



## **Progress in implementing the new arrangements for the administration of Indigenous affairs – Ensuring the effective participation of Aboriginal and Torres Strait Islander peoples in decision-making processes**

The first twelve months of the federal government's new arrangements for the administration of Indigenous affairs has ended. The primary focus of this period has been on abolishing the Aboriginal and Torres Strait Islander Commission (ATSIC) and creating new processes to engage with local Indigenous communities and coordinate mainstream delivery of services to Aboriginal and Torres Strait Islander peoples. Twelve months on, the new arrangements remain in a transitional phase. It will be a number of years before they are fully locked into place.

In the *Social Justice Report 2004*, I noted that my Office would monitor the introduction of the new arrangements from a human rights perspective. I noted a number of issues of concern in that report and identified a range of follow up actions that my Office would monitor over the next 12-18 months.<sup>1</sup> This chapter considers developments in the implementation of the new arrangements since my previous report.

There have been mixed results, outcomes and experiences in the initial twelve months of these new arrangements. There are some significant positive developments in promoting whole of government coordination and a more holistic approach to Indigenous issues, but there are also worrying gaps that remain in the new arrangements and challenges that are yet to be grappled with adequately or appropriately.

From a human rights perspective, Aboriginal and Torres Strait Islander peoples must be assured the opportunity to participate effectively in all aspects of policy development and service delivery by governments that impact upon their communities. This includes in the design, delivery, monitoring and evaluation of programs and services delivered by governments. In considering developments over the past twelve months, this chapter focuses on whether the new arrangements enable the effective participation of Aboriginal and Torres Strait Islander peoples at all levels of decision-making and service delivery that affect their lives.

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1 For the list of follow up actions see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2005, pp138-139. (Herein, *Social Justice Report 2004*).



There are four aspects to ensuring the effective participation of Aboriginal and Torres Strait Islander peoples. First, there are issues relating to Indigenous *representation* at the international, national, regional and local levels. Second, there are issues relating to Indigenous *participation* through agreement making and planning processes at the national, regional and local levels. Third, there are issues relating to processes for *engagement* with Indigenous peoples, such as through coordinated service delivery across governments and between governments, and through the development of an appropriately skilled public service. Finally, there are issues of *accountability and transparency* through the existence of appropriate data collection, performance monitoring and evaluation processes.

I consider developments in relation to these four sets of issues. The chapter concludes with a series of recommendations to governments and a number of follow up actions that my Office will engage in to continue to monitor significant issues over the coming twelve to eighteen months.



## 1) Overview of main developments in the new arrangements for the administration of Indigenous affairs: 1 July 2004-30 June 2005

The new arrangements for the administration of Indigenous affairs commenced at the federal level on 1 July 2004.<sup>2</sup> **Appendix 1** to this report provides a chronology of events relating to the introduction of the new arrangements from 1 July 2004 to 30 June 2005.

The chronology shows that there has been much activity across all areas of the federal government over the past twelve months to implement the new arrangements. In summary, the following events occurred during the past financial year in accordance with the new arrangements:

- **Abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC).** The *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* passed through Parliament on 16 March 2005. This followed the conduct of an inquiry by the Senate into ATSIC's proposed abolition and the replacement structures which were progressively being introduced through administrative measures. The *ATSIC Amendment Act* abolished the National Board of ATSIC with immediate effect and ceased the activities of Regional Councils from 30 June 2005. The *ATSIC Amendment Act* amends the *Aboriginal and Torres Strait Islander Commission Act* and renames it the *Aboriginal and Torres Strait Islander Act 2005*. The new Act maintains, as well as making consequential amendments to the operations of, the Torres Strait Regional Authority, Indigenous Business Australia, the Indigenous Land Corporation and the Office of Evaluation and Audit (Indigenous Programs).
- **Administrative changes to effect the demise of ATSIC and ATSI.** Most programs and staff were transferred from ATSI and ATSIC to mainstream departments on 1 July 2004. Further programs and staff were transferred in March 2005, when the *ATSIC Amendment Act* authorised the transfer of ATSIC's assets to other agencies within the Australian government. ATSIC did not cease to exist, however, until 30 June 2005 when Regional Councils were closed.
- **The establishment of new structures for administering Indigenous affairs.** New mechanisms were put into place to administer the federal government's activities in Indigenous affairs. The Office of Indigenous Policy Coordination (OIPC) was established to coordinate policy nationally, and Indigenous Coordination Centres (ICCs) were established in each of the former ATSIC regions to deliver a whole of government approach to programs on a regional basis and to negotiate with Indigenous communities at the local level. The position of Indigenous Employment Coordinator was established in the Australian Public Service Commission to more clearly elaborate a competency framework for public servants working in Indigenous affairs and to address the declining representation of Indigenous peoples within the public service.

<sup>2</sup> The *Social Justice Report 2004* provided a detailed overview of the main components of the new arrangements and the principles that underpin them. See: *ibid*, Chapter 3 and Appendix 1.



- ***The introduction of measures to lead and support a whole of government approach at the federal level.*** The Ministerial Taskforce on Indigenous Affairs and Secretaries Group on Indigenous Affairs had been established prior to July 2004 and were confirmed as the mechanisms to lead the new arrangements. The National Indigenous Council (NIC) was also established to provide independent advice to the government, through the Ministerial Taskforce.
- ***The negotiation of arrangements with the states and territories to improve coordination between governments.*** The Council of Australian Governments had adopted *Principles for Government Service Delivery to Indigenous Australians* in June 2004. These have implemented during the past year with the finalisation of the first bilateral overarching agreement on Indigenous affairs with the Northern Territory, and continued negotiations for similar agreements with other states and territories. The first stage of evaluations of the COAG trials also commenced and the NSW government agreed to co-locate staff from the Department of Aboriginal Affairs in regional ICC offices.
- ***Changes to the Indigenous budget, grant management and financial reporting processes.*** Commencing with the 2005-06 Budget in May 2005, all Indigenous specific funding by the federal government is coordinated through a new, single budget submission process which is overseen by the Secretaries Group and Ministerial Taskforce. New grant management processes have also begun to be introduced with a revamp of the funding process for Aboriginal and Torres Strait Islander Legal Services, which has been accompanied by the progressive roll out of a public tender process. A new Indigenous management information system, known as AGIMIS, is also under development to support the new whole of government approach.
- ***Re-alignment of programs to coordinate the operation of mainstream and Indigenous specific services.*** The new arrangements involve commitments to improve the performance of mainstream programs and services for Indigenous peoples. Projects such as the development of the AGIMIS reporting system are intended to provide improved and more coordinated information about access to mainstream services and programs in the longer term. During the past year, the Department of Employment and Workplace Relations reviewed the operation of the Community Development Employment Projects (CDEP) Scheme to align it closer to mainstream employment programs.
- ***Consideration of regional Indigenous representative structures.*** Consultations have been jointly convened by the federal government and various state and territory governments to consider models for regional Indigenous representation. Agreement to progress the Northern Territory's preferred regional authority model was included in the bilateral agreement between the Commonwealth and Northern Territory governments. No alternative structures were funded as at 30 June 2005, although shortly afterwards agreement was reached on a Regional Partnership Agreement with the Ngaanyatjarra Council and funding has been provided for the Murdi Paaki Regional Assembly



(including through a number of Shared Responsibility Agreements). A number of ATSI Regional Councils also released their Regional Plans during the financial year, many of which focused on mechanisms to ensure Indigenous participation post-ATSI.

- ***Negotiation of agreements with Indigenous peoples at the local level.*** A target of 50-80 Shared Responsibility Agreements (SRA's) was set and met for the first twelve months of the new arrangements. Processes were set up to support Indigenous communities to identify their needs; as well as the establishment of a number of expert panels to assist communities to build their capacity to engage in the SRA process.

These developments have been accompanied by the Federal Government's acceptance of the legitimacy of my functions, as the Aboriginal and Torres Strait Islander Social Justice Commissioner, to focus on the human rights implications of the new arrangements.

The government has acknowledged in public forums that the Human Rights and Equal Opportunity Commission (HREOC), through the functions of the Social Justice Commissioner, is one of the independent monitoring mechanisms for the new arrangements. This is along with the Office of Evaluation and Audit (Indigenous Programmes) in the Department of Finance and Administration, the Australian National Audit Office and through the reporting of the Productivity Commission and Steering Committee on Government Service Provision.<sup>3</sup>

The Office of Indigenous Policy Coordination has also put into place formalised processes to interact with HREOC on the new arrangements and in the production of the *Social Justice Report*. These include:

- the establishment of a contact officer at the senior level within OIPC to facilitate the preparation of responses and furnishing of information in response to all requests for information to OIPC by my Office, as well as to coordinate meetings with officers within the OIPC and ICCs;<sup>4</sup>
- the establishment of quarterly meetings with the Associate Secretary and senior officials of the OIPC to discuss developments in the new arrangements; and
- the furnishing of copies of finalised Shared Responsibility Agreements and Regional Partnership Agreements to my Office on an ongoing basis.<sup>5</sup>

3 Presentation by Office of Indigenous Policy Coordination at the *Canberra Evaluation Forum: Australian Government Indigenous Affairs Accountability Framework*, 21 July 2005, and Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 19 September 2005, p1.

4 To date, this arrangement has been effective in providing timely and streamlined access to information and in identifying the appropriate staff to address the issues raised by my Office. In agreeing to these administrative arrangements I have informed the OIPC that I will not accept any arrangement that limits my ability to independently exercise my statutory functions. No concerns have arisen in this regard to date.

5 Agreements are provided with the consent of the affected communities and on a confidential basis. In the discussion of SRAs in this chapter, details of individual agreements that are not in the public domain (such as through the summary information on agreements published on the internet by the Australian Government or made available by affected communities) are de-identified to maintain this confidentiality.



## 2) Ensuring the effective participation of Aboriginal and Torres Strait Islander peoples in decision making that affects us

I have chosen to focus my review of the first twelve months of the new arrangements specifically on the impact on the ability of Indigenous peoples to participate in decision-making processes. There are three main reasons for choosing this focus.

First, the government has confirmed that a central objective of government activity remains to ensure the maximum participation of Aboriginal and Torres Strait Islander peoples. The objects of the amended *Aboriginal and Torres Strait Islander Act 2005* confirm this.<sup>6</sup> Section 3 of this Act states:

The objects of this Act 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:

- (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.

It is appropriate to consider how the new arrangements respond and contribute to these inter-related objectives.

Second, in addition to the significant changes introduced as part of the new arrangements, Indigenous communities are facing multiple government reform processes. I am concerned 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.

The intention of the reforms is plainly to improve engagement and service delivery with Indigenous peoples. However, the impact of individual arms of government proceeding with simultaneous reforms is challenging to communities and individuals. The rapid rate of the reforms and the accompanying impact it is having on communities and individuals needs to be acknowledged by governments.

Text Box 1 below outlines some of the reforms introduced over the past year at either the federal, state and territory level.

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<sup>6</sup> This is the name of the Act that resulted from the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*.



### **Text Box 1: Current government reform processes which impact on Aboriginal and Torres Strait Islander communities and individuals**

**At the national level**, communities are being impacted upon through the following reforms:

- The abolition of ATSIIC, particularly the Regional Councils. Grant management processes are now being administered by a variety of different departments (with differing degrees of flexibility in interpreting program guidelines) and the regional interface taking place through ICC's. There are also consultation processes underway to determine appropriate representative structures for Indigenous peoples regionally.
- Reform to the operation of the CDEP Scheme, with revised grant conditions, regional hub arrangements, and a renewed focus on mainstream employment targets.
- The negotiation with individual communities for the lifting of remote area exemptions for Centrelink benefits.
- The tendering out of Aboriginal and Torres Strait Islander legal services, which has particularly impacted in Queensland with the reduction in the number of legal services to two. This is likely to impact in a similar way in New South Wales and the Northern Territory over the coming year.
- The announcement of the reform process for the Aboriginal Councils and Associations Act, with new requirements to be met from 1 July 2006. This will impact on most Indigenous community organisations (as they are incorporated under this legislation). A parliamentary committee is also examining the Bill and undertaking consultations with Indigenous communities until early 2006.
- Changes to funding processes for Indigenous education, including changes to the Aboriginal Student Support and Parental Awareness (ASSPA) Committees which were previously funded on a per child per school basis and have now been replaced by the Parent School Partnerships Initiative (PSPPI) which require schools or incorporated organisations in partnership with the Indigenous community to apply for funding for individual projects.

The following inquiries and consultation processes have also been announced at the national level, which relate to the rights and interests of Indigenous peoples and communities. The capacity of Indigenous communities to participate in and inform these processes will depend on available resources:

- Consultation processes announced to reform the native title system, including the operation of Native Title Representative Bodies and Prescribed Bodies Corporate.
- Proposed changes to communal land ownership regimes to enable long term leasing and private home ownership. This will initially be focused on the Northern Territory, although the federal government has announced that a new home ownership program and incentive scheme for long term renters may be extended to other states if they also change their land rights/communal land ownership provisions.
- Proposed amendments to the Aboriginal and Torres Strait Islander Heritage Protection Act were introduced into Parliament in October 2005.



- Parliamentary committee inquiries are currently being conducted into Indigenous employment;<sup>7</sup> the provisions of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005;<sup>8</sup> the operation of native title representative bodies;<sup>9</sup> and mental health.<sup>10</sup> An inquiry into Indigenous training and employment outcomes was deferred in 2004 and is anticipated to be recommenced in late 2005.<sup>11</sup> This is in addition to other inquiries that are not Indigenous specific but which raise issues of concern to Indigenous peoples.
- Parliamentary committee inquiries which took place during the past year and which have recently been completed included inquiries into the access of Indigenous Australians to law and justice services;<sup>12</sup> the provisions of the Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 and the proposed administration of Indigenous programs and services by mainstream departments and agencies (the ATSIC inquiry);<sup>13</sup> and the provisions of the Indigenous Education (Targeted Assistance) Amendment Bill 2005 (in relation to funding to provide tutorial support to Indigenous students who need to move away from remote communities to study).<sup>14</sup>

**At the state and territory level,** communities are being impacted upon through the following processes:

- In **New South Wales**, a taskforce has been established to review the operation of the land council system. Community consultations on proposed amendments to the Aboriginal Land Rights Act will occur in late 2005.
- The *Redfern-Waterloo Authority Act 2004* has established an Authority to consider issues which impact upon the Aboriginal communities of the Redfern and Waterloo areas.
- In the **Northern Territory**, the *Parks and Reserves (Framework for the Future) Act 2003* came into effect in 2004 and has resulted in Indigenous Land Use Agreements and land tenure changes to introduce leasing and joint management arrangements in 27 national parks and reserves across the Northern Territory.
- Amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* are also expected in early 2006.
- In **Queensland**, corporate governance reforms are underway with the transition of Deed of Grant in Trust communities into local council structures.
- In **South Australia**, a review of the operation of the *Aboriginal Lands Trust Act 1966*, the *Maralinga Tjarutja Land Rights Act 1984* and the *Pitjantjatjara Land Rights Act 1981* has occurred. Amendments to the *Pitjantjatjara Land Rights Act 1981* are expected shortly.

7 For terms of reference see: [www.aph.gov.au/house/committee/atsia/Indigenousemployment/tor.htm](http://www.aph.gov.au/house/committee/atsia/Indigenousemployment/tor.htm).

8 For terms of reference see: [www.aph.gov.au/Senate/committee/legcon\\_ctte/corporations/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/corporations/index.htm).

9 For terms of reference see: [www.aph.gov.au/senate/committee/ntlf\\_ctte/rep\\_bodies/tor.htm](http://www.aph.gov.au/senate/committee/ntlf_ctte/rep_bodies/tor.htm).

10 For information see: [www.aph.gov.au/senate/committee/mentalhealth\\_ctte/index.htm](http://www.aph.gov.au/senate/committee/mentalhealth_ctte/index.htm).

11 For information see: [www.aph.gov.au/Senate/committee/eet\\_ctte/Indigenous04/index.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/Indigenous04/index.htm).

12 For the report see: [www.aph.gov.au/house/committee/jpaa/atsis/report.htm](http://www.aph.gov.au/house/committee/jpaa/atsis/report.htm).

13 For the report see: [www.aph.gov.au/Senate/committee/Indigenouaffairs\\_ctte/index.htm](http://www.aph.gov.au/Senate/committee/Indigenouaffairs_ctte/index.htm).

14 For the report see: [www.aph.gov.au/Senate/committee/eet\\_ctte/Indigenous05/info.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/Indigenous05/info.htm).





- In **Tasmania**, the *Aboriginal Lands Amendment Bill 2005* introduces a definition of 'Aboriginal person', which is based on a 'three-part' test of Aboriginality. This impacts on the election of members of the Aboriginal Land Council of Tasmania and more broadly, to the accessibility to indigenous specific services.

The third reason for a focus on the impact of the new arrangements on the ability of Indigenous peoples to participate in decision making processes is that such participation is central to a human rights based approach to development.

As Chapter 2 demonstrates in relation to the right to health, the principle of effective participation is integral to meeting the requirements of accessible, appropriate, acceptable and quality services in the realisation of economic, social and cultural rights.

Principles relating to self-determination, non-discrimination, equality before the law and minority group cultural rights have also been interpreted as requiring the effective participation of Indigenous peoples in decisions that affect them, and that such participation be on the basis of free, prior and informed consent.<sup>15</sup>

In August 2005, the Human Rights and Equal Opportunity Commission co-hosted a workshop with the United Nations Permanent Forum on Indigenous Issues to consider the key elements which underpin the engagement of governments, the private sector and civil society with Indigenous communities. The text box below sets out guidelines for engaging with indigenous peoples and communities based on human rights principles.

## Text Box 2: Guidelines for engagement with indigenous peoples

These guidelines were developed at the *International Workshop on Engaging with Indigenous Communities* which took part at the *International Conference on Engaging Communities* in Brisbane in August 2005.<sup>16</sup>

It sets out principles for governments, the private sector and civil society to engage with indigenous peoples, in relation to the following contexts:

- Indigenous systems of governance and law;
- Indigenous lands and territories, including sacred sites;
- Policies and legislation dealing with or affecting indigenous peoples.

15 For an overview of the relevant human rights principles see: United Nations Permanent Forum on Indigenous Issues, *Report of the International Workshop on methodologies regarding free, prior and informed consent and Indigenous Peoples*, UN Doc: E/C.19/2005/3, 17 February 2005, Annex IV, available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/243/26/PDF/N0524326.pdf?OpenElement>; and United Nations Working Group on Indigenous Populations, *Expanded working paper submitted by Mrs. Antoanella-lulia Motoc and the Tebteba Foundation offering guidelines to govern the practice of implementation of the principle of free, prior and informed consent of Indigenous peoples in relation to development affecting their lands and natural resources*, UN Doc: E/CN.4/Sub.2/AC.4/2005/WP.1, 14 July 2005, available online at: [www.ohchr.org/english/issues/Indigenous/docs/wgip23/WP1.doc](http://www.ohchr.org/english/issues/Indigenous/docs/wgip23/WP1.doc).

16 Human Rights and Equal Opportunity Commission and United Nations Permanent Forum on Indigenous Issues, *Engaging the marginalised: Report of the workshop on engaging with Indigenous communities*, HREOC, Sydney, and United Nations, New York, 2005, available online at: [www.humanrights.gov.au/social\\_justice/](http://www.humanrights.gov.au/social_justice/). For further information about the International Conference on Engaging Communities, Brisbane, August 2005, see: [www.engagingcommunities2005.org/home.html](http://www.engagingcommunities2005.org/home.html).



The guidelines for engaging with indigenous communities specifically include:

***A Human Rights-Based Approach to Development***

- All policies and programs relating to indigenous peoples and communities must be based on the principles of non-discrimination and equality, which recognise the cultural distinctiveness and diversity of indigenous peoples;
- Governments should consider the introduction of constitutional and or legislative provisions recognising indigenous rights;
- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives;
- Such participation shall be based on the principle of free, prior and informed consent,<sup>17</sup> which includes governments and the private sector providing information that is accurate, accessible, and in a language the indigenous peoples can understand;
- Mechanisms should exist for parties to resolve disputes, including access to independent systems of arbitration and conflict resolution;

***Mechanisms for representation and engagement***

- Governments and the private sector should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities;
- Indigenous peoples and communities have the right to choose their representatives and the right to specify the decision making structures through which they engage with other sectors of society;

***Design, negotiation, implementation, monitoring, and evaluation***

- Frameworks for engagement should allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes;
- Indigenous peoples and communities should be invited to participate in identifying and prioritising objectives, as well as in establishing targets and benchmarks (in the short and long term);
- There should be accurate and appropriate reporting by governments on progress in addressing agreed outcomes, with adequate data collection and disaggregation;
- In engaging with indigenous communities, governments and the private sector should adopt a long term approach to planning and funding that focuses on achieving sustainable outcomes and which is responsive to the human rights and changing needs and aspirations of indigenous communities;

17 The elements of a common understanding of free, prior and informed consent, as identified at the *International Workshop on Methodologies regarding free prior and informed consent and Indigenous peoples* (UN Doc: E/C.19/2005/3, 19 January 2005) are set out in the *UN Workshop on engaging the marginalized: Background paper prepared by the Secretariat of the UN Permanent Forum on Indigenous Issues*. The workshop report identifies the main areas where the principle of free, prior and informed consent is relevant; what constitutes consent; the timeframes for seeking such consent; who may provide it on behalf of an indigenous community; how it should be sought; and procedures and mechanisms for oversight and redress.



### ***Capacity-building***

- There is a need for governments, the private sector, civil society and international organisations and aid agencies to support efforts to build the capacity of indigenous communities, including in the area of human rights so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them;
- Similarly, there is a need to build the capacity of government officials, the private sector and other non-governmental actors, which includes increasing their knowledge of indigenous peoples and awareness of the human rights based approach to development so that they are able to effectively engage with indigenous communities;
- This should include campaigns to recruit and then support indigenous people into government, private and non-government sector employment, as well as involve the training in capacity building and cultural awareness for civil servants; and
- There is a need for human rights education on a systemic basis and at all levels of society.

