relation to regional implementation of policies and programs (service delivery). This is an important and crucial step in improving relationships with the State however a direct relationship is also needed with the Parliament.

A peak body representing issues of concern for Indigenous people to the parliament is supported. A two-pronged approach is proposed.

Firstly, the peak body should be able to provide direct input to the Parliament, and secondly work directly with a dedicated Cabinet and/or Parliamentary Standing Committee on Indigenous Social Issues similar to the model in Western Australia (WA). There are benefits from utilising a two-pronged approach. The peak representative body can provide advice directly to the Parliament on issues needing immediate attention and remedy, and by working with a permanent Standing Committee (chaired by the Minister for Aboriginal and Torres Strait Islander Policy) the peak representative body and parliamentarians can address long-term issues about reconciliation, self-determination and regional autonomy. The benefits of Indigenous representatives working with a Cabinet Committee are supported over involvement with a Parliamentary Committee. The Cabinet holds the executive power of government and by working in partnership with Ministers that have direct portfolio decision-making power, there is the potential for real change to be effected in the policy directions of government about issues of importance for Aboriginal peoples and Torres Strait Islanders.

In WA advice is provided from the Indigenous Affairs Advisory Committee (IAAC) directly to the Cabinet Standing Committee on Social Policy on Indigenous Issues. The IAAC comprises membership from ATSIC's State Policy Council (SPC), other Indigenous peak bodies and State government departmental heads. This model was developed under the state-level agreement between ATSIC and the WA government and supports a partnership approach between parliamentarians and elected Indigenous representatives.

A difference between the WA model and what is proposed in Queensland is that the Cabinet and/or Parliamentary Standing Committee will work directly with a committee of statutory elected Aboriginal and Torres Strait Islander representatives. The WA model has included another layer of bureaucracy with the inclusion of senior level government officials members in the IAAC. Whilst this additional tier of bureaucracy is not supported in the Queensland model, there are benefits to having an executive policy group consisting of elected Indigenous members and Government departmental heads. However what is important is that an independent body consisting solely of elected Indigenous representatives has a direct relationship with the Parliament. An executive group may be formed as a supporting mechanism to execute the decisions of the Parliamentary or Cabinet Standing Committee on Indigenous Social Policy Issues.

A number of Commonwealth, State and regional Indigenous representative bodies already exist in Queensland, including ATSIC, the Aboriginal Coordinating Council (ACC), the Islander Coordinating Council (ICC), the Torres Strait Regional Authority (TSRA) and other bodies. If a new peak body is formed to work directly with the Parliament, membership needs to be drawn from these existing structures and a partnership model developed with ATSIC.

ATSIC should be a key member in any peak body formed to work directly with the Parliament. ATSIC has a strong role in the coordination of regional policy and programs through three primary mechanisms: direct service delivery; the

provision of advice, advocacy and monitoring to all levels of government on Indigenous specific and mainstream policies, programs and services; and the development and maintenance of strategic regional and state partnerships. ATSIC has an effective regional representative structure with eighty-six (86) elected ATSIC representatives over seven (7) Queensland regions, including four (4) mainland Queensland Commissioners and seven (7) Chairpersons. This network allows for ATSIC to have a strong and representative role in coordinating and directing policies and programs at the regional level which is based on agreed priorities and planning frameworks. The recent ATSIC Review² notes these strengths and also recommends that ATSIC be the primary national and state/territory body advocating for the development of Indigenous communities.

Whatever structure is determined for the peak Indigenous representative body to Parliament, membership needs to come from elected Indigenous representatives and not by appointment. Political appointments are subject to controversy and factional disputes.

2. Functions of an Independent Elected Indigenous Representative Body

This peak body needs to be a formal party to the development and reform of legislation, budget and policy processes that impact on Indigenous people. This includes both Indigenous specific programs and mainstream programs (and their accessibility by and impact on Aboriginal peoples and Torres Strait Islanders). In addition to this, the representative body should be involved in the machinery of government, including:

- Report on bills;
- Questions on notice to Ministers;
- Comments on Cabinet submissions;
- Require Ministers to respond to reports of the peak body;
- Representation on inter-departmental committees and any expenditure review committees; and
- Development of budgets by government departments.

It is essential that Ministers have a legal obligation to respond to questions and any reports tabled by the peak body.

The representative body could also be a vehicle for the coordination of joined-up Commonwealth-State efforts in improving service delivery to Aboriginal peoples and Torres Strait Islanders as evidenced by the current Council of Australian Government (COAG) whole-of-government trial initiative in the Cape York. This model supports partnerships between Aboriginal peoples and Torres Strait Islanders and the government based on outcome based planning, mutual respect and shared responsibility.

² *Review of the Aboriginal and Torres Strait Islander Commission*, June 2003. Public Discussion Paper. Commonwealth of Australia.

Strategy 3: An Aboriginal and Torres Strait Islander Assembly

There are some concerns with the proposal to develop a parallel independent Aboriginal and Torres Strait Islander Assembly.

