

Speech notes for Commissioner Troy Austin

Meeting with ANTAR

19 July 2003

Separation of Powers

On 17 April 2003, following meetings between the ATSIC Board of Commissioners and Federal Indigenous Affairs Minister, Philip Ruddock a media statement on a Cabinet decision (in the context of the Federal Budget) was released to the effect that:

“from 1 July 2003 all individual funding decisions concerning programs delivered by ATSIC will be made by officers of the administrative arm”.

The Government’s purpose was to clearly distinguish roles within ATSIC and to remove the potential for conflicts of interest in decision-making over funding.

Since its creation in 1990, ATSIC comprised the Board of Commissioners, the Regional Councils, and a statutory authority in which staff are employed under the Australian Public Service Act.

All of these elements operated under the ATSIC Act.

Under the new arrangements, an Executive Agency was created under the Public Service Act and began operations on 1 July.

The agency is called Aboriginal and Torres Strait Islander Services – ATSISS for short.

Virtually all staff transferred to the new executive agency, which is not a statutory authority.

ATSIC still exists and is made up of the elected arm – some 400 Indigenous representatives – and support staff.

The majority of the \$1.1 billion appropriated to ATSIC through the Federal Budget will be appropriated to ATSIIS. It will administer programs and make funding decisions.

The new Executive Agency will be both independent of any other public service agency and will be required to operate in conformity with policies and priorities established by the ATSIC Board and Regional Councils and to report on performance to the ATSIC elected arm.

The Board and Regional Councils will continue to set directions and to make broad decisions on how they want the budget appropriated to ATSIIS to be distributed. The Board will continue to make policies in relation to programs.

The Government says the establishment of ATSIIS will provide better opportunities for ATSIC to focus on policy development and advocacy and for Regional Councils to focus on regional-level planning and the co-ordination of services with the three levels of government.

The new set-up will also seek to improve overall accountability for program resources.

The issues

The creation of ATSIIS represents the most radical reform of ATSIC in its short history.

There are a number of major issues associated with the Government's decision, and some of these issues are controversial – not least being what ATSIC regards as the loss of Indigenous self-determination

According to the Government, ATSSIS has been created to address **perceived** conflicts of interest by separating the elected arm's continuing role in setting policies, priorities and broad budget allocations from specific funding decisions.

ATSSIC's elected does not believe it has been offered an adequate explanation for such a major change.

Has the Government simply moved because of perceptions and the constant negative media coverage of ATSSIC – in particular, the Chairman and Deputy Chairman?

Where was the consultation with ATSSIC's elected representatives?

Where was the hard evidence of any problems with the way in which ATSSIC had been operating?

The move to a new agency has also pre-empted – and even undermined – the Government's current review of ATSSIC.

The ATSSIC Board has actually agreed in principle with the creation of ATSSIS – but it said that we should not proceed with such haste and should wait until the final recommendations of the review team.

We argued – and continue to argue – that a separation of powers could have occurred under the ATSSIC structure without the need to create a new agency.

We were also unhappy about ATSSIC losing some \$24 million in program moneys to cover the administrative costs of setting up ATSSIS.

But the biggest blow, with loss of control over funding, is our capacity to self-determine on the delivery of services and programs to Aboriginal and Torres Strait Islander people.

As ATSIC Chairman Geoff Clark said, Indigenous self-determination is the foundation stone upon which ATSIC was built when it began 13 years ago.

The ATSIC Board will jealously guard the right to self-determination and will hold the Minister to his word on this fundamental principle.

Another important issue which will impact on Indigenous self-determination is the proposed move to contestability of grant funds.

In other words, the Government is saying that Indigenous organizations are not always best placed to deliver services to Indigenous people and that the process should be opened up to give non-Indigenous organizations a chance to tender for work.

The dangers of this approach are obvious, particularly if the “bottom line” – dollars and cents – is the guiding policy.

I know the elected arm in Victoria is very keen to ensure that services remain culturally appropriate.

How will ATSIC-ATSIS work?

The plan for ATSIC to concentrate on policy and advocacy work is based on giving it more teeth to monitor and control the work of other agencies – at all levels of government – which deliver Indigenous services and programs.

Under the new arrangement, Regional Councils will rise to a more prominent role through the creation of detailed strategic plans for their regions.

These plans will be the blueprint for government initiatives in the regions.

The key will be to have other agencies working to Regional Council plans. Getting other agencies at the Commonwealth level to change their operations to fit in the new way will, in time, be achievable.

But the perennial question remains: how do we make state and territory governments more accountable for the delivery of services to their Indigenous citizens?

Remember that they have major responsibility for the delivery of services to our people. By and large, they have failed in that responsibility.

This has been lost in the rush over the years to apportion blame to ATSIC for everything that's wrong in Indigenous affairs.

ATSIC has always been a supplementary funder, accounting for less than half of the Commonwealth's overall budget in Indigenous affairs.

The big buckets of money are with State and Territory governments. How do we make them more accountable? How do we make them comply with our planning requirements?

The issue, in a nutshell, is: we reluctantly lose control over ATSIC's relatively small bucket of money, *on the condition* we gain more control over the big buckets of money in the states and with other Commonwealth agencies.

There are questions also about the relationship between ATSIC and ATSIS. Tensions already have arisen with the appointment of Wayne Gibbons as the CEO of both organizations.

The ATSIC Board says this is an untenable situation.

Tension may be inevitable. Suddenly, the political careers and prospects of ATSIC's elected representatives have been placed in the hands of public servants and their ability to make the right decision in relation to funds.

ATSIS officers will need to be as accountable to us as they to the Minister.

What would be catastrophic for Indigenous people is a situation where ATSIC and ATSIS are engaged in a public battle over particular decisions.

The review

The review of ATSIC is being undertaken by an independent three-member panel: Jacquie Huggins, Bob Collins and John Hannaford.

The panel recently released a public discussion paper, which outlines a number of options "to achieve more effective arrangements for ATSIC and better outcomes for Indigenous Australians".

Members of the public are invited to respond to the discussion paper, with the panel expected to make a final report to the Federal Government by September 2003.

I would be looking to the final report to:

- retain ATSIC as the peak national elected body in Indigenous affairs
- confirm ATSIC as the main source of policy advice to Government

- recommend that separation of powers be implemented under the one ATSIIC structure
- guarantee, if the current structure is retained, that mechanisms and protocols are put in place which give due recognition to the respective roles and status of ATSIIC and ATSIIS
- suggest ways in which other Commonwealth agencies could work with ATSIIC to deliver better (more co-ordinated) services
- suggest ways in which ATSIIC could have a meaningful say in the Indigenous programs of State and Territory governments and ways in which these programs could be delivered in line with Regional Council plans
- ensure that ATSIIC's elected arm is properly resourced in line with its new roles and responsibilities
- ensure that, if there is a move to contestability of funds, services remain culturally appropriate.