The remainder of the chapter considers the impact of the new arrangements in relation to four elements of the effective participation of Aboriginal and Torres Strait Islander peoples. These are issues relating to:

- Indigenous representation at all levels of decision making;
- Indigenous participation through agreement making and planning processes;
- Processes for government engagement with Indigenous peoples; and
- Mechanisms for ensuring accountability and transparency.



### 3) Indigenous representation and the new arrangements

A challenge for the new arrangements is to ensure that there are processes through which Indigenous peoples can be represented at all levels of decision making.

In announcing the abolition of ATSIC, the Government stated that it intended to address this issue by:

- Supporting the creation of a network of regional representative Indigenous bodies to interact with governments;
- Negotiating agreements at the regional level with representative Indigenous structures which link to local level decision making processes; and
- Utilising existing ATSIC Regional Council structures (until 30 June 2005) and building on ATSIC Regional Plans.<sup>18</sup>

Last year's *Social Justice Report* noted that, at that time, these proposed new mechanisms were either not in place or had not been operating for long enough to determine their effect. Accordingly, the adequacy of the government's approach would need to be revisited in twelve months time when these aspects of the new arrangements were in place.<sup>19</sup>

#### ***i) Progress in establishing regional Indigenous representative structures***

The Minister for Immigration and Multicultural and Indigenous Affairs confirmed in June 2005 that the Government remains committed to establishing representative bodies at the regional level:

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

Indigenous Coordination Centres are taking the lead in consulting with communities about their interest in and preferences for new representative arrangements from July 1 and many are well advanced...

In keeping with the Government's desire to engage at the community level, the new bodies are to act as the interface between communities and governments. They will help articulate community views and provide a framework for contributing to Regional Partnership Agreements.

We want communities to tell us how they could best be represented and we are seeing diverse and flexible arrangements emerge as a consequence.

Where communities have not yet formalised arrangements for the future, ICCs are talking with a range of individuals and community organisations, particularly in relation to the establishment of Shared Responsibility and Regional Partnership Agreements.

18 The Government also announced the appointment of a National Indigenous Council of Indigenous experts. However, members of the Council would advise government in their individual capacities and not in a representative capacity.

19 *Social Justice Report 2004, op.cit.*, pp103-104. My previous report identified ten 'follow up actions' that my Office would take during the subsequent year. This section of the chapter considers follow up actions 3 (participation in framework agreements); 4 (linking local and regional representation to the national level); 5 (Torres Strait Islanders on the mainland); and 6 (engagement with ATSIC Regional Councils and developments on regional representative structures).



To ensure that the new bodies have the opportunity to meet and consult with their communities we, along with State and Territory Governments, will provide modest, targeted funding.<sup>20</sup>

Consultations have been conducted across many regions to identify replacement representative structures during the past year. The Office of Indigenous Policy Coordination has noted that they have:

provided funds through the ICCs for Indigenous people to convene local and regional meetings to discuss options for new regional representative arrangements. The funding has varied among regions depending on requirements but has generally covered the cost of advertising and printing, venues, lunches, travel expenses for participants, and the fee of a consultant or facilitator. Where possible, these consultations have been undertaken with State government counterparts.<sup>21</sup>

No replacement Indigenous representative bodies were actually in place when ATSIC Regional Councils ceased to exist on 30 June 2005.<sup>22</sup>

At that time, the Minister reflected on the status of the consultations and stated that 'arrangements have already been finalised in 10 of the 35 regions covered by the ATSIC Regional Councils and consultations and negotiations are ongoing in others.'<sup>23</sup> The Office of Indigenous Policy Coordination subsequently confirmed to my Office that this statement meant that a regional structure had been developed for those 10 regions and did not mean that arrangements were actually in place or funded.

A map released by the government on 30 June identified the areas where representation arrangements 'are in place and where consultations are continuing.'<sup>24</sup> The map suggests that:

- Representative arrangements are in train for the entire Northern Territory, through the movement to a local government based regional authority model.<sup>25</sup>
- New representation is 'finalised' in the following 10 regions: Bourke and Coffs Harbour in New South Wales; Cairns, Mt Isa and Rockhampton in Queensland; Port Augusta in South Australia; and Broome, Geraldton, Kununurra and Warburton in Western Australia.
- Community consultations are 'continuing' in the following regions: Ceduna and Adelaide in South Australia; Sydney, Tamworth and Wagga Wagga in New South Wales; Brisbane, Cape York and Townsville

20 Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), *Minister announces new Indigenous representation arrangements*, Media Release, 29 June 2005, p1.

21 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 19 September 2005, p1.

22 In recent months, at least two regional structures have been supported with a Regional Partnership Agreement in place with the Ngaanyatjarra Council (in August) and funding provided to the Murdi Paaki Regional Assembly. There is also ongoing support to support the transition of the Thamarrurr Regional Council in Wadeye as a regional authority under local government provisions as part of the COAG trial.

23 Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), *Minister announces new Indigenous representation arrangements*, *op.cit.*, p1.

24 *ibid.* The map is available online at: [www.Indigenous.gov.au/OIPC\\_Regional\\_Representational\\_Map.pdf](http://www.Indigenous.gov.au/OIPC_Regional_Representational_Map.pdf).

25 The regional authority model is discussed in Text Box 4 below.



in Queensland; Derby, Perth and Kalgoorlie in Western Australia; and across the whole of Victoria and Tasmania.

- Community consultations are 'to begin shortly' in the following regions: Queanbeyan (which includes the Australian Capital Territory) and New South Wales; Roma in Queensland; and South Hedland in Western Australia.<sup>26</sup>

An overview of the 10 structures identified by the Minister as 'finalised' are provided in Text Box 3 below.

### **Text Box 3: Regional representative Indigenous models proposed as at 30 June 2005 (by ICC region)**

#### **The Murdi Paaki Regional Assembly (Bourke ICC region, NSW)**

The Assembly has already met a number of times and consists of one representative from each of the 16 existing Community Working Parties. Shared Responsibility Agreements have been negotiated which support the operation of the Community Working Parties through the provision of secretariat and administrative support, employment for an administrative trainee and the provision of computer hardware and software.

It is intended that the Assembly shall be recognised as the peak Indigenous regional body and the primary point of Indigenous community coordination and input, while the Community Working Parties shall be the primary points of Indigenous contact at the community level.

#### **Many Rivers region, (Coffs Harbour ICC region, NSW)**

A two-tier model has been designed to provide flexibility of representation at the local level and deliver delegates to a regional body. At the community level, local coalitions of organisations, groups and individuals will meet to identify needs and priorities, and have input to the development of Shared Responsibility Agreements. At the regional level, a coalition of organisations, consisting of representatives from the local level, will provide a liaison point for the delivery of services.

#### **Cairns and District Regional Reference Group (Cairns ICC region, Qld)**

A two level model has been agreed at a recent regional workshop after meetings with each community in the region. At the local level, Community Reference Groups will involve community service delivery organisations as well as representatives from youth, women and elders groups. At the regional level, delegates will be drawn from the Community Reference Groups to form a Regional Reference Group. The regional body will negotiate a Regional Partnership Agreement, provide input to government decisions, and provide regular reports to communities. This model focuses on community and regional planning as a central part of the relationship between Indigenous communities and governments.

#### **Gulf & West Queensland (Mt Isa ICC region, Qld)**

An Indigenous Regional Coordination Assembly has been finalised that will consist of 15 representatives from Community Issue Groups and Community Negotiating Teams, as determined in different communities. The Assembly will develop and maintain working partnerships with all levels of government, monitor services, and enter into regional agreements as needed. The model will develop procedures to remove and replace representatives on the Assembly.

<sup>26</sup> *ibid.*



### **Central Queensland (Rockhampton ICC region, Qld)**

A three-tiered Central Queensland Forum Model has been supported through Indigenous community consultation for the Central Queensland region. The Forum is a three-tier structure:

- The first tier is comprised of eight local shire clusters, or Community Working Parties, which represent all 36 communities/towns in the Central Queensland area. They will meet on a monthly basis to identify priority issues;
- The second tier consists of local groups which feed into eight Regional Assemblies that will meet quarterly to develop strategic regional plans that focus on the delivery of services;
- The third tier is an overarching Central Queensland Aboriginal and Torres Strait Islander Regional Forum that will meet twice each year to compare initiatives that may be working across the region.

Local communities will identify the selection processes with an emphasis on the representation of women, men, youth and elders at each level. It has been anticipated that funding for the regional representative structure will be negotiated through the Regional Partnership Agreement process.

### **Nulla Wimila Kutja (Port Augusta ICC region, SA)**

The proposed regional representative model draws a representative from eight 'community-focused' bodies, where the arrangement is based on the idea of 'smaller regions co-existing within a larger representative body'. It is proposed that the new entity will have input to government policy and program development, monitor the effectiveness of service delivery, and identify Indigenous people or groups that can liaise with government bodies, such as the Aboriginal Housing Authority and Indigenous Land Corporation.

### **Wunan, East Kimberley District Council (Kununurra ICC region, WA)**

A model of local governance has been proposed to establish Community Representative Committees or Local Development Committees, depending on the preferences of communities, which provide delegates to a regional East Kimberley District Council. The model creates strong links between the regional body and local communities, thereby providing significant opportunities for community participation.

Discussions are continuing with communities on selection processes, the boundaries used to define groupings, input of portfolio bodies, and the role of the Chair of the District Council.

### **Kullarri Regional Indigenous Body (Broome ICC region, WA)**

The Kullarri Regional Indigenous Body will consist of three representatives from each of four discrete areas or wards. This body will be supported by a panel of Aboriginal experts on key issues, including education, economic development, communications, employment and training, governance and strategy, health, housing, and infrastructure, justice, land and natural resources, women's issues, families and youth. The representative body proposes to provide regional plans, monitor outcomes of service providers and government agencies, offer independent advice and advocate for the improvement of the wellbeing of Indigenous people in the region.

### **Yamatji Regional Assembly (Geraldton ICC region, WA)**

The proposed Yamatji Regional Assembly includes nominees from 12 organisations or communities representing specific issues or groups: land, housing, health, justice, education, employment and training, women, youth, remote communities, town based communities, as well two other community representatives. The Assembly is designed to provide an interface between communities and government at all levels.



The roles and responsibilities of the Assembly will include: advising governments on regional needs, policy development and program design; input to regional planning; monitoring and evaluating service delivery; promoting cultural issues; providing leadership; and advocating for the Indigenous people of the region.

**Ngaanyatjarra Council, (Warburton ICC region, WA)**

The Australian Government, Western Australian Government and Ngaanyatjarra Council have finalised a Regional Participation Agreement which establishes the Council as the regional representative body in August 2005. The agreement is discussed further below.

All state and territory governments have also acknowledged the importance of representative structures and have committed to supporting their operation. Most have collaborated with the OIPC in the conduct of consultations to establish new structures post-ATSIC.

Text Box 4 below provides an overview of the commitments of each state and territory government to representative arrangements.

**Text Box 4: State and Territory developments in supporting regional Indigenous representative organisations**

**Australian Capital Territory**

The ACT Government have provided their support for both national and regional elected Indigenous representative bodies. They have stated that:

The ACT government has proposed to establish an elected body to provide advice on issues and needs of the ACT and Australian Governments, and the Aboriginal and Torres Strait Islander community... [and is] exploring how to link community and regional planning processes with the ACT Government's planning processes.<sup>27</sup>

Consultations with Indigenous people in the ACT regarding alternative representative structures are currently occurring and a final structure has yet to be decided. The ACT government also gains advice on Indigenous policy and issues from its Aboriginal Consultative Council and Ngunnawal Council of Elders.

**New South Wales**

In September 2004, the New South Wales Department of Aboriginal Affairs and the ATSIC State Council co-hosted the *Our Future, Our Voice* summit to discuss options for Indigenous representation. Delegates were presented with three different models:

1. Regional Assembly Model – based on the Murdi Paaki model;
2. Coalition of Peak Aboriginal Bodies – building on the organisations that already exist on the ground as the foundation for any future representative model; or
3. Combined ATSIC/Land Council model – with local land councils provide input to regional councils which input to the state land council. Embedded within the local, regional and state land councils are 'cultural councils'

27 Acting Chief Minister (Australian Capital Territory), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 17 June 2005, p2.





and with the state and regional councils directly linking to a national representative body, if it exists.<sup>28</sup>

In addition to the summit, DAA in conjunction with the Office of Indigenous Policy Coordination, through its State Indigenous Coordination Centre, hosted a series of forums in early 2005 for Indigenous people across New South Wales to discuss the federal Indigenous affairs reforms as well as alternative regional representation structures post-ATSIC.

Part of these consultations touched on DAA's policy framework, *Two Ways Together*.<sup>29</sup> It is intended that local 'cluster groups' comprised of representatives from NSW government agencies, Commonwealth Governments and peak Aboriginal organisations will be formed for each of the priority areas of the strategy. Local groups will advise these cluster groups on the priorities and needs for their particular areas.

### **Northern Territory**

In April 2005, the Northern Territory and Commonwealth governments entered into the *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005-2010*. It states that, 'Governments will work with Indigenous people to determine arrangements for Indigenous consultations and representation at the regional or local level.'<sup>30</sup>

The agreement establishes that the NT government's *Building stronger regions – Stronger futures Strategy* will be the basis for representative bodies in remote areas. The government has stated that it:

The NT Government's *Building stronger regions – Stronger futures Strategy* is directed towards the creation of larger, more effective local government bodies with legitimate authority to represent and deliver services to their communities. By encouraging the voluntary transformation of existing remote local governing arrangements in regional Authorities these bodies to aim to marry contemporary governance requirements with Indigenous traditional and cultural values.

The NT Government sees the development of Regional Authorities as a mechanism for facilitating strong Indigenous representation at the local level in the aftermath of the Aboriginal and Torres Strait Islander Commission Regional Councils.<sup>31</sup>

Under this strategy, Regional Authorities will be established where existing community councils agree to amalgamate; Partnership Agreements between regions and government will be negotiated; and Regional Development Plans will then be negotiated.<sup>32</sup>

The bilateral agreement also notes that in urban areas, the NT government and Australian government will look to flexible arrangements (including options that bring together Indigenous peak bodies).

28 *Our Future, Our Voice – Report on the NSW Summit on Aboriginal Governance*, NSW Department of Aboriginal Affairs and ATSIC, September 2004, Sydney, p5.

29 New South Wales Department of Aboriginal Affairs, *Two Ways Together – New South Wales Aboriginal Affairs Plan 2003-2012*, Sydney, 2003.

30 *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005-2010*, Commonwealth of Australia and Northern Territory Government, signed 6 April 2005, p6.

31 Chief Minister of Northern Territory, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 5 July 2005, p3.

32 Department of Community Development, Sport & Cultural Affairs, *Building Stronger Regions – Stronger Futures*, Northern Territory Government, Darwin, May 2003, p1.



### Queensland

The Queensland Government has stated that it 'has a commitment to engaging at the local level with Indigenous communities, using negotiation tables as the primary mechanism of engagement. The local level is preferred over the regional level because of the diversity of communities in Queensland.'<sup>33</sup> The Government's new strategy for Indigenous affairs, *Partnerships Queensland*, emphasises the importance of the negotiation table process. As outlined in Text Box 3 above, consultations on regional structures have been advanced in several former ATSI regions.

### South Australia

The South Australian government's *Doing it Right* policy is aimed at targeting the needs of Indigenous South Australians on a local and regional level. The Department of Aboriginal Affairs and Reconciliation has stated that it will work with the Office of Indigenous Policy Coordination to consult with the Aboriginal community about alternative representative structures.<sup>34</sup>

As part of the *Doing it Right* policy the South Australian government has developed an Indigenous Advisory Council. The role of the Council is to 'oversee the application of the *Doing it Right* policy framework and report to the Premier'.<sup>35</sup> Members of the Council include the 'Minister for Indigenous Affairs, representatives from the ATSI State Council, leaders of land councils, other Aboriginal peak bodies and community leaders'.<sup>36</sup> It is undecided at this stage how the gap left by the ATSI representatives will be filled.

### Tasmania

The Tasmanian government has advised that no progress has been made in establishing formal representative structures. The government is currently relying upon existing community organisations and groups which have an informal representative mandate from communities.

While individual portfolio strategies exist to target the needs of Aboriginal Tasmanians, there is no one whole-of-government strategy which guides the engagement between government and Aboriginal communities.

### Victoria

In 2004-2005, the Victorian government and the Tumbukka and Binjuru ATSI Regional Councils have conducted consultations with Indigenous peoples to discuss alternative representative structures. Three alternative models of representation have emerged from these consultations. The consultations have consisted of local community meetings and a questionnaire, with a second round of return meetings planned in late 2005. At the second round meetings, each community will be asked to nominate 2 local delegates to represent that community at a regional forum at which the preferred model for the regional will be confirmed. Two delegates will then be nominated from each regional forum to attend a state forum to determine the model for a state-wide representative body.<sup>37</sup>

33 Premier of Queensland, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 14 July 2005, p2.

34 <http://www.daare.sa.gov.au/projects.jsp?doc=strategic>

35 South Australian Department for Aboriginal Affairs and Reconciliation, *Doing It Right*, South Australian Government, Adelaide, May 2003, p14.

36 *ibid.*

37 Premier of Victoria, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 9 August 2005, pp4-6.



### Western Australia

The Western Australian Department of Indigenous Affairs, in collaboration with ICCs in Western Australia, is undertaking the Western Australia Indigenous Representation Project. The government notes that:

An emerging trend from consultations has shown that each region has different views and expectations and is formulating their own model of representation for consideration by the State and Commonwealth Governments. Any new arrangements will be based on building partnerships with Indigenous people and will recognise the diversity and needs of Indigenous peoples across the State.<sup>38</sup>

The government's state-wide Indigenous Affairs Advisory Committee is in abeyance subject to the outcomes of the consultation project on representation models.

In 2001 the Western Australian Government and ATSIC signed the *Statement of Commitment to a New and Just Relationship between the Government of Western Australia and Aboriginal Western Australians*. The Western Australian Government has advised that it will continue its commitment to the Statement as well as use ATSIC Regional Plans to inform priority setting within the state.<sup>39</sup>

This overview shows the progress made in the first twelve months of the new arrangements. There are promising developments in determining culturally appropriate regional representative models.

Most of the models for regional representation as highlighted above are premised on connecting local services and decision-making bodies to a regional council (and in some instances, a state-wide forum). Members of the regional structure are derived from elected nominees from the local working groups or organisations. Some of the models deviate from this approach with membership being based on traditional ownership as opposed to service/organisations affiliation.

At this stage it seems that the primary role of all of the proposed regional bodies is to connect local and regional needs to all levels of government through advocacy. They are not intended to deliver services or administer funds (and the federal government has made clear that it will not support models that seek to do so). This differentiates all these models from the Torres Strait Regional Authority model, and the more extensive models for regional autonomy that were recommended by ATSIC through consultations in 1999 and 2000.<sup>40</sup>

There remain, however, gaps in these representative structures. For example, the Northern Territory Government's preferred model of regional authorities relates to remote areas. It is not clear what arrangements will apply in urban centres. Indeed, it is notable that none of the representative structures that are finalised to date are in regions that encompass major urban centres such as capital cities.

Common to all the existing proposals is that the federal government has not as yet outlined in concrete terms how they will support them. There are concerns

38 Premier of Western Australia, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 9 August 2005, pp2-3.

39 *ibid.*

40 Aboriginal and Torres Strait Islander Commission (ATSIC), *Report on greater regional autonomy*, ATSIC National Policy Office, Canberra 2000 and ATSIC, *Regional autonomy for Aboriginal and Torres Strait Islander communities*, Discussion paper, ATSIC Canberra 1999.



about how regional representative bodies will be funded and the type and level of administrative support they will be provided.

The representative models that have been designed need to be finalised and supported so that they can become operational. Greater progress is needed in other regions where models have not yet been finalised.

The consequence of the current status of these models is that there are few mechanisms for Indigenous participation at the regional level. This issue needs to be progressed as an urgent priority.

### **ii) Regional agreement making processes**

Along with regional representative bodies, regional agreement making processes are an integral component of the new arrangements. As noted in the *Social Justice Report 2004*, Regional Partnership Agreements (RPAs) are intended to 'provide a mechanism for guiding a coherent government intervention strategy across a region, eliminating overlaps or gaps, and promoting coordination to meet identified priorities for the region.'<sup>41</sup> RPAs will also operate in tandem with Shared Responsibility Agreements, particularly as SRAs move towards a more comprehensive model.<sup>42</sup> Some consideration has been given to using RPAs to develop industry strategies for a region, i.e. tourism, economic development, pastoral, mining and employment strategies.

Where states and territories have agreed, RPAs may also incorporate state and territory investment. This is in accordance with the *National Framework of Principles for Government Service Delivery to Indigenous Australians* as agreed by the Council of Australian Governments (COAG) in June 2004.<sup>43</sup>

At the time of announcing the new arrangements, the Government indicated that Indigenous Coordination Centre Managers would negotiate RPAs outlining the priorities in that region with such representative bodies.<sup>44</sup>

As at 30 June 2005, there were no Regional Partnership Agreements in place.<sup>45</sup> This is not surprising, given that regional representative arrangements had not been finalised by this time and since RPAs will establish the role of such representative structures.

The first Regional Partnership Agreement was subsequently signed on 12 August 2005. It relates to the Ngaanyatjarra lands in Western Australia. The OIPC has advised my Office that other RPAs are under currently under discussion, including with the new Murdi Paaki Regional Assembly; in Cape York; on the Anangu Pitjantjatjara lands; in the East Kimberley region; and, in southwest Western Australia.<sup>46</sup>

41 Office of Indigenous Policy Coordination (OIPC), 'Indigenous Representation', *New Arrangements in Indigenous Affairs*, OIPC, [http://www.oipc.gov.au/About\\_OIPC/new\\_arrangements/IndigenousRepresentation.asp](http://www.oipc.gov.au/About_OIPC/new_arrangements/IndigenousRepresentation.asp) (25 August 2005).