The responsibility to respond to Indigenous issues would be abdicated by the Legislative Assembly and deferred to the Aboriginal and Torres Strait Islander Assembly. This could marginalise the consideration of Indigenous issues by the Legislative Assembly which has a responsibility to address and remedy issues for all Queensland constituents, including Aboriginal peoples and Torres Strait Islanders. The real political power that could be given to this body is questionable as the Aboriginal and Torres Strait Islander Assembly would operate parallel to the Legislative Assembly, however it would lack the decision-making power to effect any real changes within the Parliament.

The Assembly could also duplicate and detract from existing processes already in existence (for example, ATSIC and the Aboriginal Coordinating Council) and lead to confusion between the roles and responsibilities of the various bodies.

Another concern is that the Assembly may be given the role of consulting Aboriginal peoples and Torres Strait Islanders on government policies and programs. This could result in a conflict of interest between the State and the Legislative Assembly if there are disagreements about the policy directive of government.

Strategy 4: Dedicated Seats

Reserved parliamentary seats for Indigenous Australians at the Commonwealth and State level is one measure supported in *Recognition, Rights and Reform* to increase the involvement of Indigenous peoples in the mainstream political process.³ The ATSIC Board of Commissioners (BoC) reaffirmed the general position as outlined in paragraphs 4.19 to 4.31 in the *Recognition, Rights and Reform* Report, and stated that ATSIC is supportive of reserved Indigenous seats for Commonwealth and State Parliaments⁴.

Reform of Queensland's democratic institutions by the introduction of dedicated seats has some benefits as it may be perceived as a symbolic example of reconciliation and recognising the unique status and rights of Aboriginal peoples and Torres Strait Islanders in Queensland. However there is also potential for this strategy to be misused by Parliament and the government by claiming significant inroads to the realisation of equality rights for Indigenous Australians without due respect to undertaking much needed reforms across the operation of Australia's political and legal framework. Indigenous peoples aspirations to have real self-management (leading to self-

³ *Recognition, Rights and Reform: Report to Government on Native Title Social Justice Measures*. ATSIC, 1995, pg 48.

⁴ Board of Commissioners Meeting 49, 20-22 August 1997. Constitutional Reform Issues: Paper Number 2429. Decision Number 1930

determination) needs to be formally recognised by the parliament and government and a new power-sharing relationship developed.

Dedicated seats is one measure to recognise the unique rights of Indigenous Queenslanders, but other strategies would need to be implemented concurrently to give effect to the principle of self-determination within the social, political and legal system of this nation.

Strategy 5: Changes to the electoral process

No comment.

Other Strategies to Enhance the Participation of Indigenous Peoples in the Democratic process in Queensland

1. Public Sector Employment

A strategy to increase the involvement of Aboriginal peoples and Torres Strait Islanders in politics is through active recruitment and mentoring support of Indigenous peoples within government. Employment as advisers to Ministers and Parliamentarians and within the bureaucracy (public service) is one means to familiarise people with the machinery of government and provides the opportunity for valuable network development.

2. Local Government

The importance of local government is often the only exposure to the mechanics of mainstream government for many Aboriginal peoples and Torres Strait Islanders, especially in rural and remote areas. The promotion of Indigenous involvement in local government is a practical means of encouraging greater participation in the state and federal political process, either through casting votes or standing as candidates. It also provides a fertile ground to learn about the system of government and provide a greater flow-on interest in governance issues per se.

It may be more practical and a higher priority for Indigenous peoples to concentrate on local issues due to the high need in some Indigenous communities. In addition to seeing the effect of government processes at the local level, it provides a learning environment to progress towards state-level (and federal) politics. Skills and networks are developed at the local level which are necessary for successful representation at the state and federal levels.

Strategies such as mentoring, reserved seating in local government and greater education about the role of local government need to be given further consideration in promoting Indigenous involvement in the political process.

3. *Capacity Building*

The impact of previous government policies has resulted in structural inequality and historical discrimination for many Indigenous Australians. This is evidenced by significant levels of social dysfunction within some Aboriginal communities.

Developmental approaches that incorporate capacity building and transitional processes are needed by Aboriginal peoples and Torres Strait Islanders to fully participate in the democratic process in a meaningful way in Queensland. A long-term commitment and shared responsibility between government and Aboriginal peoples and Torres Strait Islanders based on partnerships and negotiation is needed to achieve this.

4. *Other strategies*

Complimentary strategies to improve the representation of issues of importance for Aboriginal peoples and Torres Strait Islanders are listed below. These strategies encompass both governmental and parliamentary processes and could be given further consideration as additional strategies to improve representation.

- An Indigenous Affairs Budget that encapsulates the whole-of-government expenditure including Indigenous specific and mainstream funding streams. This information would assist in gathering information on the allocation of resources; service utilisation rates and identifying opportunities to address service delivery gaps;
- Active support and regional implementation of the *Commitment to Partnership (2002)* between ATSIC and the Queensland Government to ensure the ATSIC is engaged on the key processes of the State; and the
- The ATSIC Queensland State Policy Council (or representatives thereof) to be invited to participate in Budget matters and discuss other matters with Cabinet.