42 The proposed comprehensive approach to SRAs is discussed in the next section of this chapter.

43 Office of Indigenous Policy Coordination (OIPC), 'Indigenous Representation', *New Arrangements in Indigenous Affairs*, *op.cit.*

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

45 This does not include the 'Regional Shared Responsibility Agreements' signed through the COAG trials, such as in Murdi Paaki.

46 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, p1.



Each RPA will reflect the specific circumstances of the Indigenous communities of the region that it covers. Bearing this in mind, the Ngaanyatjarra RPA still provides a useful demonstration of the content and purposes of the RPA process.

The agreement relates to twelve discrete communities on the Ngaanyatjarra lands. It 'sets out strategic approaches and projects for joint innovative action by Governments and Council in partnership with Ngaanyatjarra people and communities'. It is intended to:

- establish the principles and engagement processes necessary to enable a range of agreements, including Shared Responsibility Agreements (SRAs), which address jointly agreed issues, to be developed through cooperation and partnership;
- ensure that all Parties have the capacity and capability to effectively jointly develop agreements including SRAs and their respective Service or Funding Agreements where appropriate; and
- increase Indigenous people's access to Governments and maximise access of Indigenous people to all levels of service delivery.<sup>47</sup>

Table 1 below outlines the main elements of the Ngaanyatjarra RPA.

**Table 1: Overview of the Ngaanyatjarra Regional Partnership Agreement<sup>48</sup>**

<b>Parties to the agreement</b>	<ul style="list-style-type: none"> <li>• Australian Government;</li> <li>• Western Australian Government;</li> <li>• Ngaanyatjarra Council; and</li> <li>• Shire of Ngaanyatarraku</li> </ul>
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• establish partnerships and sharing responsibility for achieving measurable and sustainable improvements for people living in the Ngaanyatjarra lands;</li> <li>• provide better coordinated and resourced programs and services to achieve improvements in priority areas;</li> <li>• establish mainstream programs and ensuring improved access to them;</li> <li>• reduce inefficiencies; and</li> <li>• develop a Strategic Investment Plan for the region.</li> </ul>
<b>Principles that underpin the agreement</b>	<ul style="list-style-type: none"> <li>• National Framework Principles for Service Delivery to Indigenous Australians, endorsed by COAG on 25 June 2004.</li> <li>• The vision of COAG for Indigenous peoples to 'have the same rights and opportunities and participate equally in society as do other Australians.'<sup>49</sup></li> </ul>

47 Regional Partnership Agreement between the Ngaanyatjarra Council (Aboriginal Corporation), the Australian Government, the State Government of Western Australia and the Shire of Ngaanyatjarraku, 12 August 2005, Section 1.2.

48 This summary is developed from the full text of the Regional Partnership Agreement: *ibid.*

49 *ibid.*, para 1.6.7.



	<ul style="list-style-type: none"> <li>• 'Key Ngaanyatjarra Principles that the Ngaanyatjarra people hold to be important'.<sup>50</sup> These are:             <ul style="list-style-type: none"> <li>– recognising existing capabilities and capacity;</li> <li>– maintaining control of our own affairs;</li> <li>– recognising the role of the Ngaanyatjarra Council and its capacity to drive planning and negotiation;</li> <li>– maintaining and strengthening traditional Ngaanyatjarra cultural and social values and connection to land;</li> <li>– recognising the need for change and innovation to improve living conditions;</li> <li>– wishing to live in communities on traditional country that have the best achievable standard of living and a healthy and safe environment;</li> <li>– wishing to secure core infrastructure funding for all Ngaanyatjarra communities and to develop all participating communities in the agreement; and</li> <li>– supporting an educational system that provides children with relevant and useful mainstream education while also reinforcing culture.</li> </ul> </li> </ul>
<p><b>Representation Issues</b></p>	<p>The Ngaanyatjarra Council will:</p> <ul style="list-style-type: none"> <li>• represent the communities within its area that wish to be represented by the Council;</li> <li>• conduct consultations and then advise government of which communities wish to be represented by it; and</li> <li>• facilitate closer working relationships between Governments and communities, including through the facilitation of SRAs.</li> </ul> <p>Governments will:</p> <ul style="list-style-type: none"> <li>• commit to support the Council in its representative role through active engagement with the Council as the peak regional body and through funding for Ngaanyatjarra Council to fulfil that role; and</li> <li>• not seek to establish any other representative arrangement in respect of those communities that have endorsed Ngaanyatjarra Council's representative status.</li> </ul>
<p><b>Outcomes &amp; Priorities (four projects)</b></p>	<ol style="list-style-type: none"> <li>1. <b>Improved Regional Capacity</b> – all parties review their capacity to achieve the objectives of the RPA and make appropriate changes to structure, behaviour or capacity.</li> <li>2. <b>Establishment of effective structures to manage the RPA</b> – establish, maintain and use the Tiered Coordination Structure (which includes a Regional Partnership Committee and Agreement Coordinators Group) to monitor and develop the partnership described by the agreement.</li> </ol>

50 *ibid*, para 1.5.



	<p><b>3. Reducing 'red tape'</b> – implement an on-going process to identify 'red tape', create new efficiencies and address the accessibility of mainstream services, initially in relation to housing and housing maintenance issues and the provision of municipal and essential services.</p> <p><b>4. Develop and implement a Ngaanyatjarra Strategic Investment Plan</b> – develop and agree to a 20-30 year vision for the Ngaanyatjarra people and communities.</p>
<b>Monitoring &amp; Evaluation processes</b>	<p>Project progress is to be monitored by all Parties in accordance with the timeframes and performance indicators as outlined in Project Plans. An independent evaluation will be completed in the third year of the agreement's operation.</p> <p>The agreement notes that there is no baseline data required to establish whether the indicators have been met, and some of the measurements are subjective and not easily measured, such as 'improved communication' and that Secretarial support to the Committee set up under the agreement is effective. It is anticipated that more detailed indicators, referenced to baseline data, will be developed as the initial projects under the Agreement are completed.</p>
<b>Legal status and dispute settlement processes</b>	<p>The agreement is described as a 'statement of the mutual intentions of the Parties and is not intended to give rise to any enforceable rights or binding obligations.'</p> <p>It includes an 'escalation procedure' as a dispute settlement process which can be activated where:</p> <ul style="list-style-type: none"> <li>• Another party has not met timeframes or performance measures contained in this Agreement and a satisfactory arrangement for dealing with that lack of performance has not been agreed;</li> <li>• Agreement between parties can not be reached about prioritisation of projects and/or SRA development; and</li> <li>• any other matter of importance to one of the parties has not been dealt with satisfactorily.</li> </ul>
<b>Duration</b>	The agreement will continue until 30 June 2008.

This agreement establishes a comprehensive basis for the relationship between governments and Indigenous communities in the Ngaanyatjarra region. I particularly welcome the following structural aspects of the agreement:

- it seeks to integrate the activities of all four levels of government – federal, state, local and Indigenous nation;
- it commits to a community development approach, building the capacity of all participants (including through identifying existing capital) and developing a longer term strategic plan;
- it is incremental in its approach;
- it involves requirements for communities to endorse the representative agency, guaranteeing their participation in the formulation of the new structures;



- it focuses on the delivery of mainstream services in addition to Indigenous specific services;
- it sets a strategic framework through which local level agreement making processes can take place, which has the potential to contribute to a more holistic and systemic approach to SRA development;
- through recognising the Key Ngaanyatjarra Principles, is built on an acknowledgement of the rights of the Ngaanyatjarra peoples;
- establishes clear goals and targets, and commits to evaluation processes to determine how well the objectives of the agreement are met; and
- acknowledges existing deficiencies, such as the absence of baseline data, that are necessary to support a rigorous evaluation framework and commits to joint efforts to address these as the long term strategic directions for the region are developed.

One aspect of the agreement that I consider can be improved over time is to provide a more solid basis to the relationship between the regional authority and governments, as well as to enshrine governance principles for the regional authority.

As noted in the table above, the agreement does not give rise to any enforceable rights or binding obligations. This has two main consequences.

First, the relationship with governments is dependent on good will. It may ultimately be preferable for the regional authority to have a legislative base to ensure a clear understanding (from both government and the regional authority) of its functions and role, and to ensure that the regional authority has the legitimacy to engage with government. A legislative basis to the powers of the regional authority would provide clear guidance to government agencies and departments into the future. It would assist in ensuring that attention from government to issues with the regional authority does not wane as the processes lose their 'newness' or that the engagement process deviates from its original purpose over time.

Second, the non-binding nature of the agreement also provides limited ability for Indigenous communities within the region to hold either the governments or the regional authority to account. Regulatory provisions guiding the operation of the regional authority are limited to those provisions for the incorporation of Aboriginal organisations. It is not clear how a community, or part of a community, that is unhappy with the operation of the regional authority will be able to have their concerns addressed formally.<sup>51</sup> In the longer term, it may be advantageous to establish a minimum set of common standards for governance for regional bodies in legislation to enshrine the rights of communities and ensure their full participation in the process.

In both these regards, the RPA approach (as illustrated by the Ngaanyatjarra Agreement) falls below the standard set by the Torres Strait Regional Authority (TSRA) model. The TSRA operates with a high degree of autonomy, administers

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51 I note that the agreement establishes an 'escalation procedure' as a dispute resolution process and parties to the agreement have committed to use this procedure prior to taking any formal legal action. This does not, however, prevent individuals from taking legal action against any of the parties to the agreement – for example, under racial discrimination laws or by way of judicial review of administrative decisions made by government.





government funding and has legislative backing through the *Aboriginal and Torres Strait Islander Act 2005* with a detailed set of functions, powers and obligations.

While it may be advantageous in the initial stages for agreements to have the maximum flexibility by not being tied to legislative requirements, in the longer term there should be a more secure basis for the operation of regional bodies. This could be achieved through the introduction of new provisions to the *Aboriginal and Torres Strait Islander Act 2005* to support the role of regional representative bodies on the mainland. Regional Participation Agreements could be given legislative backing by introducing provisions which enable the government to schedule such agreements to the Act. The adequacy of the legal status of regional representative bodies should be considered as part of monitoring processes for RPAs within the next two years (that is, during the life of the Ngaanyatjarra Agreement).

Accounting for this concern, the Ngaanyatjarra Agreement demonstrates that the Regional Partnership Agreement approach has the potential to contribute to governments working together in a coordinated manner and in true partnership with Indigenous communities in a structured and systemic manner.

The Department of Family and Community Services has also proposed additional processes to support Regional Partnership Agreements. They state:

FACS is proposing the formulation of regional support committees of four types – economic, human, social and environmental – consisting of staff from relevant departments, from both levels of government, to support the development processes in families and communities. It is also proposing the formulation of regional development plans to integrate regional development with community and family level development needs. These regional development plans would then guide the prioritisation of funding within the region. It is likely that these bi-level government committees would have an important role in the formulation of regional development plans, as would the (currently) emerging forms of regional Indigenous representation.<sup>52</sup>

My Office will monitor developments relating to this proposal over the coming year.

### **iii) Utilising ATSIC Regional Councils and Regional Council Plans**

ATSIC Regional Councils continued to operate until 30 June 2005. Broadly, the Councils had two main roles that remained of central importance in the introductory phase of the new arrangements. First, to represent 'Aboriginal and Torres Strait Islander residents of the region and to act as an advocate of their interests'<sup>53</sup> and second, to develop Regional Plans 'for improving the economic, social, and cultural status of Aboriginals and Torres Strait Islander residents of the region.'<sup>54</sup>

52 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 17 October 2005, p8.

53 *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth), s.94(e). Note s.94(d) also provides that a related role of the Regional Council is to 'receive, and to pass on to the Commission the views of Aboriginal and Torres Strait Islanders about their activities, in the region, of the Commission, other Commonwealth bodies and State, territory and local government bodies'.

54 *ibid*, s.94(a). Section 94(b) also provides that the Council is 'to assist, advise, and co-operate with the Commission, other Commonwealth bodies and State, Territory and local government bodies in the implementation of the regional plan'.



The past twelve months has been a difficult time for Regional Councils. The demise of ATSIC was not confirmed in legislation until March 2005, creating great uncertainty for the Councils in their operations. They also faced severe resource constraints during the year to support their activities.

Despite this, most Regional Councils assisted in the transition to the new arrangements and worked with the OIPC and ICCs in developing alternative regional structures.

Federal government departments also engaged with the Regional Councils on a variety of issues relating to the transition to the new arrangements. For example, the Department of Employment and Workplace Relations state:

The Department has worked with Regional Councils in a formal and informal way on the following issues:

- CDEP reforms;
- Regional Council meetings;
- Reviewing of Regional Plans;
- Development of Indigenous employment strategies such as the Structured Training and Employment Project (STEP) and the Indigenous Small Business Fund (ISBF).<sup>55</sup>

Similarly, the Attorney-General's Department state:

As part of the Government's new arrangements, agencies were required to continue to engage with ATSIC Regional Councils and their planning processes in the administration of the Government's programs and services. AGD staff have liaised with ATSIC Regional Councils and Indigenous organisations on matters relating to Indigenous service delivery in their regions.<sup>56</sup>

The Department of Family and Community Services, in particular, 'undertook a concerted approach to engage with the ATSIC Regional Councils in its planning processes.'<sup>57</sup> This included:

- meeting with various regional councils to discuss draft regional plans and subsequently analysing the finalised plans in accordance with FACS' service responsibilities;
- inviting Regional Council Chairpersons in Western Australia to strategic planning workshops to present their views from a regional Indigenous perspective on matters which may impact on the planning processes;
- continuing involvement of regional councils on consultative committees such as the Joint Indigenous Housing Consultative Committee and working parties such as the Family Wellbeing Curriculum Development committee, both in Tasmania; and

55 Acting Deputy Secretary, Department of Employment and Workplace Relations, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 20 July 2005, p1.

56 Secretary, Attorney-General's Department, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 15 July 2005, p1.

57 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.



- relying on ATSIC planning documents, such as the Regional Housing and Infrastructure Plans, as a basis for allocating funding in relation to housing, family violence and in assessing submissions received for 2005-2006 funding.<sup>58</sup>

Government departments have also engaged with ATSIC Regional Councils in order to match their programs and activities with the priorities identified in the ATSIC Regional Council Plans. The Office of Indigenous Policy Coordination notes that:

The ATSIC Regional Council plans have provided useful information to ICC managers and staff on community needs and priorities, strategies for service delivery and community consultation methodologies.<sup>59</sup>

The Department of Family and Community Services states:

In all States and Territories, FaCS has ATSIC Regional Council Plans to assist in determining communities' needs. For instance:

- FaCS Tasmania discussed the ATSIC Tasmanian Regional Plan with the Chairperson and provided comments regarding housing and family matters to the Hobart ICC.
- FaCS Victoria used the ATSIC Regional Housing and Infrastructure Plan for its funds allocation of capital purchases in 2005-2006 as well as a supplementary allocation of \$3.7million received late 2004-2005.
- FaCS ACT Aboriginal and Torres Strait Islander Bilateral Housing Agreement Steering Committee utilised the ATSIC Queanbeyan Region Council Plan to develop its ACT Housing Plan 2004-2005.
- In NSW, FaCS Coffs Harbour utilised the ATSIC Many Rivers Regional Plan to inform decisions and as input to the Housing Bilateral Plan and the Family Violence Action Plan.
- FaCS SA used ATSIC Regional Plans as a basis for its appraisal of the Family Violence Regional Activity Program (FVRAP) appraisal process and to inform the formulation of projects.
- FaCS WA referred to ATSIC Regional Plans to provide strategic focus and prioritisation for each of the regions, as well as inviting the participation of regional councilors in their strategic planning workshops.
- FaCS NT used ATSIC Regional Council Homelands policies as an information tool in determining program funding agreements in 2004-2005 and 2005-2006.<sup>60</sup>

The Department of Employment and Workplace Relations noted:

A number of DEWR State Offices have engaged ATSIC Regional Councils in relation to their Regional Plans, including reviewing the plans with the Councils as these pertain to this portfolio and exploring mechanism for achieving the objectives set out in those Plans.

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58 *ibid*, pp2-3.

59 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

60 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p4.



During the current financial year the Northern Territory (NT) Office will be developing employment and business development strategies with each CDEP, which will recognise Regional Plans.<sup>61</sup>

The Department of Education, Science and Training also stated that they have utilised the Murdi Paaki Regional Council Plan in the COAG trial for that region. They have also continued the relationship with the Regional Council through the use of Community Working Parties and the development of local Community Action Plans which will form basis of the development of a new regional plan.<sup>62</sup>

The ATSIC Regional Council Plans have ongoing significance in the administration of services to Indigenous people and communities. Regional Council Plans have identified regional priorities through a process of consultation and evidence-based analysis. As such, the Plans provide a workable platform for government and alternative regional representative structures to begin to establish commitments and processes to address regional need through RPAs, SRAs and Strategic Investment Plans.

In some instances further work is required to be able to 'operationalise' the Regional Council Plans. For example, the Department of Family and Community Services have stated in relation to the Sydney Regional Council Plan that it:

provided limited added value. This is not a criticism of the plan itself. More acceptance of their relevance is required in... policy, program and service development.

Firstly, the broad strategic areas identified in the plan, frequently match the needs identified in specific communities. This should be no surprise because the regional plans were developed in consultation with the community.

Secondly, they lack a detailed operational level. This level is the advantage of the new approach, where specific solutions can be recommended and lead agencies can be nominated for delivering against a specific strategic priority. No instructions in the regional plans have been directed to a lead agency nor are there any specific project details for strategic priority.<sup>63</sup>

As noted above, section 94(b) of the ATSIC Act envisaged a role for Regional Councils (or alternative representative structures from now on) 'to assist, advise, and co-operate with... Commonwealth bodies and State, Territory and local government bodies in the implementation of the regional plan'. Negotiating the operational level of the plans was intended to be an ongoing role of the ATSIC Regional Council.

The Chairperson of the Sydney Regional Council explained the significance of their plan at its launch on 15 September 2004:

The Plan is the result of a process of engagement by Regional Council with our Aboriginal community throughout the region... (It) is built entirely on community knowledge and expertise, through the process of community engagement, and enhanced by Council through a lengthy process of discussion, debate and

61 Department of Employment and Workplace Relations, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

62 Department of Education, Science and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

63 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p4.



analysis. Regional Council's are mandated to undertake planning on behalf of our communities...

The Sydney Regional Plan reflects the aspirations of the Sydney Aboriginal community and will become the template for government and community action over the next few years. Our greatest challenges during that time will be in ensuring governments adhere to the broad outcomes expressed in the plan, and effectively negotiating with the community on localised priorities and concerns...

While our future role is currently subject to Parliamentary debate, Council is very serious about assisting the community to identify future processes of engagement in a landscape of public policy that is vastly different to what we have seen before. *This becomes even more important in negotiating the implementation of the Plan, and indeed, monitoring performance against the Plan's objectives.*<sup>64</sup>

The fact that ATSIC does not exist to build on the strategy should not deter from the importance of Regional Plans. Without reliance on the plans, there is currently no mandate and no informed basis for governments to determine the regional priorities of Indigenous peoples and communities.

**Appendix 2** of this report provides an overview of the key issues identified in each of the 35 ATSIC Regional Council Plans, and the strategies proposed to advance these issues. It is notable that a number of the plans include models for regional representation post-ATSIC, as well as identifying relevant indicators to measure progress in addressing the key issues raised in the plan. This includes by linking to the headline and strategic change indicators of COAG's Overcoming Indigenous Disadvantage Framework.

A whole of government approach should surely include utilising existing research and consultation outcomes to ground the new arrangements. The Regional Council Plans provide such a basis. They are particularly important in light of local Indigenous participation in their development and in the absence of replacement representative structures to guide policy development and service delivery in most regions.

#### ***iv) Representative arrangements for Torres Strait Islanders on the mainland***

A particular concern in the new arrangements is the absence of specific mechanisms at the regional level for consulting with, and ensuring the participation of, Torres Strait Islander peoples living on mainland Australia.

The *ATSIC Act* provided mechanisms to ensure the interests of mainland Torres Strait Islanders were represented. Despite this, ATSIC had noted in 2000 as an ongoing challenge that 'mainland Torres Strait Islanders are experiencing problems with access and equity issues to funding bodies, programs and services.'<sup>65</sup>

With the abolition of ATSIC these mechanisms no longer exist. Participation of mainland Torres Strait Islanders is no longer assured.

The Office of Indigenous Policy Coordination has described the options for participation of mainland Torres Strait Islanders in the new arrangements at a regional level as follows:

64 ATSIC Sydney Regional Council, *Last Annual Report 2004-2005*, ATSIC Sydney 2005, pp21-22. Emphasis added.

65 Aboriginal and Torres Strait Islander Commission, *Submission to the House of Representatives Standing Committee into The Needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples*, ATSIC, Canberra, October 2000, p71.



Torres Strait Islander people living on the mainland have been invited to, and participated in, meetings on the new arrangements in Indigenous affairs, particularly community consultations on new regional representative bodies, and will be able to continue their involvement in planning through the new representative mechanisms. They can also be part of the development of SRAs in communities.<sup>66</sup>

The federal budget in May 2005 indicates that specific funding to assist Torres Strait Islanders living on mainland Australia totalling \$480,000 per annum has been incorporated into the *Shared Responsibility Agreements and Community Engagement – Implementation Assistance Program*. The Minister announced:

The new whole-of-government arrangements for service delivery to Indigenous people are based on shared responsibility. This measure will provide resources for SRA development and fund SRA priorities that do not fall neatly into individual government agencies' responsibilities, while also supporting existing and new Communities in Crisis interventions and continuing assistance for Torres Strait Islanders on the mainland.<sup>67</sup>

The OIPC have advised my Office that the 'guidelines for the SRA Implementation Assistance Program allow for funding activities previously funded under the Torres Strait Islanders on the Mainland program, not necessarily through SRAs.'<sup>68</sup>

They have also advised that there has been some discussions on funding arrangements for 2005-06 for the National Secretariat of Torres Strait Islander Organisations Ltd (NSTSIOL). This organisation was previously funded by ATSIIC/ ATSIIS through the Torres Strait Islanders on the Mainland Program to:

- advocate for the protection and maintenance of Torres Strait Islander culture, language and heritage;
- provide secretariat services and corporate governance assistance for member organisations;
- develop strategic plans for the engagement of Torres Strait Islander people and community organisations on the mainland; and
- conduct conferences and workshops designed to bring people together to discuss issues, priorities and aspirations of Torres Strait Islander people on the Mainland.

OIPC advise that NSTSIOL had some grant funding carried over from 2004-05 to cover operational costs in 2005-06 and to conduct a workshop for members of NSTSIOL to start future planning for the organisation.<sup>69</sup>

66 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

67 Minister for Immigration and Multicultural and Indigenous Affairs, *Indigenous budget measure 1: Shared Responsibility Agreements and community engagement – Implementation Assistance*, Fact sheet, online at: [www.atsia.gov.au/budget/budget05/c\\_fact\\_sheet\\_1.pdf](http://www.atsia.gov.au/budget/budget05/c_fact_sheet_1.pdf).

68 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 2 November 2005, p1.

69 *ibid.*



The Queensland Government has noted that in Queensland (where a large proportion of mainland Torres Strait Islanders live):

There are no specific measures for Torres Strait Islander living on the mainland. However... Partnerships Queensland explicitly recognises that Queensland has two distinct Indigenous cultures – Aboriginal and Torres Strait Islander. It is anticipated that the Bilateral Agreement (with the Commonwealth on Indigenous Affairs) will also make this distinction clear.<sup>70</sup>

The ATSIC Central Queensland Regional Council advised my Office that they did not consider these arrangements appropriate:

(We are) not confident that mainland Torres Strait Islanders will be able to effectively participate based on early observations, as the focus from a national perspective has been on Aboriginal issues, mainly in relation to DOGIT / remote communities and there has been no specific documentation focusing specifically on ways to capture engagement of Torres Strait Islander issues...

Part of the problem relates to the carry over of the emphasis on program delivery, including financial accountability, rather than being proactive and devising strategies to capture all disadvantaged groups, which includes Torres Strait Islanders on the mainland. There is also a need for ICCs to have an understanding of Torres Strait Islander cultural protocols around engagement.<sup>71</sup>

Ms Kerry Arabena, a Torres Strait Islander woman specialising in Torres Strait Islander policy and research and living on the mainland, has expressed concerns about the options for representation of Torres Strait Islanders as follows:

Very few Torres Strait Islander corporations on the mainland will have the capacity to negotiate about services to benefit our communities with governments. To my knowledge, very few Torres Strait Islander groups have even been approached by bureaucrats to discuss regional representation, or to fully engage in the development of SRAs that might deliver resources to provide services for specific purposes within my community.

Governments have articulated that models of representation must be workable, affordable, effective and efficient and have a membership and capacity to provide informed advice about regional priorities, service delivery methods and assist in the development of a 20-30 year vision for the region. Yet very few attempts have been made to engage Torres Strait Islanders on the mainland to work out what our aspirations are at a regional level, particularly for those residing in the southern part of Australia. These discussions have highlighted how much of a minority within a minority we are, and a preparedness by bureaucrats to homogenise our experiences into the singular descriptor of 'Indigenous'. This is an unsatisfactory outcome for all concerned, and not at all what was promised by the reform agenda.<sup>72</sup>

My Office will continue to monitor how mainland Torres Strait Islanders are able to participate in the new arrangements over the coming year, particularly once regional representative Indigenous bodies exist.

70 Premier of Queensland, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit., p4.

71 ATSIC Central Queensland Regional Council, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 30 June 2005, p5.

72 Arabena, K, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, 31 October 2005, p1. See also: Arabena, K, *Not fit for modern Australian society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous affairs*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra 2005, pp40-42.



**v) *Linking community and regional level structures to the national and international levels***

The majority of attention over the past year has been devoted to establishing alternative processes at the regional level and engaging with communities at the local level.

There has been very little focus on ensuring national level input of Indigenous peoples into policy making processes. Issues of concern that have arisen with the abolition of ATSIC at the national level include:

- establishing replacement processes for the participation of Indigenous peoples in Commonwealth-State framework agreements;
- the absence of requirements for government to consult with Indigenous organisations;
- facilitating Indigenous participation in national policy debates through linking local and regional level structures to the national level; and
- negotiating with Indigenous peoples on the positions on Indigenous rights adopted by the government in international fora.

■ *Representation of Indigenous peoples in framework agreements*

Previously, ATSIC participated as a formal partner on inter-governmental agreements, such as those relating to Indigenous health and housing. It had also been involved in the negotiation of these agreements. Addressing Indigenous participation in these agreements post-ATSIC remains an outstanding concern under the new arrangements.

In relation to health framework agreements, the Department of Health and Ageing has noted:

The (Framework) Agreements on Aboriginal and Torres Strait Islander Health are the primary vehicle for ensuring collaboration in resource allocation, joint planning and priority setting for service delivery between key stakeholders in Indigenous health within each state and territory.

Aboriginal Health Forums or partnerships are established under the Framework Agreements to oversee this collaborative work.

Until 30 June 2004 the signatories to the Framework Agreements and membership of the Forums included: the Australian Government; State/Territory governments; the Aboriginal community controlled health sector; and ATSI and the Torres Strait Regional Authority.

Since the abolishment of ATSIC and ATSI, Framework Agreements and Forums will in future involve the three remaining partners plus the Torres Strait Regional Authority.<sup>73</sup>

In terms of the participation of Indigenous peoples in the Framework Agreements and Aboriginal Health Forums the Department also notes that:

The development of Indigenous Coordination Centres at the regional level will provide one mechanism for ongoing representation of Aboriginal communities in whole of government planning and priority setting. State policy managers from

73 Department of Health and Ageing, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 21 July 2005, p7.



the Office of Indigenous Policy Coordination have been invited to participate in the Forums.<sup>74</sup>



This practice is not appropriate to ensure regional or informed representation of Aboriginal and Torres Strait Islander peoples in decision-making and planning processes relating to health. It is wrong to describe ICCs as providing 'ongoing representation of Aboriginal communities' when they are government offices which are intended to streamline the interaction of government with communities. The involvement of OIPC State Managers in Health Forums may be of assistance in achieving better engagement from non-health sector agencies but it does not assist in assuring Indigenous peoples appropriate representation in the health forums. This issue needs to be addressed.

In terms of housing agreements between governments, the Department of Family and Community Services has indicated that it:

is currently negotiating new bilateral Indigenous Housing and Infrastructure Agreements (IHAs) with all States and Territories for 2005-08. The Minister wrote to relevant State and Territory Ministers in June 2005 advising of the Australian Government's policy priorities for negotiating new IHAs. This advice included the need for all jurisdictions to develop and agree to new arrangements for engaging Indigenous participation in policy and planning roles under the bilateral agreement.

The composition, function and powers of Indigenous Housing Authorities (in New South Wales and South Australia) and Indigenous housing advisory groups in all other jurisdictions, are being revised as part of the negotiation of the new IHAs. The membership of the majority of Indigenous Housing Authorities and Indigenous housing advisory groups will consist of eight members, with at least five members being Indigenous. In a number of jurisdictions the membership will be entirely Indigenous. *In all jurisdictions members will be selected based on merit against an agreed criteria.*

A key function of Indigenous Housing Authorities and Indigenous housing advisory groups is to assist Government to determine appropriate regional participation in housing and infrastructure planning processes. Jurisdictions are at different stages in the development of new arrangements for regional participation. The New South Wales Government has established Regional Aboriginal Housing Committees, and these provide a best practice model in providing regional Indigenous participation in housing and infrastructure planning.

As well, FaCS has negotiated interim bilateral agreements with the States and Territories over the provision of Indigenous housing. These interim Indigenous Housing Agreements have been or are being negotiated with the ACT, NSW, NT, SA and WA. Basically, they pool Indigenous specific housing funds, with the programs implemented by the State or Territory body. In these jurisdictions, Indigenous Housing Authorities (IHAs) undertake planning at the regional level, resulting in Regional Housing and Infrastructure Plans. These then input into an overarching State or Territory Plan.<sup>75</sup>

This is a much more satisfactory approach than that adopted in relation to health agreements.

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74 *ibid.*

75 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner - Request for information in preparation of Social Justice Report 2005, op.cit.*, p6. Emphasis added.



I will continue to monitor developments relating to Indigenous participation in framework agreements over the coming year as negotiations on framework agreements are concluded and as more lasting arrangements are put into place.

■ *Requirements to consult with Indigenous peoples at the national level*

The *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) also established requirements for various federal agencies and Ministers to consult with ATSIC on specified issues. These provisions were repealed as part of the abolition of ATSIC. Alternative processes for consulting with Indigenous organisations or peoples were not substituted into the amended Act.

For example, the relevant Minister was previously required to consult with ATSIC when considering the appointment of new Directors to Indigenous Business Australia or the Indigenous Land Corporation, and when selecting a Torres Strait Islander for the Council of the Australian Institute for Aboriginal and Torres Strait Islander Studies. ATSIC could also nominate a member to the National Health and Medical Research Council. ATSIC also had a close relationship with the Australian Bureau of Statistics and was consulted in the setting of data collection processes.<sup>76</sup>

The impact of these changes is likely to be subtle and not easily identified. There may be practical difficulties in identifying who would be an appropriate body to consult with in relation to certain issues, particularly in the absence of a national representative body or regional representative bodies.

However, the potential impact of these changes is that they distance Indigenous peoples from decision-making processes. Government departments should build into their policy processes, as a minimum standard, engagement with Indigenous peoples about issues that directly or indirectly affect their rights.

■ *The absence of engagement with Indigenous peoples at the national level*

This reflects a broader concern about the new arrangements to date. Since the abolition of ATSIC, there has been no national representative body that can participate in national level debates on Indigenous issues. While the new arrangements are built on a commitment to local level engagement, the nature of this engagement is established through national processes that do not consistently involve the participation of Indigenous peoples.

The only mechanisms for participation of Indigenous peoples are through the National Indigenous Council or sector specific organisations – such as national committees on education, the National Aboriginal Community Controlled Health Organisation, the Secretariat of National Aboriginal and Islander Child Care and affiliations of local bodies (such as working groups of native title representative bodies).

Neither of these mechanisms is sufficient to ensure appropriate representation of Indigenous peoples in national decision-making processes.

In relation to the National Indigenous Council (NIC), it is not a representative organisation. It does not claim such a role – indeed, the Chairperson, Dr Sue

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76 In relation to my functions as Social Justice Commissioner, the requirement that I *must* consult with ATSIC was deleted although the existing provision that I *may* consult with Indigenous organisations was retained.



Gordon, has made clear that the NIC is not a replacement for ATSIC. Rather, the Council is an advisory body to Government.<sup>77</sup>

The consequence of this is clear. While the NIC is entitled to put positions to government based on the individual and collective expertise of its members, its views can in no way be seen as providing consent or agreement on behalf of Indigenous peoples to any proposal. This is despite the fact that the NIC is made up of Indigenous experts. The NIC also has no capacity to undertake consultations with Indigenous peoples and hence no capacity to seek endorsement of its views among Indigenous communities.

Similarly, while sector specific organisations play an important role in their relevant sector they also do not have the mandate or representative base from which to be able to effectively represent Indigenous peoples across the full range of issues necessary. Many organisations are also service based rather than representative in their structures.

Accordingly, there is presently an absence of a connection between local level participation of Indigenous peoples and regional and national representation. In part, this flows from the absence of regional representative structures. I had proposed in last year's *Social Justice Report* a number of mechanisms for joining such representative bodies to the national level.<sup>78</sup> None of these suggestions is capable of being implemented until there exist operating regional bodies.

Concern at the absence of national representation (connected at all levels) was one of the major themes that emerged from the National Reconciliation Workshop in May 2005. As stated in the final report of the workshop:

discussion centred around the dismantling of ATSIC and the roles legitimately played, and not played, by the National Indigenous Council and Reconciliation Australia. There was broad agreement by participants of the need for a strong, representative voice for Indigenous Australians at the national level, as well as the regional and local level...

Reconciliation Australia used the workshop to reiterate a message it has consistently conveyed since the dismantling of ATSIC - that it strongly supports the need for a body which draws its authority from, and can legitimately speak for, Indigenous peoples. RA believes its structure and establishment are matters for Indigenous Australians to determine with backing from non-Indigenous quarters and to this end, RA continues to support, alongside the Australian Indigenous Leadership Centre, a series of meetings and consultations to canvass options.<sup>79</sup>

Efforts are also continuing to determine an appropriate structure for a national non-government organisation to represent Indigenous peoples. The OIPC had provided funding to assist in this, along with the support of Reconciliation Australia, the Australian Indigenous Leadership Centre, and the Australian Institute of Aboriginal and Torres Strait Islander Studies.

77 National Indigenous Council 2nd Communiqué, *Second meeting of the National Indigenous Council, 17-18 February 2005*, OIPC 18 February 2005, at <http://www.oipc.gov.au/NIC/communiqué/PDFs/2ndcommuniqué.pdf>.

78 *Social Justice Report 2004, op.cit.*, pp106-107. Suggestions included the convening of a national congress of Indigenous representative organisations accompanied by a national conference on service delivery to Indigenous communities and the establishment of a national non-government organisation peak body.

79 Reconciliation Australia, *Proceedings Report of the National Reconciliation Planning Workshop - 30/31 May 2005*, Reconciliation Australia, Canberra 2005, pp 3-4, online at: [www.reconciliation.org.au/docs/planning\\_workshop/proceedings\\_report.pdf](http://www.reconciliation.org.au/docs/planning_workshop/proceedings_report.pdf).



■ *Consultation with Indigenous communities on international issues*

There is also an absence of appropriate engagement of the government with Indigenous communities regarding Indigenous rights in international arenas. There are three aspects to this:

- supporting the ability of Indigenous peoples to participate in negotiations in a coordinated manner;
- engaging in consultations and negotiations with Indigenous communities about the positions to be adopted by the government in international fora; and
- supporting domestic processes for Indigenous organisations to develop a representative position for international meetings and to disseminate information about the outcomes and implications of decisions in international fora afterwards.

The government is an active participant in international negotiations which are directly related to the rights of Indigenous peoples – such as the Working Group on the United Nations Draft Declaration on the Rights of Indigenous Peoples, the Article 8(j) Committee under the Convention on Biological Diversity and the traditional knowledge working group of the World Intellectual Property Organisation. It also participates in processes which guide the development of international standards relating to Indigenous peoples, such as the United Nations Permanent Forum on Indigenous Issues and the United Nations Working Group on Indigenous Populations.

The abolition of ATSIC has severely restricted the ability of Indigenous peoples to input into these international processes. Of the four Indigenous organisations in Australia with accreditation as a non-government organisation at the ECOSOC level,<sup>80</sup> only the Foundation for Aboriginal and Islander Research Action has maintained an active engagement in international negotiations on Indigenous rights.<sup>81</sup> It has done so with minimal funding and on occasion, with funding provided by foreign governments or through the voluntary fund for Indigenous issues at the United Nations (i.e., funding that is usually provided to indigenous representatives in relatively poor countries and regions of the world).

The ATSIC Review had commented on the importance of ATSIC's international advocacy role to Indigenous peoples:

ATSIC's international advocacy role is widely supported by Aboriginals and Torres Strait Islanders and judged as essential in keeping all Australians informed of global human rights issues and providing an Indigenous Australian voice overseas...

The review panel agrees that ATSIC plays an important advocacy and representation role at the international level... Regional council and community meetings highlighted the need for there to be better reporting back mechanisms

80 To participate in most UN meetings, organisations must be accredited in accordance with procedures established by the Economic and Social Council of the United Nations. Indigenous organisations can, however, participate in some UN meetings (such as the WGIP, Permanent Forum and Draft Declaration negotiations) specific to Indigenous issues without such formal accreditation (although they cannot participate in other bodies of the UN such as the CHR, General Assembly, ECOSOC etc).

81 The Social Justice Commissioner also participates in select negotiations in the capacity of a national human rights institution.



by the representatives of ATSIC who are attending international forums, detailing the purpose of the involvement, and the outcomes.<sup>82</sup>

Mechanisms that existed within ATSIC to consult with Indigenous organisations in Australia, such as the Indigenous Peoples Organisations network, have now ceased. There is an absence of routine engagement between the government and Indigenous organisations prior to the commencement of international meetings (with the exception of small scale and limited consultations being held specifically on the Draft Declaration on the Rights of Indigenous Peoples in recent years).

In my view, this absence of dialogue contributes to less effective engagement by both the government and Indigenous organisations in international meetings. Indigenous organisations have every right to participate in international discussions on their rights and interests and I am not supportive of any restrictions on such participation. However, establishing common ground between the government and Indigenous peoples prior to going overseas, and looking to where the government and Indigenous organisations could jointly advance Indigenous issues in such forums, could contribute significantly to the outcomes of these meetings.

HREOC has made a number of recommendations to the government to ensure that a systematic approach is adopted to international negotiations and fora. The proposals include:

- funding community education activities on Indigenous rights, including community workshops to inform communities about their rights and corresponding responsibilities and about developments in international fora;
- convening domestic fora for Indigenous organisations to collaborate ahead of international meetings, and for negotiations to take place with government ahead of such meetings;
- supporting Indigenous involvement in international meetings, including through mentoring Indigenous youth and supporting leadership programs; and
- disseminating information back to communities about international developments in Indigenous rights.

The funding necessary to support such proposals is minimal and was carried over to the budget of the Office of Indigenous Policy Coordination from the budget of ATSIS in 2003. As at 30 June 2005, there was no decision on these proposals.<sup>83</sup>

#### **vi) Conclusions and recommendations**

There has been substantial effort made during the first twelve months of the new arrangements to identify processes for engaging with Indigenous peoples in a representative manner and on a regional basis. Despite this, there remain significant gaps relating to Indigenous representation.

82 ATSIC Review Team, *In the hands of the regions – A new ATSIC. Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra 2003, p37.

83 Note: The budget statement on SRA implementation states that funding for international activities has been included within the SRA Implementation Program and as such, continues to exist in the OIPC budget: Minister for Immigration and Multicultural and Indigenous Affairs, *Indigenous budget measure 1: Shared Responsibility Agreements and community engagement – Implementation Assistance*, op.cit.



In most instances where regional representative structures have been developed, they are not yet operational. In other regions, there are no agreed mechanisms developed. There are no specific mechanisms in place to ensure that the distinct issues of Torres Strait Islander peoples are addressed in mainland areas, with available funding subsumed within the SRA development program, and there is a particular absence of representative arrangements in major urban areas.

Interim steps have been taken to engage with Indigenous representatives in housing framework agreements, and assuring such engagement is a key priority in the renegotiation of these agreements between the Commonwealth and the states and territories over the coming year. Adequate arrangements are yet to be put into place for health framework agreements.

There are also limited mechanisms for engaging with Indigenous representatives at the national level and in relation to international developments, and the need for established links between local and regional levels, and then the regional and national levels.

The legacy of ATSIC Regional Councils is their Regional Planning documents, most of which were updated or revised during the past twelve months. The ATSIC Regional Council Plans provide a useful basis for identifying the regional needs and priorities of Indigenous peoples, as well as proposing mechanisms for engagement. Further work is needed to 'operationalise' the plans – a task that was a central function of the ATSIC Regional Councils themselves. Further effort should be made to utilise the plans in the development of regional structures and in identifying the priorities for each region.

The absence of processes for Indigenous representation at all levels of decision making contradicts and undermines the purposes of the new arrangements.

It severely restricts the ability of Indigenous peoples to participate in decision making and service delivery which affects them in a systematic and coordinated manner. Any regional planning, priority setting or agreement-making made in the absence of Indigenous representative structures is also problematic. Not consulting a representative structure excludes Indigenous people from participating in decision-making processes and does not provide for their active participation in issues that affect their lives.

The first priority must be the establishment of regional representative bodies which can link to the local level as well up to the state and national levels. Regional Partnership Agreements provide a solid basis for this to occur. These agreements should also be evaluated in the coming years with a view to strengthening the recognition provided to representative bodies, including through providing them legislative recognition under the *Aboriginal and Torres Strait Islander Act 2005*.

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.

In producing this report I am required to make recommendations to address issues of concern. I make the following recommendation in relation to the absence of appropriate representation for Indigenous peoples in the first twelve months of the new arrangements. I have also identified follow up actions that my Office will undertake for the next *Social Justice Report* to retain a focus on issues of concern.



## Recommendation 4

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.

### Follow Up Action by Social Justice Commissioner

1. The Social Justice Commissioner will consider the adequacy of processes undertaken by all governments to consult and negotiate with Indigenous peoples and communities on policy development, program delivery and monitoring and evaluation processes. This will include:

- identifying best practice examples for engaging with Indigenous peoples on a national, state-wide and regional basis;
- identifying existing protocols or principles for engaging with Indigenous peoples;
- identify existing processes for engaging with Torres Strait Islander communities on the mainland; and
- developing a best practice guide to negotiating with Indigenous communities from a human rights perspective.

## 4) Indigenous participation through local level agreement making

An integral component of the new arrangements is direct engagement with local communities. A major focus of activity in the past twelve months has been the negotiation of local level agreements within Indigenous communities, known as Shared Responsibility Agreements (SRAs).

The term 'Shared Responsibility Agreement' (SRA) was first used to describe agreements within the eight sites of the Council of Australian Governments' whole of government community trials initiatives (COAG trials) that commenced in 2003.<sup>84</sup>

SRAs are based on the principle of 'mutual obligation.' It is intended that:

communities... take responsibility for determining their own priorities for change and to work out what they can contribute to making things better. This contribution could involve using community assets, such as a community centre, upgraded sports facility or tourism business; or it could be a commitment to invest time and energy towards outcomes. For real change, the community is expected to actively contribute, in some way, to achieving better outcomes for its people.<sup>85</sup>

84 For an overview of the trials see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, Human Rights and Equal Opportunity Commission, Sydney, 2004, pp 227-250.

85 Office of Indigenous Policy Coordination, *Indigenous Coordination Centres – Questions and answers (What can communities expect from governments?)*, [www.Indigenous.gov.au/icc/qa.html](http://www.Indigenous.gov.au/icc/qa.html), (Accessed 20 July 2005).



With the introduction of the new arrangements from 1 July 2004, the government set a target of finalising 50 -80 SRAs by 30 June 2005.<sup>86</sup> A target of 100 SRAs has now been set for the 2005-06 financial year.<sup>87</sup>

This section of the report considers developments during the first twelve months of the new arrangements in relation to the negotiation of SRAs.<sup>88</sup> It sets out relevant human rights standards to ensure the effective participation of Indigenous peoples at the local level and to ensure that the content of SRAs do not breach human rights standards.

### ***i) Human rights principles and Shared Responsibility Agreements***

As Social Justice Commissioner, my primary interest in SRAs is how they impact on the well-being of Indigenous peoples and whether they promote the achievement of social justice. To do so, SRAs must be consistent with human rights standards.

There are two aspects to whether SRAs comply with human rights standards.

First, is whether SRAs operate as a tool that promotes the enjoyment of human rights (i.e. as a *positive* mechanism for human rights protection). SRAs have the potential to provide a significant breakthrough in policy and program implementation. By achieving a direct relationship between government and Indigenous peoples, SRAs could overcome the flaws of the approach of government adopted over the past thirty years.

This approach has misunderstood and misapplied the principle of self-determination. This is by governments walking away from a direct relationship with Indigenous people themselves, and avoided any responsibility and accountability for this relationship. In the place of government, Indigenous peoples have had to deal with organisations and people of varying capacity, and in the case of some community advisers, store managers and administrators, of varying honesty. SRAs potentially signal the return of government to communities through direct engagement.

SRAs have the **potential** to improve the enjoyment of human rights by Indigenous peoples in the following ways:

- by being based on local level negotiation and consultation, they could ensure the effective participation of Indigenous peoples in decision-making that affects them;
- by tailoring services to the specific circumstances of the community, they could lead to culturally appropriate service delivery and improved accessibility of mainstream services;
- by supporting the development of local enterprises that are culturally relevant, they could expand the existence of otherwise limited economic development opportunities in remote communities; and

86 *Social Justice Report 2004, op.cit.*, pp115-116.

87 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p2.

88 It follows on from the discussion of SRAs in the *Social Justice Report 2004*. The information in this report does not repeat the findings of that report. See: *Social Justice Report 2004, op.cit.*, pp 113-120 and Appendix 2. My previous report identified ten 'follow up actions' that my Office would take during the subsequent year. This section of the chapter considers follow up action 7 (Shared Responsibility Agreements).





- by being part of a comprehensive plan to address the needs and build the capacity of communities, they could lead to the empowerment of Indigenous communities.

As such, SRAs could be tools for promoting:

- the realisation of the right to self-determination (in accordance with Article 1 of the *International Covenant on Civil and Political Rights* (ICCPR) and *International Covenant on Economic, Social and Cultural Rights* (ICESCR));
- the protection of minority group cultural rights (in accordance with Article 27 of the ICCPR and Article 30 of the *Convention on the Rights of the Child*);
- the achievement of culturally appropriate delivery of economic, social and cultural rights (in accordance with various provisions of the ICESCR),<sup>89</sup> and
- the achievement of equality before the law (in accordance with Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 26 of the ICCPR and related provisions in other instruments).

Second, and conversely, is whether SRAs impact *negatively* on the enjoyment of human rights by Indigenous peoples. SRAs may negatively impact on the enjoyment of human rights if they do not address the issues raised above – for example, if they do not ensure that service delivery is appropriately adapted to cultural circumstances or do not ensure the effective participation of Indigenous peoples.

In particular, SRAs could be problematic if they are not negotiated with the appropriate representatives of the Indigenous community (in cultural terms). Government has to be under a clear responsibility to find ways of negotiating with Indigenous communities that do not simply rely on existing community councils, regardless of whether they are culturally inclusive, representative, well governed or the reverse.

Additionally, SRAs have the **potential** to restrict the enjoyment of human rights by Indigenous peoples in the following ways:

- if they impose conditions on Indigenous peoples' access to services where such services are otherwise available to other sectors of the community without condition;
- if SRAs make the progressive realisation in enjoyment of rights for Indigenous peoples contingent upon conditions being met (this is particularly given the existing state of inequality experienced by Indigenous peoples); and
- if they make Indigenous peoples' access to core minimum entitlements conditional (as matters which constitute core minimum obligations are required to be met with immediate effect and are not subject to negotiation).

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<sup>89</sup> For an overview of these principles in relation to the right to health see Text Box 6 in Chapter 2 of this report. There are four inter-related principles of accessibility, adaptability, adequacy and quality. Similar principles exist in relation to rights to an adequate standard of living, water, housing and education.



As such, SRAs could raise issues of non-compliance with human rights standards in relation to:

- the principles of non-discrimination on the basis of race and equality before the law (as set out in Articles 2 and 5 of ICERD, Articles 2 and 26 of the ICCPR, Article 2 of ICESCR, and related provisions);<sup>90</sup>
- the progressive realisation principle (as set out in detail in Chapter 2 of this report, and contained in Article 2 of the ICESCR, Articles 1 and 2 of ICERD, and related provisions);
- the obligations for governments to respect, protect and fulfil the enjoyment of human rights, especially economic, social and cultural rights, and the satisfaction of core minimum obligations (as set out in various provisions of ICESCR in relation to economic, social and cultural rights).<sup>91</sup>

**To assist in determining whether the SRA approach as a whole, as well as individual SRAs, comply with human rights standards I have developed the following overview of key considerations for making SRAs. They relate to the *process* of SRA making as well as to the *content* of SRAs.**

■ *Human rights standards relating to the process of SRA making*

Text Box 2 in this chapter outlines guidelines for engaging with indigenous communities, based on human rights principles and best practice. It notes the following principles that are of relevance to SRA making:

1. **Non-discrimination and equality:** All policies and programs relating to Indigenous peoples and communities must be based on the principles of non-discrimination and equality, which recognise the cultural distinctiveness and diversity of Indigenous peoples. This acknowledges the following related factors:
  - a) that Indigenous peoples continue to face unequal enjoyment rights and access to services;
  - b) that Indigenous peoples have not in the past, nor in many instances in the present, benefited from mainstream services and programs;
  - c) that special measures may be required to address the resultant inequality in enjoyment of rights;
  - d) that programs need to be tailored to the specific cultural circumstances of Indigenous peoples for them to be effective (this may be through either mainstream or Indigenous specific programs); and
  - e) that an approach which recognises the distinct needs of Indigenous peoples is not discriminatory, so long as it is aimed to providing equality in outcome or fact and constructed with the full participation of the affected peoples.

90 Appendix 2 to the *Social Justice Report 2004* set out the elements to be met to ensure that SRAs do not breach the *Racial Discrimination Act 1975* (Cth). That Act implements Australia's obligations under ICERD. The Act applies to the negotiation stage of SRAs, the terms and conditions imposed on communities through SRAs, and any other affects on communities or individuals through SRAs.

91 There are also provisions which indicate that certain rights are non-derogable, meaning that governments must always meet these rights, even in time of war or national emergency: see Articles 4 and 5 of the ICCPR.



- 2. Effective participation:** Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives. Such participation shall be based on the principle of free, prior and informed consent. The key elements of free, prior and informed consent are set out below.
- 3. Transparent government frameworks:** Governments should establish transparent and accountable frameworks for engagement, consultation and negotiation with Indigenous peoples and communities. Frameworks for engagement should allow for the full and effective participation of Indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes; as well as in identifying and prioritising objectives, as well as in establishing targets and benchmarks (in the short and long term).
- 4. Indigenous representation:** Indigenous peoples and communities have the right to choose their own representatives and the right to specify the decision making structures through which they engage with other sectors of society.
- 5. Reporting and data collection:** There should be accurate and appropriate reporting by governments on progress in addressing agreed outcomes, with adequate data collection and disaggregation. The effective participation of Indigenous peoples in all stages of data collection and analysis has also been identified as an essential component of emerging participatory development practice.<sup>92</sup>
- 6. Adopting a long term approach:** In engaging with Indigenous communities, governments and the private sector should adopt a long term approach to planning and funding that focuses on achieving sustainable outcomes and is responsive to the human rights and changing needs and aspirations of Indigenous communities.
- 7. Capacity building:** There is a need for governments and other sectors to support efforts to build the capacity of Indigenous communities, including in the area of human rights so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them. Similarly, there is a need to build the capacity of officials of government and other sectors, including by increasing their knowledge of Indigenous peoples and awareness of the human rights based approach to development, so that they are able to effectively engage with Indigenous communities.<sup>93</sup>

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92 Permanent Forum on Indigenous Issues, *Report of the workshop on Data Collection and Disaggregation for Indigenous Peoples*, UN Doc: E/C.19/2004/2, United Nations, New York 2004. In relation to this, note the discussion in the previous section about the removal from the ATSIC Act of the requirement for consultation by a number of agencies and deletion of provisions relating to the relationship between ATSIC and the Australian Bureau of Statistics.

93 The Common Understanding of a Human Rights Based Approach to Development, as adopted by the United Nations agencies, was set out in Chapter 2 of the report. It also provides useful guidance as to a development approach to engaging with communities.



A key principle that re-emerges throughout the above points is that of *the effective participation of Indigenous peoples in decision making*. Obligations to ensure effective participation exist in nearly all the main human rights treaties. These obligations have been synthesised into the principle of free, prior and informed consent of indigenous peoples. The key elements of this principle are set out in Text Box 5 below.<sup>94</sup>

### Text Box 5: Key elements of free, prior and informed consent<sup>95</sup>

#### 1. What?

**Free** should imply no coercion, intimidation or manipulation;

**Prior** should imply consent has been sought sufficiently in advance of any authorisation or commencement of activities and respect time requirements of indigenous consultation/consensus processes;

**Informed** – should imply that information is provided that covers (at least) the following aspects:

- a. The nature, size, pace, reversibility and scope of any proposed project or activity;
- b. The reason/s or purpose of the project and/or activity;
- c. The duration of the above;
- d. The locality of areas that will be affected;
- e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
- f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others)
- g. Procedures that the project may entail.

#### Consent

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest holders. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women is essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent.

Consent to any agreement should be interpreted as Indigenous peoples have reasonably understood it.

#### 2. When?

Free, prior and informed consent (FPIC) should be sought sufficiently in advance of commencement or authorization of activities, taking into account Indigenous peoples' own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.

<sup>94</sup> See further footnote 17 above.

<sup>95</sup> Permanent Forum on Indigenous Issues (PFII), *Key elements of the principle of free, prior and informed consent*, PFII, New York, 2005.



### 3. Who?

Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. In FPIC processes, indigenous peoples, UN Agencies and governments should ensure a gender balance and take into account the views of children and youth as relevant.

### 4. How?

Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.

### 5. Procedures/Mechanisms

- Mechanisms and procedures should be established to verify FPIC as described above, including mechanisms of oversight and redress, such as the creation of national mechanisms.
- As a core principle of FPIC, all sides of a FPIC process must have equal opportunity to debate any proposed agreement/development/project. "Equal opportunity" should be understood to mean equal access to financial, human and material resources in order for communities to fully and meaningfully debate in indigenous language/s as appropriate, or through any other agreed means on any agreement or project that will have or may have an impact, whether positive or negative, on their development as distinct peoples or an impact on their rights to their territories and/or natural resources.
- FPIC could be strengthened by establishing procedures to challenge and to independently review these processes.
- Determination that the elements of FPIC have not been respected may lead to the revocation of consent given.

#### ■ *Human rights standards relating to the content of SRAs*

In addition to these principles relating to the *process* of engagement, there are a number of principles that are relevant to the *content* of SRAs to ensure that are consistent with human rights standards and in particular those set out in the *International Covenant on Economic Social and Cultural Rights* (ICESCR).

Those principles can be summarised as:

- 1. Non-discrimination and equality before the law:** Human rights instruments such as ICESCR obligate governments to guarantee the enjoyment of the rights protected by those instruments *without discrimination*. The *Racial Discrimination Act 1975* (Cth) (RDA) also embodies this principle. This principle applies to the process for negotiating SRAs, as well as the content and implementation of SRAs.<sup>96</sup>

<sup>96</sup> See Appendix 2 of the *Social Justice Report 2004* for an overview of the relevant factors to be considered to establish whether a particular SRA complies with the *Racial Discrimination Act 1975*.



2. As I noted in the *Social Justice Report 2004*, the relevant question to determine whether an SRA breaches this principle is not whether it involves an 'essential service' but whether it involves the impairment of a human right or fundamental freedom.<sup>97</sup> Examples of such rights and freedoms include, but are not limited to, the rights to housing, public health, medical care, social security and social services, education and training, and access to any place or service intended for use by the general public.
3. **Special measures and legitimate differentiation of treatment:** Where an SRA does involve a differentiation in treatment based on race, it will only be permissible if it can be classified as a 'special measure' or as a legitimate differentiation of treatment.<sup>98</sup> Special measures are actions taken to provide additional protection or benefits to an identified group within society in order to remedy an existing inequality in the enjoyment of rights by that identified group. The criteria for a special measure were set out in the *Social Justice Report 2004*.<sup>99</sup> If an SRA involves the imposition of requirements on a identified group that might otherwise be found to be discriminatory, it may be considered a special measure *only* if it meets all the criteria for a special measure.
4. **Progressive realisation:** Governments must take deliberate, concrete and targeted steps towards ensuring the full realisation of rights (Article 2(1) ICESCR) and must establish that they are progressively realising the enjoyment of rights. This requires that service delivery occur within an overall strategy that includes time-bound benchmarks and indicators to ensure that the enjoyment of rights improves over time. In terms of SRAs, the progressive realisation principle means that they should be linked to a comprehensive assessment of need and inequality in communities and form part of an overall approach to meeting that need.
5. ICESCR places an onus on governments to ensure the provision of economic, social and cultural rights. However, apart from the obligation to progressively realise them it is not prescriptive as to how they should go about doing this and does not, for example, rule out agreement making as an appropriate basis for this. Human rights standards require that:
  - the government takes whatever steps are necessary;
  - strategies should reflect extensive genuine consultation with, and participation by, all of those affected; and
  - the government can demonstrate that, in aggregate, the measures being taken are sufficient to realise the right for every individual in the shortest possible time in accordance with the maximum of available resources (particularly where the relevant group experience inequality in the enjoyment of rights).

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97 *ibid.*, p193.

98 This is in accordance with the provisions of ICESCR and the International Convention on the Elimination of All Forms of Racial Discrimination.

99 *ibid.*, Appendix 2.



6. For example, in order to address the right to adequate housing the United Nations Committee on Economic, Social and Cultural Rights<sup>100</sup> has stated that the approach adopted may consist of whatever mix of public and private sector measures considered appropriate and that governments may utilise 'enabling strategies' so long as these are combined with a full commitment to realise the right to adequate housing.<sup>101</sup> SRAs may constitute an appropriate enabling strategy to assist in the realisation of the right to housing.
7. Governments remain under an obligation to ensure equal enjoyment of rights and to take steps to ensure such equal enjoyment at all times. Accordingly, programs or services cannot be withdrawn or not offered in the future to a community if an SRA does not achieve its goals.
8. **Core minimum obligations:** There is a requirement to ensure the satisfaction of minimum essential levels of economic, social and cultural rights at all times. This is not subject to negotiation.
9. The Committee on Economic, Social and Cultural Rights has identified the following as included within core minimum obligations that would not be appropriate for inclusion within SRAs:
  - access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
  - physical access to water facilities or services that provide sufficient, safe and regular water;
  - measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation;<sup>102</sup>
  - the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;<sup>103</sup>
  - basic shelter, housing and sanitation;<sup>104</sup> and
  - essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs.<sup>105</sup>
10. **Respecting, protecting and fulfilling rights:** Governments are obliged to fulfil all human rights. *Fulfilling* human rights is a positive obligation that places an onus on governments to ensure that human rights subject matters (such as water, food and housing) are provided to its

100 This committee is established under the ICESCR to monitor the compliance of governments with their obligations under the treaty.

101 United Nations (UN), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6, 2003, pp21-22, paras 13-14, (Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 4: The right to adequate housing).

102 *ibid.*, p96, para 43, (CESCR, General comment 14: the right to the highest attainable standard of health); *ibid.*, p113, para 37, (CESCR, General comment 15: the right to water).

103 *op.cit.*, p96, para 43, (CESCR, General comment 14: the right to health).

104 *ibid.*

105 *ibid.*



population and that they are equally accessible to different population groups.<sup>106</sup>

11. Accordingly, SRAs must respect human rights and protect the rights of Indigenous peoples from third party abuse. But they may also be used to fulfil Indigenous peoples' enjoyment of human rights. The United Nations Committee on Economic, Social and Cultural Rights has provided the following illustrations of measures to fulfil economic, social and cultural rights:
- In relation to *education*: taking positive measures to ensure that education is culturally appropriate for minorities and Indigenous peoples, and of good quality for all; designing and providing resources for curricula which reflect the contemporary needs of students; and actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers.<sup>107</sup>
  - In relation to *food*: proactively engaging in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security.<sup>108</sup>
  - In relation to *water*: to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.<sup>109</sup>
  - In relation to *health*: taking positive measures that enable and assist individuals and communities to enjoy the right to health, and undertake actions that create, maintain and restore the health of the population. This includes: disseminating appropriate information relating to healthy lifestyles and nutrition, harmful traditional practices and the availability of services; and supporting people in making informed choices about their health.<sup>110</sup>

### **ii) Shared Responsibility Agreements – Key features**

There has been much debate about the SRA process over the past year. This debate has generally been based on the very limited information about the process that is publicly available. In order to comment on the compliance of SRAs with human rights standards, I first identify the key features of the SRA approach. This includes noting developments over recent months which aim to evolve this process into a more sustained and holistic one.

#### ■ *Definitions of SRAs and their content*

The government has defined Shared Responsibility Agreements (SRAs) and identified the key elements of them as follows.

106 Governments also have obligations to respect and protect human rights. *Respect* for human rights places an onus on governments to restrain itself from acting in a manner that breaches human rights. *Protecting* human rights places an onus on governments to monitor and regulate the behaviour of non-government parties to ensure that they do not breach human rights.

107 *ibid.*, p81, para 50, (CESCR, General comment No. 13: the right to education).

108 *ibid.*, p66, para 15 (CESCR, General comment No. 12: the right to adequate food).

109 *ibid.*, p112, para 25 (CESCR, General comment 15: the right to water).

110 *ibid.*, pp95-96, paras 36-37 (CESCR, General comment 14: the right to health).





## Text Box 6: Extract: Secretaries' Group Bulletin 1/2005. What are Shared Responsibility Agreements<sup>111</sup>

### What is a SRA?

SRAs are agreements between the government and Indigenous communities or groups, to provide a discretionary benefit in return for community obligations. These discretionary benefits may take the form of extra services, capital or infrastructure *over and above* essential services or basic entitlements.

They can involve all or some of the people in a residential community. They can be developed in remote communities, regional areas or urban areas if Indigenous people locally decide they want to make changes in this way.

The government wants to do business this way because SRAs are driven by community priorities and provide a mechanism to deliver services with much more flexibility to tailor to community needs than has been used in the past.

SRAs are to contribute towards the long term vision and plans that Indigenous people have for their communities, their children and grandchildren. However, this does not mean they have to be complex documents that attempt to address all issues facing a particular community at the one time.

### What is in a SRA?

Initially, we are expecting simple SRAs, perhaps covering only a single issue. Over time, we want to see this building to a whole-of-community SRA that includes all discretionary spending. Either way SRAs need to have the following key elements:

- one or more priority issues identified locally by Indigenous people (e.g. increased school attendance, healthier kids, stronger governance, Indigenous people able to get into available jobs and including how CDEPs best support community needs);
- government agencies' commitments to support initiatives to address community priorities;
- a description of the discretionary benefit(s) that will flow to the community;
- an outline of the obligations the community commits to in return.

SRAs can also include other partners besides the government and Indigenous groups, such as state and territory governments, local governments, businesses or non-government organisations.<sup>112</sup>

#### ■ *The legal status/requirements of a SRA*

SRAs are made in 'the spirit of non-legal partnership and shared responsibility.'<sup>113</sup> The Minister for Immigration and Multicultural and Indigenous Affairs has indicated that SRAs are 'good faith agreements'<sup>114</sup> based on trust. The Secretary

111 Secretaries Group on Indigenous Affairs, *Bulletin 1 – March 2005*, Available online at: [www.apsc.gov.au/indigenousemployment/bulletin0105.htm](http://www.apsc.gov.au/indigenousemployment/bulletin0105.htm).

112 Office of Indigenous Policy Coordination, *Indigenous Coordination Centres – Questions and answers (Shared Responsibility Agreements)*, [www.Indigenous.gov.au/icc/qa.html](http://www.Indigenous.gov.au/icc/qa.html), (accessed 20 July 2005).

113 Wellington SRA.

114 Minister for Immigration and Multicultural and Indigenous Affairs, *Speaking Out*, ABC Online, 20 March 2005, [www.abc.net.au/message/radio/speaking/stories/s1324685.htm](http://www.abc.net.au/message/radio/speaking/stories/s1324685.htm).



of the Department of Prime Minister and Cabinet has noted that SRAs operate on the understanding that further SRAs might not be made with communities or groups who do not uphold their part of an agreement (and further benefits through SRA-making would not accrue).<sup>115</sup>

Consistent with this position, the Australian Government has indicated that an Indigenous group that intends to be a party to a SRA does not need to be an incorporated council or association. However, they must have 'the authority, given to them by their group or community, to make an agreement on their behalf.'<sup>116</sup> The delivery of SRA subject matters by the Government, however, requires 'arrangements [being] made with an incorporated organisation to contract with the Government to provide the services and administer and account for the funds identified in the SRA.'<sup>117</sup>

■ *Scope of the SRA process*

**Appendix 3** of this report provides an overview of the content and the obligations agreed by the Australian Government and Indigenous communities in SRAs up to 30 June 2005.

As at 21 June 2005, 76 SRAs had been signed in 64 communities.<sup>118</sup> SRAs have been made in COAG trial sites with:

- ATSIC Regional Councils – to be replaced as partners to the SRA by regional representative bodies as they emerge;<sup>119</sup>
- Community Working Parties (within each trial site these have been set up to address priority areas – e.g. education - within the trial site area); and
- Communities within the trial sites.

In communities outside of the COAG trial sites:

- The bulk of SRAs are being made directly with communities, with the SRA being signed off by representatives from each family group;<sup>120</sup>
- Some have been made with community organisations representing the community;<sup>121</sup>

115 Shergold, P, *Hansard*, Senate Select Committee on the Administration of Indigenous Affairs, Canberra, 8 February 2005, p15.

116 Office of Indigenous Policy Coordination, *Indigenous Coordination Centres – Questions and answers (Shared Responsibility Agreements)*, *op.cit.*

117 *ibid.*

118 Office of Indigenous Policy Coordination, *Fact sheet: What are Shared Responsibility Agreements?* Available online: [http://www.indigenous.gov.au/sra/kit/what\\_are.pdf](http://www.indigenous.gov.au/sra/kit/what_are.pdf). There were in excess of 100 agreements in place at the time of submitting this report to government.

119 In June 2005, it was suggested that the Murdi Paaki SRA upon which the COAG trial in that region was based was to be adapted to reflect the emergence of the Murdi Paaki Regional Assembly consisting of a representative from each of the 16 CWP as the peak body within the trial site, following the abolition of the ATSIC Regional Council. Media release, *Minister announces new Indigenous representation arrangements*, 29 June 2005 DIMIA website, <http://www.atsia.gov.au/media/media05/v0522.htm>.

120 For example, the Kulaluk/Minmarama Community SRA, OIPC, 24 March 2005.

121 For example, the Sarina community SRA, June 2005.



- One SRA has been made with an organisation representing traditional owner groups;<sup>122</sup> and
- SRAs have also been made with community service organisations representing sub-community groups such as men's services.<sup>123</sup>

In addition to the Indigenous community and the federal government, SRAs have been made with Indigenous communities which include mining companies,<sup>124</sup> other corporations,<sup>125</sup> local governments (shire and city councils),<sup>126</sup> and state and territory governments<sup>127</sup> as partners.

Most of the SRAs finalised up to 30 June 2005 are what the government has termed 'single-issue' SRAs which set out agreement to undertake a specific project or activity.

The Department of Family and Community Services note that over the past year, the approach to SRAs has changed from the initial model in the COAG trials:

SRAs were initially developed as part of the whole-of-government trials. They typically took the form of a general agreement between government and the relevant community about who would assume responsibility and to identify their role. Each project relevant to the overall implementation of the SRA was described in attached schedules. With the more widespread use of SRAs, and with the setting of numerical targets for a minimum number by 30 June 2005, the number of agreements has multiplied rapidly. As a general rule though, their focus has narrowed, with most now describing projects.<sup>128</sup>

A fact sheet on SRAs published by the OIPC specifies that these agreements are intended to 'contribute to bring about long-term changes which will achieve better outcomes for Indigenous communities.'<sup>129</sup> It notes that:

initially, the Australian Government has been entering into simple, single-issue agreements that are meaningful to communities and provide examples of what

122 Girringun Aboriginal Corporation SRA on behalf of 9 traditional owner groups: the Jirrbal, Gulgnay, Djiru, Warungnu, Girramay, Bandjin, Waragamay, Nywaigi and Gugu-Badhun peoples), 3 March 2005.

123 For example, the Wamba Nilgee Burru Ngardu, (Derby Men's Service) SRA, 17 March 2005 or the Jayida Burru Abuse and Family Violence Forum SRA, March 2005.

124 Gelganyem Trust SRA, July 2005.

125 For example, the Arnhemland Progress Association Inc is a partner to the SRA made with the Aboriginal Communities of Galinwin'ku, Gapuwiyak, Milingimbi, Ramingining and Minjaling. This is an Indigenous-owned organisation that manages community stores throughout Arnhem Land, (Gapuwiyak SRA, June 2005). Tropical Aquaculture Australia is a partner to the Kulaluk/Minmarama Community SRA, (24 March 2005).

126 For example: Palmerston City Council is a partner to the Palmerston Indigenous Village SRA, May 2005; Brewarrina Shire Council is a partner to the Ngemba Community Working Party SRA, (April 2005).

127 States and territories are formal partners to SRAs within the COAG trial sites. Formal partnership outside the COAG trial sites is predicated upon the completion of Indigenous Affairs Agreements in each jurisdiction. At the time of writing, only the Northern Territory agreement had been completed: *Overarching Agreement On Indigenous Affairs Between The Commonwealth Of Australia And The Northern Territory Of Australia 2005 – 2010*, 6 April 2005, available online at the Northern Territory Government Website: [http://www.nt.gov.au/dcm/Indigenous\\_policy/pdf/20050406/OverarchingAgreement.pdf](http://www.nt.gov.au/dcm/Indigenous_policy/pdf/20050406/OverarchingAgreement.pdf).

128 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit., p7.

129 Office of Indigenous Policy Coordination, *Fact Sheet – What are Shared Responsibility Agreements?*, Available online at: [www.indigenous.gov.au/sra/kit/what\\_are.pdf](http://www.indigenous.gov.au/sra/kit/what_are.pdf).



SRAs can achieve. Over time, SRAs will become more comprehensive, building towards a community's long-term vision for the future.<sup>130</sup>

The Secretaries' Group has identified how they expect the SRA approach to evolve over the next year to contribute to this longer term vision, through the development of a 'comprehensive approach to SRAs.'

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**Text Box 7: Extract: Secretaries' Group Bulletin 3/2005. What do we mean by a more comprehensive approach to SRAs?**<sup>131</sup>

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This describes the more intensive work that we will do with Indigenous communities that goes beyond addressing single issues. It will require strong partnerships between communities and government at all levels, with business and our provider networks.

While it is important not to underestimate the impact of single-issue SRAs - particularly in smaller and remote communities as the first step - progress will always be limited in any single area unless factors in related areas are addressed. For example, only limited success can be expected in the area of employment (even if real job opportunities exist), if education and health issues are not also addressed.

It can be done by building on the single-issue SRAs that are now in place in communities and working from there to identify long term goals and what needs to be done by all parties for goals to be met.

Alternatively it can begin at the other end of the spectrum, where communities have already identified long term goals and want to work back from there. These communities know where they need to get to, want to take responsibility for progress from the start and want help from us to do that.

This might mean they want to take a whole of community or even a cross community approach - here they might start with a comprehensive (multi issue) SRA if it's just for one community, or with an RPA if they want to work across several communities in a region.

RPAs tend to set out higher level community goals and the outcomes to be delivered. However, as they progress, they should include SRAs with clear shared responsibilities for local communities or groups which support the objectives of the RPA. This is what happened with the recently signed RPA with Ngaanyatjarra Council in WA, which included three community SRAs.

The key in going forward with more comprehensive work is to keep it simple, clear and focussed on the outcomes that the Indigenous communities, with our support, are seeking to achieve. Playing our critical role in a way that enables Indigenous people to take more responsibility locally becomes more important in this comprehensive approach.

The more intensive work might encompass some of the following elements:

- supporting the community to develop its long term strategic goals, building on planning that many Indigenous communities have already done, and identifying the practical steps about how to achieve these goals;
- a family/community development component (eg developing the skills to negotiate SRAs or developing family capability to manage money);

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130 *ibid.*

131 Secretaries Group on Indigenous Affairs, *Secretaries Group Bulletin (3/2005) - A comprehensive approach to Indigenous reforms*, October 2005, Available online at: [www.apsc.gov.au/indigenousemployment/bulletin0305.pdf](http://www.apsc.gov.au/indigenousemployment/bulletin0305.pdf).



- some mapping of the assets of a community – people, infrastructure, other physical assets – so that these can be drawn into the community's overall effort to support the community's development aspirations; and
- governments identifying how they will strategically package the funding that supports the community in achieving its goals (eg make sure funding responds to the community's priorities and is delivered in a practical way that suits the location, size and capacity of the community and doesn't add more red tape).

The Department of Family and Community Services have stated that they 'are collaborating with the Office of Indigenous Policy Coordination to evolve the approach to SRAs.'<sup>132</sup> They identify four phases of this evolution:

Phase One SRAs will involve the negotiation of communication and participation protocols between governments and Indigenous communities. Phase Two SRAs will involve communities in processes of self-assessment and a discourse on what sustainable development may mean for them. Phase Three SRAs will work with families to develop economic, human, social and environmental development plans. The proposed process will assist families to participate effectively in Phase 4 SRAs, which will correspond to what has generally been referred to as 'community development planning'. They will involve communities in developing collective responses to shared concerns. Like the Phase 3 SRAs, they will result in the production of integrated economic, human, social and environmental development plans.<sup>133</sup>

The Secretaries Group has stated that activities relating to SRAs in the coming financial year (i.e. 2005-06) will focus on three areas. Namely:

- delivering on the commitments in existing SRAs;
- working with more communities on small (one or two issue) SRAs; and
- expanding the scope of SRA work in locations where communities are ready and willing to build on what they have already achieved (through a more comprehensive approach to SRAs or RPAs).<sup>134</sup>

■ *Linking SRAs to the Community Development Employment Project (CDEP) Scheme*

The CDEP scheme enables local Aboriginal organisations to provide employment and training as an alternative to unemployment benefits. CDEP participants forgo their social security entitlements and receive wages from CDEP organisations at a similar level to benefits in return for part-time work. The Scheme is led by the communities and participants involved, and any activity that benefits the community can be a CDEP activity.

132 Department of Family and Community Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit., p7.

133 *ibid*, pp7-8.

134 Secretaries Group on Indigenous Affairs, *Secretaries Group Bulletin (3/2005) – A comprehensive approach to Indigenous reforms*, op.cit., p1.



The Australian Government has stated that:

If the CDEP is in a community with a Shared Responsibility Agreement (SRA) the CDEP's activities should link to the SRA. If there is no SRA relevant to the CDEP organisation's activities then another arrangement for measuring community satisfaction with the CDEP organisation's activities will be negotiated with DEWR and included in the funding agreement.<sup>135</sup>

This is borne out in many SRAs *where CDEP has been used as the way to deliver the commitments of Government* in relation to labour for capital works, maintenance and other programs.

The use of CDEP in SRAs coincides with an announcement by the government of its intention to phase out the remote area exemption (RAE) on the activity test for income support in remote communities.

Since the late 1980s, obligations have been required of income support recipients. In 1998, in accordance with the mutual obligation principle, the receipt of income support was made conditional on the meeting of an activity test. The shorter term unemployed are required to be actively looking for work. The Work for the Dole program requires income support recipients to 'actively seek work, constantly strive to improve their competitiveness in the labour market, and give something back to the community that supports them.'<sup>136</sup>

The RAE was put in place because opportunities for meeting the requirements of the activity test were limited in remote communities and to apply the test rigidly would be punitive. Community Participation Agreements (CPA), the forerunner to SRAs in ATSI, flagged the lifting of the exemption.

It is proposed that communities in which large numbers of people are receiving income support would consent to the lifting of the RAE by agreeing to meet the activity test. The community would be involved in designing and negotiating their obligations and activities in a manner similar to CDEP. It has been suggested that activities completed in accordance with the activity test could be administered by the CDEP organisation operating in the community. This would result in two streams of activity in a community – those undertaking 'activities' in order to receive income support, and those participating in CDEP for wages. The amount provided under income support is slightly less than the 'work for wages' CDEP amount, which is intended to create an incentive to work for wages.

The lifting of the RAE is being progressed with a number of trial communities. A further batch of communities has also been identified for the second phase of lifting of the exemption, ahead of a complete lifting of the exemption.

#### ■ *The SRA Implementation Assistance Program*

In the 2005-06 federal budget, the government announced the SRA Implementation Assistance Program to support the development and funding of SRAs over the next four years.

This Program allocates \$23.1 million over 2005-06, and a total of \$85.9 million over four years to 2008-09, to support community engagement with government about the development of SRAs and Regional Partnership Agreements. The funds are sourced from a number of programs previously managed by ATSI, including

135 DEWR, Building on Success, CDEP Future Directions, Commonwealth of Australia, Canberra.

136 Parliament of Australia Parliamentary Library, 'Current issues: Social Policy Group: Welfare review', Parliament of Australia, Canberra, 2000, p6.



Community Participation Agreements, Planning and Partnership Development, Indigenous Rights and International Issues programs.<sup>137</sup> The Torres Strait Islanders on the Mainland and Communities in Crisis programs have also been incorporated into this program, but are to be managed in a discrete fashion.

The Program provides funds for SRAs that 'do not fit neatly into individual government agencies' responsibilities' (the 'flexible funding pool').<sup>138</sup> Conversations between my Office and the OIPC have clarified that there is no quarantining of funding sources in relation to SRA-making (i.e. this funding is additional to that which can still be drawn from any Indigenous specific or mainstream program).

The Program is intended to provide resources to communities to build their capacity to engage effectively with government and to government in engaging with communities.<sup>139</sup>

A key aspect of the Program is the creation of four specialist panels to provide technical assistance in developing SRAs. The OIPC note that 'once the need for services covered by the Panels is identified at the community level, and agreed between the community and the ICC, the ICC arranges for a suitable Panel member to undertake the project.'<sup>140</sup> It is not intended that the panel members will be available to communities independently of the ICC. Details about the Program and the nature of the expert panels are set out in the text box below.

### Text Box 8: SRA Implementation Assistance Program – Specialist Panels<sup>141</sup>

Four expert panels have been established with the following roles.

#### 1. Financial/project/program management and governance

- Financial management/accounting/business service and advice for community organisations, community councils, etc (including advice on specific issues as well as working in a broader advisory role for specific periods of time).
- Financial management training and skills transfer (both one-off training tailored to specific organisation/community circumstances/needs and longer term skills transfer approaches).
- Financial systems implementation, advice or improvements.
- Business restructuring assistance, advice and planning.
- Grant administrators/controllers (to work on ICCs/OIPC behalf to take over management of the finances of an organisation/community for a time until it can be handed back to community control).
- Financial auditors (to provide expert audit advice and services to community organisations; this will not include forensic audit as it can be accessed through a different mechanism).

137 OIPC, 'Shared Responsibility Agreements Implementation Assistance Program (fact sheet); *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, email, 23 August 2005, p1.

138 OIPC, *Fact Sheet 1. Indigenous Budget Measure 1: Shared Responsibility Agreements community engagement – Implementation Assistance*, Australian Government Indigenous Budget 2005, June 2005, available at [www.atsia.gov.au/budget/budget05/IndigenousBudget2005.pdf](http://www.atsia.gov.au/budget/budget05/IndigenousBudget2005.pdf).

139 *ibid.*

140 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, email, 17 October 2005, p1.

141 Office of Indigenous Policy Coordination, 'Panels of experts, description of services (fact sheet); *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 23 August, 2005, p1.



- Corporate governance advice and training for effective financial and operational management.
- Community governance advice – for example advice/training about roles and responsibilities of community boards, councils, etc (incl. in financial matters).
- Project/program management and advice/training (including short term assistance in running projects/programs on the ground in crisis situations).
- Advice and training for community organisations regarding contract management, human resources management and workplace relations, organisational planning and change management processes.

## **2. Risk/crisis assessment and management**

- Major assessment of activities of Australian and at times State Government investments.
- Risk assessment at the community level to assist ICCs/OIPC in designing appropriate responses to crisis situations in communities.
- Risk analysis and development of risk management plans following the assessment.
- Crisis response and intervention advice, planning and coordination (this may include working with ICC managers, communities and other stakeholders – eg. State governments, to develop the appropriate strategy, as well as on the ground coordination role for a specified time).

## **3. Building community capacity to engage with governments and negotiate/ implement Shared Responsibility Agreements**

### *Assistance for ICCs*

- Support facilitation of government's engagement with communities (assistance for ICC Managers, including cultural appropriateness training, negotiating and partnering in a culturally appropriate way, and community development training for ICC Managers and staff).
- Support in negotiating and developing SRAs with ICC and other agency staff.

### *Assistance for communities*

- SRA engagement/negotiation stage: assistance/facilitation for communities in priority setting, developing responses based on shared responsibility and negotiating with governments.
- SRA implementation stage: support for communities to implement, manage and monitor agreed shared responsibility activities.
- Facilitating/coordinating communities' access to specialised expertise in community development, including scoping project proposals.
- Mediation and other appropriate support for community members to enable inclusive engagement in the SRA process.

### *Support for community leaders – short to medium term (not a structured leadership program)*

- Coaching for community leaders to support SRA development and implementation work.
- Leadership development, mentoring and training for community leaders (including short term intense support for leaders on the ground in crisis situations).

### *Regional level support*

- Support to facilitate engagement between communities and engagement between government and communities in consultations, development and the implementation of regional representative networks; also support leading to the development of Regional Partnership Agreements.





#### 4. Coaching for communities and government agencies in whole of government collaboration

- Support for the OIPC and the ICC Managers to create leadership teams and resolve barriers to more effective whole of government working in the new arrangements for Indigenous affairs.
- Training (including train-the-trainer) on the new arrangements for Indigenous affairs, including broader issues impacting on the new arrangements (such as welfare reform, strategic indicator framework, accountability frameworks).

The OIPC have stated that following tenders for the panels in early 2005:

73 firms/organisations were invited to join the panels, with 50 being successful for more than one panel. They represent a mix of private sector consultants, NGOs and Indigenous organisations (for example, Cape York Institute, Wunan Foundation). Projects undertaken by the panels are in the main funded from the SRA Implementation Assistance Program. Projects can also be jointly funded, with other Australian or State government agencies contributing their program funds.<sup>142</sup>

Some project work by Panel members has commenced in recent months. The OIPC have provided the following examples of activities conducted by panel members:

- assisting a community to establish a company and financial management systems around a farming venture (NT);
- the facilitation of community meetings to identify proposed regional representation models (Qld) and
- conducting a financial and an operational review of an Indigenous incorporated organisation, including the assessment of financial and management systems and controls, administrative procedures and the operation of essential services in the community (WA).<sup>143</sup>

#### ■ Key Performance Indicators for SRAs

The OIPC have prepared draft guidelines for the negotiation of key performance indicators in Shared Responsibility Agreements to ensure that commitments made in agreements are measurable, and where possible, link to the National Overcoming Indigenous Disadvantage Framework (as prepared by the Steering Committee for Government Service Provision and reported against every second year).

The OIPC has indicated to my Office that the negotiation of Key Performance Indicators is guided by the following basic principles:

1. Performance indicators should relate clearly to the objectives of the SRA/RPA, and are best agreed upon at the time the objectives are negotiated. A good question on an objective is, 'If this is what you want to achieve, how will you know when it is achieved?' Testing the community objective against baseline data for an indicator is a useful verification of community priority objectives.

142 Office of Indigenous Policy Coordination, 'Shared Responsibility Agreements Implementation Assistance Program', *op.cit.*, p1.

143 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, email, 17 October 2005, p1.



2. A performance indicator is useless if it will not be reported against. You will need to identify, and get the agreement of, a data provider for every indicator included in an SRA/RPA.
3. A statistic... can be used as an indicator against more than one issue (and in relation to more than one) strategic area... for action.
4. You should only use a small number of critical indicators in an SRA – four or five at the maximum – and preferably outcome indicators rather than process indicators. Go for quality and relevance, not quantity.
5. When you negotiate a performance indicator, you should negotiate the frequency of data collection, beginning with baseline data. You should also agree who in the ICC/OIPC will receive the data.
6. Rather than using performance indicators, in some cases it may be appropriate for some or all of the performance information in an SRA (particularly an enabling SRA) to be milestones that an event or action has been completed.
7. ICCs should not feel limited (in choice about what constitutes)... relevant indicators with a community.
8. (Most) indicators... have been... designed with small populations in mind. They are not designed to enable comparison between communities or aggregation across communities. While rates are typically considered to be better indicators, (we recommend the use of) raw numbers... to get around the problem (of) determining the denominator population size for communities, especially as this can fluctuate.<sup>144</sup>

An example of how an indicator might be utilised in a SRA or RPA is provided in Table 2 below.

**Table 2: Potential key performance indicators for a Shared Responsibility Agreement<sup>145</sup>**

Strategic Area for Action	Possible Indicator	Comments
Parenting and Early Childhood (0-3 years)	<ul style="list-style-type: none"> <li>• Proportion of (Indigenous births with a birth weight above 2,500 grams</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Purpose:</i> An indicator of good nutrition, lifestyle, and pre-natal care for mothers</li> <li>• <i>Source:</i> Need to get agreement from local hospital and/or Aboriginal Medical Services to provide the data</li> </ul>
	<ul style="list-style-type: none"> <li>• Number of (Indigenous) children fully immunised</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Purpose:</i> An indicator of the risk of preventable illness among children</li> <li>• <i>Source:</i> Need to get agreement from local hospital and/or Aboriginal medical Service to provide data</li> <li>• <i>Caveat:</i> Would not be appropriate for very small community as individuals may be identifiable</li> </ul>

144 Office of Indigenous Policy Coordination, *A guide to possible small area performance indicators for SRAs and RPAs – draft*, Correspondence received 26 September.

145 *ibid.*



### iii) Compliance of SRAs with human rights

My Office has been provided access to a number of Shared Responsibility Agreements. I have also visited some communities involved in SRA-making and talked to community members about their experience in making the SRAs.

This has confirmed to me that great care must be taken in passing judgment on individual agreements based solely on press reports or even the text of the agreements themselves. SRAs have been developed with an eye to the history of service delivery in the relevant community and with the participation of community members. What may at first appear to be a problematic condition may in fact represent a solution to an intransigent, pre-existing problem faced by the community.

For example, consider that a SRA is made for the provision of a garbage truck to a community. The community has previously had a garbage truck and other infrastructure provided through the CDEP scheme. That truck was taken on kangaroo hunts and used as a private vehicle by members of the community. In a short time it was in a state of disrepair. The SRA requires the community to keep the new truck locked up and not to use it for any other purpose than garbage collection.<sup>146</sup> While such a condition may not be insisted on in other communities, it is difficult to argue that such a condition is inappropriate or places any greater onus/requirement on the Indigenous community.

Concepts such as 'no school, no pool' must also be closely examined.<sup>147</sup> This short hand description of the shared responsibility principles attached to funding for swimming pools in remote communities appears punitive in nature. However, in at least one SRA that my Office has considered the 'no pool' element does not involve the prohibition on school truants from using the swimming pool (and thus denying them the potential health benefits of exposure to chlorinated water in relation to ear, eye and skin infections, or general health and fitness benefits). Instead, it is based on not providing a subsidy for pool entry fees and other support to those children who do not attend school.

In other words, the child may still swim but the family will have to pay. The child will not get the benefit of the subsidy provided through the agreement. While this may be a subtle difference, it changes the nature of the program from one that places *restrictions* on communities to one that confers *benefits* on sectors of the community who comply with the commitments contained in the agreement.

The checklist of principles for the content of SRAs contained above indicates that addressing the issue of whether an SRA complies with human rights standards is not a straightforward task. It is a task that must be approached with sufficient information about the state of service delivery in the community and the exact details of the obligations and approach that the government is considering.

The government has indicated that its rule of thumb is that SRAs are to concern the provision of 'discretionary benefits in the form of extra services, capital or infrastructure *over and above essential services or basic entitlements*'. I have provided my support to this position, so long as there exists no discrimination in the requirements insisted upon in any agreement.

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146 This example is a hypothetical, but reflects situations that I have experienced visiting some communities.

147 There are variations on this concept among different SRAs – such as 'no school, no play' in relation to basketball facilities and 'no school, no scout' in relation to participation in scout groups.



The checklist of principles suggests that an SRA may still breach human rights if it provides a benefit that is over and above essential services, if it is provided in a manner that is discriminatory or that makes addressing existing inequalities contingent upon the completion of mutual obligation principles.

The checklist also suggests that it may be appropriate for governments to agree to some subject matter that are *related* to the delivery of basic entitlements or essential services, such as housing, water supply, education or health. But this is only where the nature of the agreement is to promote the fulfilment of the relevant right and does not make the delivery of the actual service or entitlement contingent on meeting obligations.

As an example, the SRA in Coonana relates to improving the water supply by providing trap yards to cull feral animals as well as to control the movement of animals around dams from which the water supply is sourced. As part of the agreement, the community agrees to maintain the dams. Such an obligation can be seen as contributing to the protection of water sources and related to improving the quality of the water supply. As such, it is consistent with the right to water and is not an inappropriate condition to include in a SRA.

**Appendix 3** to this report identifies the commitments that have been agreed by both government and communities in SRAs finalised in the 2004-05 financial year. A number of the commitments made are related to the provision of basic entitlements. However, I consider that they are most likely consistent with the obligation on the government to fulfil the enjoyment of rights to education, health, nutrition and housing. Some agreements provide commitments relating to:

- positive measures to ensure that education is culturally appropriate for local Indigenous communities and to incorporate Indigenous perspectives into educational curricula (see for example, the Mungkarta, Narrandera, Tumut, Enngonia, Coober Pedy and Bourke SRAs);
- processes to facilitate broader engagement of the Indigenous community in education (see for example, the Barrow Creek, Tara, Kalumburu, Ninga Mia, Yalata, Anangu and Aroona SRAs);
- initiatives that promote healthy lifestyles and better nutrition (see for example, the Bonya, Minjilang, Alpururlum, Wilora, Kalumburu, Punju Njamal, Mungullah and Brewarrina SRAs);
- initiatives to provide recreational facilities and promote healthy/fitness activities for children, consistent with the fulfilment of the right to health (for example, the Kundat Djaru, Balgo, Kupartiya, Billiluna, Palmerston, Wangkatjungka, Ninga Mia, Bidyadanga and Woorabinda SRAs);
- support for the role of elders and women in communities (for example, Tennant Creek, Aroona, Doomadgee, Brewarrina and K'Gari (Fraser Island) SRAs); and
- processes to manage and maintain housing stock (Wreck Bay and Murdi Paaki SRAs).

Over the next twelve months, my Office will particularly focus on agreements that involve commitments about subject matter that relate to the delivery of basic entitlements or essential services. This is in order to ensure that the obligations



made in such agreements amount to positive measures to fulfil human rights and do not place restrictions on the accessibility of basic entitlements.

My Office will also focus on whether the government has fulfilled its commitments in SRAs. Delivering on a commitment involves more than simply making funding available for a project. I consider that the government is under an obligation to ensure that the proposed benefit in an SRA is realised in the community, including through supporting the community with technical support and capacity building initiatives. A failure to provide such support could render individual SRAs unsustainable.

At this stage, my concerns about SRAs are focused on:

- the systemic approach adopted to SRA making by the government and the way that this accounts for human rights standards as a whole; and
- specific issues that have been raised during consultations with community members that have been engaged in the SRA process.<sup>148</sup>

The SRA process is clearly an evolving one. Most of the developments in relation to the SRA process set out above (such as the issue of bulletins by the Secretaries Group explaining the process, the development of guidelines to assist in agreeing on Key Performance Indicators in SRAs or the operation of the expert panels) are recent or not yet fully in place. Most documents and processes intended to clarify the purpose and content of the SRA process have been produced since March 2005.

At this stage, the SRA process appears to lack some of the key elements necessary to ensure the appropriate engagement of Indigenous communities. In particular:

- There are not transparent frameworks for government accountability, with an absence in many agreements of sufficient benchmarks or targets. Recent guidance on developing relevant and appropriate key performance indicators goes some way to addressing this concern and achieving better consistency among SRAs in the future.
- A number of SRAs (particularly those which were made earlier in the year) confuse the terms benchmarks, performance indicators, targets and monitoring processes. For example:
  - one SRA states ‘Community need and participation opportunities to be reflected in longer term business plan’, in response to the question ‘*How will the strategy be monitored?*’;
  - one SRA outlines an existing situation in relation to rental collections without identifying how it will measure improvement in the collection of rent in its response to benchmarking; and
  - a further SRA states that one of its benchmarks will be a reduction in social and health problem without providing specific targets.

These examples highlight the need for specific information to be provided to government representatives and communities alike on what are performance indicators, benchmarks, targets and monitoring

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<sup>148</sup> The relevant communities who have provided this information has not been included and descriptions have been de-identified.



processes. Each one has a specific role in effective performance monitoring and evaluation.

- There is also limited information available publicly about the content of SRAs. The agreements are not made available publicly by the government, although summaries of most of the agreements finalised in 2004-05 have been placed on a government website.<sup>149</sup> I note, however, that my Office is able to obtain copies of SRAs in accordance with section 46K of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth)<sup>150</sup> for use in the performance of my statutory functions.
- Monitoring and evaluation mechanisms for SRAs are also limited within agreements and are even less satisfactory at a system wide level (with no independent monitoring in place). OIPC have advised that informal audits of select agreements will be undertaken in the first half of 2006 to establish some of the features of SRAs that work in order to guide future work. These 'mini-evaluations', expected to be no longer than 1 to 2 pages for each SRA involved in the process, are intended to be purely qualitative in focus and it appears they will be based on anecdotal evidence. There will also be no external or independent evaluation of the SRA process as a whole by either the Office of Evaluation and Audit or the Australian National Audit Office in the foreseeable future.
- With the initial focus on single issue SRAs, it is also difficult to see that a capacity building approach tied to long term change is being prioritised in the SRA approach – although the government has clearly indicated that this is an intention of the process and will be built upon through the negotiation of more comprehensive SRAs.

I anticipate that there will continue to be uneven levels of information and understanding of the new arrangements as a whole, and SRAs in particular, until such time as replacement Indigenous representative structures are in place to support and facilitate engagement with Indigenous communities. The Ngaanyatjarra Regional Partnership Agreement illustrates the value of regional representative bodies in bringing a coordinated and more holistic approach to the SRA process.

My Office will continue to monitor these issues over the next twelve months, particularly to establish whether these concerns have been appropriately addressed when systems to support the SRA process are more established or functioning.

149 See: [www.indigenous.gov.au/sra.html#kitcontents](http://www.indigenous.gov.au/sra.html#kitcontents).

150 This section provides that '(1) If the Commissioner has reason to believe that a government agency has information or a document relevant to the performance by the Commissioner of functions under this Part, the Commissioner may give a written notice to the agency requiring the agency: (a) to give the information to the Commissioner in writing signed by or on behalf of the agency; or (b) to produce the document to the Commissioner. (2) The notice must state: (a) the place at which the information or document is to be given or produced to the Commissioner; and (b) the time at which, or period within which, the information or document is to be given or produced...' (5) In this section: *government agency* means: (a) an authority of the Commonwealth, or of a State or Territory; or (b) a person who performs the functions of, or performs functions within, an authority of the Commonwealth, or of a State or Territory.'



While accepting that we are in the early days of SRA making, there are a number of practical issues that have arisen to date in relation to the negotiation of SRAs with communities.

In the *Social Justice Report 2004*, I noted that a practical issue that had arisen in community consultations up to November 2004 was the lack of information that ICC staff and Indigenous peoples and communities had about the new arrangements in general. This view has continued to be expressed to me in consultations and at community events during this year.

As recently as October 2005, a number of communities that have been engaged in the process of negotiating and finalising SRAs had indicated to me that they are still not clear about the purpose of the SRA process.<sup>151</sup>

One community has advised me that they have received brochures from the government setting out the approach of the new arrangements, but that there has been limited consultation with the community to explain this material. As a consequence, the assessment by the community organisation that was a signatory to the SRA was that community members didn't really understand what the process was about. This was not a concern of just one community. Similar comments were made to me by communities across three states. I believe it to be a common issue.

A number of staff in ICCs, including senior officers, have made similar comments. They have stated that communication about the government's approach is 'patchy' outside of Canberra and has not resulted in a consistent understanding within ICCs as yet. I note that the Secretaries Group have commenced issuing bulletins to public servants from March 2005 which set out their expectations of the new processes. These bulletins include the two reproduced in Text Box 6 and 7 above relating to the SRA process. Training for ICC staff was also due to commence from September 2005.

An illustration of the general lack of understanding about SRAs was that at least two documents that were identified by the government, as well as referred to by the community, as SRAs did not contain all of the essential elements of an SRA as set out by the Secretaries Group in their Bulletin (as set out in Text Box 5 above).

One agreement in the Kimberley region was with a service organisation that delivered services to the entire community, not just Indigenous community members, and could not be described as an agreement with an Indigenous community. The service organisation also advised that they had negligible contact with the Indigenous communities they serviced in the development of the SRA. Another agreement in Queensland did not involve any engagement with the community directly and had more of a representative focus (and might more appropriately have been described as a Regional Partnership Agreement).

Consultations with communities who had signed SRAs suggested that the limited information provided by government was not easy to understand. A number of communities, for example, noted that the newspaper style overview of the SRA process distributed by the OIPC was in a font size that was too small for many people in the community to read.

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151 I note that a number of non-government organisations have also stated to my Office that they have received numerous inquiries from Indigenous people and organisations seeking advice to understand the new processes and SRAs in particular.



I note that the OIPC advised my Office in November 2004 'that communications experts have recently been engaged to work with OIPC to ensure the consistency and reach of messages about the new arrangements and SRAs in particular.'<sup>152</sup>

In September 2005, they advised me that 'OIPC has been progressively implementing an information and communications strategy to inform Indigenous organisations and communities about the new arrangements.'<sup>153</sup> This strategy consists of:

- letters from the Minister to Indigenous organisations announcing the new arrangements, on their introduction and to introduce the National Indigenous Council;
- the distribution of 'large numbers' of booklets and brochures on the new arrangements and SRAs, particularly to leaders and staff of Indigenous organisations;
- comprehensive information provided through websites;
- briefings to ATSIC Regional Councils (up to 30 June 2005);
- ICC managers and staff holding discussions with communities;
- a fact sheet for all organisations applying for funding in 2005-06; and
- items on the new arrangements being contained in Indigenous print and electronic media.<sup>154</sup>

OIPC note that they are also currently:

- trialling a recently-devised computer animation presentation tool which enables communities to take part in developing their own stories and messages in ways that can be readily understood, including in their languages;
- finalising a whole of government cross-cultural communications strategy to guide future communications with Indigenous people and communities; and
- working on appropriate materials, include radio presentations, for people who have difficulty reading or understanding English.<sup>155</sup>

Only some of this information appears directed at communities, or to be specific, to the SRA process. It is also ad hoc in its approach, with the key elements of the information campaign still not in place.

There appears to be a continued absence of a comprehensive information campaign to engage fully with communities to understand the new processes. This issue continues to concern me, nearly eighteen months into the new arrangements. It raises concerns about the basis on which communities are entering into negotiations on SRAs and particularly, whether communities are able to proceed on an informed basis.

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152 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Questions relating to the Social Justice Report 2004*, 22 December 2004, p5.

153 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

154 *ibid*, p2.

155 *ibid*.





Consultations with communities who have finalised a SRA also identified two trends. First, that generally the activities addressed through the SRA reflect the desires of the relevant communities. A number of communities were enthusiastic about the way that the government had directly engaged with the community and about the activity that was funded.

Second, communities noted that when ICCs hold discussions with communities to identify the issues that they face, the community are 'processed' by the ICC into a SRA. A number of communities and organisations claimed that the idea to establish a SRA came from the government. This is not problematic of itself. It does, however, have three potential implications.

- First, it involves channelling communities into processes involving mutual obligation. At least in relation to some SRAs, it may be erroneous to suggest that the agreement is 'community led' in designing community obligations to be undertaken in return for an activity or service. This will particularly be the case if the community believes that it will not be able to undertake the activities that they desire unless they agree to mutual obligation conditions. This may ultimately affect whether the agreement is made with the free, prior and informed consent of the community or whether it is in fact coercive or made under duress. My Office will consider this as a possible scenario when undertaking consultations with communities over the coming year about SRAs.
- Second, a number of agreements involve the government making CDEP places available to complete the activity agreed upon in the SRA. While it can be argued that CDEP involvement ought to be the contribution of the community to the agreement, it is not clear whether the government has allocated additional CDEP places for the community or has redirected the existing places to meet their obligations in the SRA. Any redirection of CDEP places needs to be carefully considered to ensure that basic services provided by the CDEP do not suffer from such a redirection of labour.

A further concern I have with this is that the obligations for CDEP participants must be understood by the community to be separate from the obligations to be undertaken by the community as part of the SRA. If the two sets of obligations are conflated, then Indigenous communities may be left under the impression that they are required to comply with the obligations set out in the relevant SRAs in return for income support through the CDEP. The OIPC have stated explicitly that SRAs will not put additional conditions on Indigenous peoples' access to benefits or services available to all Australians and have used the example of social security benefits to illustrate this.<sup>156</sup> Steps may be necessary to ensure that this is fully understood and there is no misunderstanding of the role of the CDEP scheme in the performance of the SRA.

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156 Indigenous Coordination Centres – questions and answers (Shared Responsibility Agreements). Website of the OIPC. *op.cit.*



- Third, some communities have noted that the emphasis has been on the process of getting a SRA signed and that there has not been genuine engagement to support the process or make it sustainable. In relation to one SRA in Queensland, the relevant community organisation has stated that they were initially excited about the prospect of the SRA and the direct engagement offered by the government. They are now feeling so disillusioned with the SRA that they have considered walking away from the agreement for the following reasons:
  - they are concerned that neither government has sent senior staff to the Negotiating Table or Project Steering Committee set up under the SRA with the consequence that proposals discussed in the process are not feeding back to the governments and not resulting in any action;
  - they were not provided with any information on how to secure funding or to present project ideas in a way that will garner government support and have found it difficult to secure funding for projects through the SRA; and
  - as a consequence, have stated that they may have to start shopping around different State and Commonwealth departments themselves to patch together enough funding for the organisation to remain solvent.

A factor that appears to be affecting this type of outcome is the insistence on ICCs meeting targets for the number of SRAs in the 2004-05 year. As noted earlier, a target has also been set for the 2005-06 financial year.

I expressed the concern in last year's report that ICCs should not be beholden to numerical targets and instead need to be focused on the broader purpose of their role. One ICC manager has told me that he advises his staff when they go into a community not to go in with the intention of making an SRA but rather to 'broker a solution'. They must listen to the community, identify the issues raised and if these could be resolved through a SRA, then a SRA is appropriate. But if the issues would be better resolved through other means such as existing government programs, ICC staff should use these other means.

Other statutory agencies which run discrete programs have informed my Office that they have also faced some pressure from ICCs and OIPC State Offices to translate projects that they are negotiating into SRAs.

#### ***iv) Conclusions and recommendations***

The SRA process raises complex issues of human rights compliance. These relate to ensuring the effective participation of Indigenous peoples in the agreement making process (including on the basis of their free, prior and informed consent) as well as ensuring that the content of SRAs is consistent with human rights standards. There is limited understanding of both sets of issues among government and among communities.

During the coming year I will visit communities that have been engaged in the SRA process in order to establish how and whether the SRA process complies with the human rights standards set out above. I will also work with the government as well as non-government organisations to promote a clearer understanding by Indigenous peoples and communities of their rights in negotiating SRAs



(in terms of both the process for negotiating agreements and the content of agreements).

Accordingly, I make the following recommendation and follow up action relating to the SRA process.

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### **Recommendation 5**

That the Office of Indigenous Policy Coordination, in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, agree to *Guidelines to ensure that Shared Responsibility Agreements comply with human rights standards* relating to the process of negotiating SRAs and the content of such agreements.

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### **Follow up action by Social Justice Commissioner**

2. The Social Justice Commissioner will work in partnership with non-government organisations and Indigenous community organisations to promote understanding of the rights of Indigenous peoples in the making of Shared Responsibility Agreements. This will include:

- disseminating information about relevant human rights standards for engaging with Indigenous communities and to guide the content of SRAs; and
- consulting with Indigenous people, organisations and communities about their experiences in negotiating SRAs.

3. The Social Justice Commissioner will monitor the Shared Responsibility Agreements process. This will include:

- considering the process for negotiation and implementation of SRAs;
- considering whether the obligations contained in agreements are consistent with human rights standards or place restrictions on the accessibility of basic entitlements or essential services; and
- establishing whether the government has fulfilled its commitments in SRAs, including through providing appropriate support to communities to ensure that the proposed benefit in an SRA is realised in the community.



## 5) Government engagement with Indigenous peoples

A key element that will determine the success of the new arrangements is the ability of governments to engage effectively with Indigenous peoples. There are a number of challenges to achieve this:

- ensuring that public servants have the appropriate skills to engage with communities;
- improving the coordination of activities and services at the federal level, as well as with the state, territory and local governments; and
- improving the accessibility of mainstream services, and the coordination of mainstream and Indigenous specific services.<sup>157</sup>

### ***i) An appropriately skilled public service***

In the *Social Justice Report 2004*, I raised a number of concerns about the processes of the new arrangements in supporting and recognising the skills of public servants necessary to engage effectively with Indigenous communities. I noted:

- A lack of commitment to using *identified criteria* by the central coordinating agency for the new arrangements (OIPC), meaning that skills relating to communicating with Indigenous peoples and understanding Indigenous cultures are not considered mandatory skills for some key positions in the new arrangements;
- A lack of *cultural awareness training* for staff entering the OIPC or regional service delivery roles through ICCs; and
- *A decline in the employment and retention of Indigenous people in the Australian Public Service*, particularly at the executive and senior executive levels, particularly since the introduction of the new arrangements.<sup>158</sup>

There have been a number of developments in relation to these issues over the past year. In particular, there has been an increased focus on these issues by the Australian Public Service Commission (APSC).

In April 2005, Ms Pat Turner was appointed as Aboriginal and Torres Strait Islander Employment Co-ordinator within the APSC. Her responsibilities focus on fostering Aboriginal and Torres Strait Islander employment in the Australian Public Service by developing and implementing strategies to attract, recruit, develop and retain Indigenous employees.

Another welcome development was the government's response in March 2005 to the Finance and Public Administration References Committee on Recruitment and Training in the Australian Public Service. In this, the Government indicated its support for the APS establishing strategies to increase Indigenous employment

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157 My previous report identified ten 'follow up actions' that my Office would take during the subsequent year. This section of the chapter considers follow up actions 2 (financial disadvantage resulting from the transition from ATSI to mainstream departments); 8 (recruitment and retention of Indigenous peoples in the Australian Public Service and ensuring that public servants have the necessary skills to engage with Indigenous communities); and 9 (whole of government coordination).

158 *Social Justice Report 2004, op.cit.*, p120.



in the APS.<sup>159</sup> As part of its response, the Government agreed to the APSC accessing funding of \$400,000 from its accumulated reserve funds to support the *Indigenous Employment Strategy*.

Further, in August 2005 the Prime Minister launched the *Australian Public Service Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees*<sup>160</sup> with \$6.4 million funding over three years. It supersedes the *Indigenous Employment Strategy*.<sup>161</sup> There are five elements to the strategy:

1. Supporting whole-of-government by building public sector capability to do Indigenous business;
2. Providing pathways to employment by removing barriers to the effective employment of Indigenous Australians;
3. Supporting employees by maximising their contribution to the workplace;
4. Supporting employers by helping them to align their Indigenous Employment Strategies with their workforce planning and capacity building; and
5. Developing and strengthening cross-agency partnerships to support working together to promote Indigenous employment.<sup>162</sup>

Specifically in relation to Indigenous peoples it aims to:

- stabilise numbers over the next two years, then increase Aboriginal and Torres Strait Islander employment in the mainstream Australian Public Service;
- contribute to increased social equity by improving Indigenous peoples income levels and employment opportunities in the wider Australian employment market;
- increase the extent to which government agencies are able to use the existing and potential skills and capacity of Aboriginal and Torres Strait Islander employees in order to meet their business needs for skilled employees, including in areas of specific skill shortage and recruitment difficulty; and
- build the capacity of the APS generally to provide more effective service delivery to Indigenous people.<sup>163</sup>

Some of the initiatives that the APS will be developing and implementing over the next three years include:

- Secondments for senior Indigenous managers to gain broader experiences and perspectives, including placements in the central agencies;
- Development of a national exchange programme for non-SES employees to provide short-term placement opportunities in other agencies;
- Entry-level traineeships to provide accessible pathways into public sector employment;

159 Government Response to the Senate Finance and Public Administration References Committee Report on Recruitment and Training in the Australian Public Service, *Hansard – Senate*, 10 March 2005, p91.

160 Prime Minister, *New Indigenous Employment Strategy for the Australian Public Service*, Media Release, 12 August 2005.

161 APSC, *Correspondence with the Social Justice Commissioner*, Email, 27 October 2005.

162 Briggs, L., (Public Service Commissioner), *Indigenous Employment in the APS*, Address to the Executive Leadership Group Victoria, Four Points Sheraton Hotel, Geelong, 25 August 2005. Available online at: [www.apsc.gov.au/media/briggs250805.htm](http://www.apsc.gov.au/media/briggs250805.htm).

163 APSC, *APS Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees*, undated, APSC Website, <http://www.apsc.gov.au/indigenousemployment/index.html>, accessed 18 August 2005.



- Job-ready training to equip potential employees with the skills needed for public sector jobs, and advice regarding the conversion of life experiences into evidence of workplace skills;
- Service-wide graduate recruitment to increasingly target Indigenous graduates as potential employees;
- School-to-work transition support, recognising the link between educational attainment and employment outcomes;
- Indigenous Development Programmes across the range of classification groups and in regional centres, and the incorporation of an Indigenous perspective into existing and new 'mainstream' programmes;
- Continued support of Indigenous Employee Networks and the establishment of a SES network;
- A significant research programme looking at areas such as capacity development, separation rates, and effective recruitment and retention strategies, and the development of a range of better practice guidance;
- The establishment of an Indigenous Recruitment Taskforce to target regional recruitment opportunities, and a central employment register of potential Indigenous employees; and
- The creation of an Indigenous Liaison Officer position in the Australian Public Service Commission to assist agencies to develop strategies, negotiate partnerships and linkages, and provide cross-cultural advice.<sup>164</sup>

The strategy lays a solid foundation for improving the ability of public servants to engage with Indigenous communities within a whole of government approach over the next 4 years. I welcome the commitment of the OIPC to be an active partner in the strategy at this early stage. My Office will continue to engage with the Public Service Commissioner and Ms Turner about the implementation of the new strategy to ensure that it addresses the concerns that I have identified.

While the *Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees* has the potential to address the concerns raised in last year's *Social Justice Report*, I remain concerned about the approach of some agencies in their recruitment and training activities.

All federal departments provided information to my Office in the preparation of this report which related to the placement and retention of staff in ICCs, the use of identified criteria to recruit staff working with Indigenous peoples; the conduct of cultural awareness training; and recruitment strategies for Indigenous staff.

The information supplied showed that there was great variation in the use of identified criteria<sup>165</sup> across public service agencies. For example:

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164 Briggs, L., (Public Service Commissioner), *Indigenous Employment in the APS*, *op.cit.*

165 Public service agencies are encouraged to utilise what are called 'identified criteria' in selection processes to require that applicants can demonstrate that they possess relevant skills. The common wording for these criteria that has been used to date in the public service is as follows: 1) Demonstrated knowledge and understanding of contemporary Aboriginal and Torres Strait Islander cultures and the diversity of circumstances of Aboriginal and Torres Strait Islander people; and 2) Demonstrated ability to communicate sensitively and effectively, including proper negotiation and consultation, with Aboriginal and Torres Strait Islander people on matters relevant to delivery of Government Aboriginal and Torres Strait Islander policies. These criteria are not mandatory, but have been identified as strategies that assist agencies to meet their obligations under the *Public Service Act 1999* (Cth) to promote workplace diversity. They have been used as a strategy to recruit Indigenous people into the public service, although recruitment is on the basis of merit and therefore not confined to Indigenous applicants. The Australian Public Service Commission's *State of the Service 2003/04* report notes that 19 federal departments or agencies utilise identified criteria, and a further 4 are developing strategies for their use: APSC, *State of the Service 2003-04*, APSC, Canberra, p155, Table 8.19.



- The Department of Employment and Workplace Relations (DEWR):
  - used an *Identified Position Guide* to recruit for identified positions with Delegates and Selection Advisory Committees 'expected to refer to the Guide' when determining the appropriate selection criteria for such positions;<sup>166</sup>
  - used identified criteria for positions based in ICCs or related to CDEP over the past year;
  - but used such criteria on an *ad hoc* basis for policy positions relating to Indigenous peoples.
- The Department of Education, Science and Training (DEST):
  - use Identified Criteria in positions which involve service delivery to Indigenous Australians; policy development that affects Indigenous Australians; and management positions where a large number of staff to be managed are Indigenous.
- The Department of Family and Community Services (FaCS):
  - used one of the two identified criteria to recruit staff in the Indigenous Housing and Infrastructure Program and the Indigenous Policy Section; and both criteria in the Indigenous Family and Child Well-Being Branch.
- Office of Indigenous Policy Coordination (OIPC):
  - has no policy on the use of Identified Criteria other than supporting individual managers formulating their own selection criteria 'which accurately reflect the attributes required of all applicants, rather than applying blanket criteria to all positions';<sup>167</sup>
  - used a variation of one of the two identified criteria in the recruitment of a majority of positions in ICCs, but with variation as to the ordering of the criterion: some positions listed it as criterion 1 within a list; others placed it as a preamble to the other criteria; others as an 'additional criteria'.

I note that as part of the *Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees*, the APSC has commenced a research program looking at areas such as capacity development, separation rates, and effective recruitment and retention strategies, and the development of a range of better practice guidance. The preliminary results of this research will be available in 2006.

My Office will continue to liaise with the APSC on issues relating to the selection requirements for positions that interact with Indigenous people and communities to ensure that there is appropriate recognition of the skills necessary to effectively engage with communities.

166 Department of Workplace Relations, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p2.

167 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p6.



## ii) *The role of Indigenous Coordination Centres in whole of government coordination*

A key feature of the new arrangements is the placement of staff from across mainstream departments within Indigenous Coordination Centres in regions across Australia.

There are two groups of staff to lead whole of government activity in ICCs – the ICC Manager for the region, who is an officer of the OIPC, and ‘Solution brokers.’ Solution brokers are staff from different government departments, usually located in ICCs or State Offices of departments, who are intended to progress the whole of government and whole of agency approach of the new arrangements. The OIPC have described their role as follows:

Solution brokers should have a detailed understanding of the *full* range of programmes and services in their agency, particularly those impacting on Indigenous Australians, and understand how to link these various programmes – or to suggest how they might need to be adapted so they respond to community circumstances and deliver better outcomes.

Ideally, solution brokers have the skills to understand how the programmes of their agency can be dovetailed with the programmes of other agencies to generate innovative, flexible solutions to issues identified by communities – i.e., they are the people who support ICC Managers in the whole-of-government approach of the ICC.

A key role for solution brokers is to work with ICC Managers to negotiate Shared Responsibility Agreements (SRAs) with Indigenous communities.<sup>168</sup>

The operation of ICCs to date has raised a number of challenges for effective whole of government service delivery.

Consultations for this report have indicated that there remain teething problems within ICCs and coordinating service delivery. This occurs particularly in relation to the interaction of staff from different government agencies that are responsive back to their line managers in state offices or national offices of departments in Canberra as well as to ICC Managers in their region.

ICC staff and communities have expressed frustration to me about delays and inefficiencies caused by staff in regional ICCs having to report to line managers who are not familiar with the local issues being dealt with in the ICC and with little experience of working with Indigenous communities.

A number of ICC managers have also stated that some Commonwealth departments are resisting the ‘whole-of-government’ approach and continuing to act autonomously. ICCs can find it hard to marshal some departments into acting cooperatively.

On the other hand, I have been told that ICCs are also being expected by some mainstream departments to deal with all Indigenous issues in the way that ATSIC used to, even where the responsibility for certain programs or services now lies with the particular mainstream agency.

I have also noted a tendency for the understanding of processes, such as the SRA process, to differ between departments. Some departments have an understanding that the unrolling of new programs will be done in a gradual or

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<sup>168</sup> Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner* (Email), 15 June 2005.





staggered manner, whereas other departments and their staff in ICCs seek to deal with such issues much more quickly.

As noted earlier in the report, there also remains some confusion as to the role of ICCs and the SRA process among staff, with unclear communication processes from Canberra.

There is also an uneven presence of departments within ICCs. This is particularly in relation to solution brokers. For example:

- The Department of Employment and Workplace Relations has placed staff, including solution brokers in all ICCs.
- The Department of Education, Science and Training (DEST) currently has a presence in 16 ICCs (although it is anticipated that their staffing in ICCs will double when they complete the co-location of staff from some offices). DEST are not, however, placing staff in urban ICCs, instead preferring to maintain staff in State Offices.
- The Department of Family and Community Services had 98 staff in ICCs at 30 June 2005 and the Department of Communications, Information Technology and the Arts a total of 71 staff.
- The Attorney-General's Department have just 17 staff in 13 ICCs; the Department of Health and Ageing 5 staff in 3 ICCs; the Department of the Environment and Heritage 5 staff in ICCs; and the Department of Transport and Regional Services no staff in ICCs.<sup>169</sup>

Concern has been expressed that some of these Departments may be considering 're-centralising' their positions in their National Offices in Canberra. On the basis of the information supplied to my Office, I am not aware of any such attempts to date. However, I will continue to monitor this over the coming years. Any attempts to re-centralise will render it more difficult for agencies to work in a whole of government level at a regional level.

In their most recent bulletin to public servants, the Secretaries Group on Indigenous Affairs note that there is 'a need for some clarity about the ICC model'.<sup>170</sup> They note their:

expectation that Indigenous Coordination Centres (ICCs) will operate as whole-of-government offices focused on improving service delivery to Indigenous Australians. Success of the ICC model depends on both the efforts of ICC staff, and staff in regional, state and national offices who support, supervise or interact with staff in ICCs.<sup>171</sup>

The Secretaries have identified five key aspects to the role of ICCs, with related expectations on ICC staff and departments. These are as follows:

- 1. All ICC agencies have a role in building partnerships with Indigenous communities and organisations**, based on shared responsibilities, committing to Indigenous participation, demonstrating willingness to engage with representatives and adopting flexible approaches:

169 Figures derived from correspondence from each department with the Social Justice Commissioner.

170 Secretaries Group on Indigenous Affairs, *Bulletin (4/2005) – The ICC model: Five point plan*, October 2005, p1. Available online at: [www.apsc.gov.au/indigenousemployment/bulletin0405.pdf](http://www.apsc.gov.au/indigenousemployment/bulletin0405.pdf). Accessed 25 October 2005.

171 *ibid.*



- in so doing, agencies will present a single, united face of the Australian Government to communities and State/Territory governments.

**2. The ICC Manager will exercise the leadership role in the ICC's whole-of-government work**, in particular in coordinating government investment in the region and with communities; negotiating with Indigenous representatives; and managing overall ICC stakeholder relationships. This means:

- ICC Managers are responsible for managing, on a day-to-day basis, the coordinated activities of staff from different agencies...
- SRAs will be signed by the ICC Manager on behalf of the Australian Government and will ensure appropriate authorisation by agency delegates of their contribution to Shared Responsibility Agreements (SRAs) and Regional Partnership Agreements (RPAs);
- with respect to annual funding rounds for ex-ATSIS/ATSIC programmes, the ICC Manager will coordinate and sign a single funding offer using the common Program Funding Agreement, while relevant agency delegates will approve and be responsible for their program funds; and
- ICC Manager accountabilities (to OIPC and for working with other agencies' staff) will be reflected in their performance agreements and linked to ICC Business Plans...

**3. For effective whole-of-government collaboration across ICC agencies**, all staff in ICCs and in regional, state and national offices will:

- actively support effective ICC operations, recognising that all staff are integral to achieving both whole of government and agency objectives
- the dual responsibilities of ICC staff will be reflected in staff performance agreements and in the ICC Business Plans;
- communicate and share information effectively, including timely and open feedback on service delivery and funding issues arising from discussions at community level and other matters;
- have an opportunity and obligation to provide input to decisions to tailor government action to identified community needs and aspirations;
- avoid unilateral actions which conflict with whole-of-government processes;
- apply relevant whole-of-portfolio expertise (eg solution brokers) to foster connected initiatives and cross-portfolio partnerships;
- involve the ICC Manager in the selection of agency ICC staff as appropriate, and alert the ICC Manager of significant changes proposed in staffing or service delivery arrangements affecting the ICC; and
- identify and seek early resolution of any issues that may impact on the effectiveness of the whole-of-government approach directly with the ICC Manager and the affected agency(ies).

**4. All ICC agencies have both the opportunity and responsibility to respond flexibly to community-identified priorities** for SRAs and RPAs. You should:

- aim to maximise the benefits to communities from connected initiatives that tap into Indigenous-specific and mainstream, new and existing programs/resources;
- take action to reduce red tape and develop flexible funding solutions;
- look for opportunities to build capability of Indigenous communities at local and regional levels;
- be supported by regular forums of State Managers from relevant agencies convened by OIPC, to provide integrated leadership in the whole-of-government work being undertaken at ICC level...



5. Each ICC Agency will **build the capability of its employees and the agency more generally to undertake its Indigenous business** in a whole-of-government way:

- ICC Managers will coordinate business planning at an ICC level which will draw from and feed into agencies' business plans;
- OIPC/APSC will arrange relevant whole-of-government training for ICC staff, in consultation with ICC Agencies;
- APSC will operate a prestigious development programme... to provide preparatory training and development (including about working in a whole-of-government way and with Indigenous people), with opportunities to work for a set period as an ICC Manager.<sup>172</sup>

Indigenous Coordination Centres and the 'solution broker' approach involve a significant shift in the approach of mainstream departments to service delivery for Indigenous communities. Their operation requires ongoing attention to ensure that staff are suitably skilled to undertake the diverse requirements expected of them and to consider best practice models for the integration of activities of different departments within an ICC.

### **iii) Coordinating federal government activity with the states and territories**

If the new arrangements are to succeed, then they will need to ensure improved coordination with state and territory government activities.

This is a central undertaking by all governments through the *National Framework of Principles for Government Service Delivery to Indigenous Australians*, as agreed at the Council of Australian Governments meeting in June 2004. These principles commit to:

- Cooperative approaches on policy and service delivery between agencies, at all levels of government and maintaining and strengthening government effort to address indigenous disadvantage.
- Addressing jurisdictional overlap and rationalising government interaction with Indigenous communities:
  - negotiating bi-lateral agreements that provide for one level of government having primary responsibility for particular service delivery, or where jurisdictions continue to have overlapping responsibilities, that services would be delivered in accordance with an agreed coherent approach.
- Maximising the effectiveness of action at the local and regional level through whole-of-government(s) responses.<sup>173</sup>

There are three main elements of the new arrangements that address such coordination – support for, and interaction with, regional representative Indigenous bodies; the COAG whole of government trials, and bilateral agreements between the Australian Government and each state and territory.

Section 3 of this chapter identified the collaboration between the OIPC and the states and territories in relation to developing models for regional representative Indigenous bodies. As such arrangements are finalised, the introduction of Regional Partnership Agreements will form one of the main sites for coordination

<sup>172</sup> *ibid.*

<sup>173</sup> Council of Australian Governments' Meeting, Canberra, 25 June 2004, Attachment B, [www.coag.gov.au/meetings/250604/attachments\\_b.rtf](http://www.coag.gov.au/meetings/250604/attachments_b.rtf).



of federal, state and territory activities. The next section of the chapter also reflects on progress in the COAG whole of government community trials, where coordinated approaches to whole of government service delivery across governments are being trialled. As discussed later, the outcomes of this process to date are uncertain and not entirely satisfactory.

In relation to the negotiation of bilateral agreements, the COAG communiqué of the June 2004 meeting notes that the *National Framework of Principles for Government Service Delivery to Indigenous Australians*:

will provide a common framework between governments that promotes maximum flexibility to ensure tailored responses and help to build stronger partnerships with Indigenous communities. They also provide a framework to guide bi-lateral discussions between the Commonwealth and each State and Territory Government on the Commonwealth's new arrangements for Indigenous affairs and on the best means of engaging with Indigenous people at the local and regional levels. Governments will consult with Aboriginal and Torres Strait Islander people in their efforts to achieve this.<sup>174</sup>

The Office of Indigenous Policy Coordination has commented on the progress of negotiation of bilateral agreements as follows:

Negotiations on these bilateral agreements on Indigenous affairs are under way in each state and territory. The negotiations have taken place in a spirit of cooperation and collaboration, with jurisdictions taking the opportunity to tackle areas where the lack of clarity about government responsibility has hampered capacity to deliver services to indigenous people.

An overarching agreement with the Northern Territory was signed by the Prime Minister and the Chief Minister in April (2005)... A number of other bilateral agreements are near completion or substantially developed. Many of these include specific undertakings for collaborative planning.<sup>175</sup>

The agreement with the **Northern Territory** Government commenced in April 2005. The agreement, known as the *Overarching Agreement on Indigenous Affairs*, is in place until 2010.

The agreement commits both governments to working together and in partnership with Indigenous people and communities in order to take action and address entrenched levels of disadvantage among Indigenous people in the Northern Territory. It sets out agreed positions on:

- priority areas for bilateral action, including streamlining of existing programs and minimising administrative costs of programs;
- principles underpinning bilateral agreements;
- future arrangements for Indigenous representation at the regional level and consultation with Indigenous people across the Northern Territory;
- core principles for Shared Responsibility Agreements; and
- the whole of government machinery required.<sup>176</sup>

174 Council of Australian Governments, Communiqué, 25 June 2004, Online at: [www.coag.gov.au/meetings/250604/index.htm#indigenous](http://www.coag.gov.au/meetings/250604/index.htm#indigenous), accessed 30 October 2004.

175 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit., p1.

176 *Overarching Agreement in Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005-2010*, op.cit., p3.



It agrees on the following priority areas:

- improving outcomes for young Indigenous Territorians, including through early childhood intervention – a key focus of which will be improved mental and physical health, and in particular primary health, and early educational outcomes;
- safer communities which includes issues of authority, law and order;
- strengthening governance and developing community capacity to ensure that communities are functional and effective;
- building Indigenous wealth, employment and entrepreneurial culture, as these are integral to boosting economic development and reducing poverty and dependence on passive welfare; and
- improving service delivery and infrastructure that recognises demographic change and the need to lift the performance of the Governments.<sup>177</sup>

Further detail on these priority areas are set out in the first Schedule to the agreement. Both governments have agreed that as details of further priority areas are finalised by the Governments those details will be added to the Agreement as additional Schedules. Three (3) such schedules were attached when the agreement was signed, which relate to:

- sustainable Indigenous housing – transferring Commonwealth funding and administration for Indigenous housing to the NT government;
- a focus on strengthening and sustaining the Indigenous arts sector; and
- commitments to work towards the establishment of Regional Authorities under the NT government's *Stronger regions, stronger communities* policy.<sup>178</sup>

The Agreement also establishes mechanisms for whole of government coordination which include:

- joint Ministerial oversight and reporting including meetings between relevant Northern Territory and Australian Government Ministers as appropriate;
- up to three meetings a year of senior officials (including representatives from the Department of the Prime Minister and Cabinet, Northern Territory Department of the Chief Minister and Office of Indigenous Policy Coordination) to review and jointly report on progress of this agreement and bilateral agreements through their respective departmental heads to the NT Chief Executives' Taskforce on Indigenous Affairs and the Secretaries' Group on Indigenous Affairs;

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<sup>177</sup> *ibid*, **Schedule 1**.

<sup>178</sup> *ibid*, Schedules 2.1, 2.2 and 2.3.



- establishing or strengthening joint coordination arrangements and include the potential for co-location of service delivery; and
- agreed accountability and outcomes measures.<sup>179</sup>

The Northern Territory government have commented on the bilateral agreement that it:

is founded on the principle that the two levels of government need to work in partnership with Indigenous communities and determine appropriate arrangements for consultation and participation in setting priority areas and developing solutions at the regional and local level. This is a cornerstone of reconciliation and signals a cooperative approach to achieving better outcomes for Indigenous Territorians.

The Agreement reflects the consistent calls from Indigenous leaders and numerous parliamentary reports for better coordination of Australian and Northern Territory Government programs to remove duplication and unnecessary costs and improve services to Indigenous people. There is also a commitment to ensure that funding under mainstream programs reaches Indigenous communities and is responsive to their needs.<sup>180</sup>

In relation to the other states and territories, negotiations are continuing on bilateral agreements. The **New South Wales** government have stated that they are:

currently negotiating a bilateral agreement with the Australian Government. This bilateral agreement seeks to ensure coordinated planning and service delivery, underpinned by the COAG principles for service delivery and *Two Ways Together*, the NSW Government's Aboriginal affairs plan. Once this bilateral is agreed, supporting structures to promote effective partnerships between governments and Aboriginal communities at a state, regional and local level will be developed.

The NSW Department of Aboriginal Affairs is currently establishing a network of regional offices. Four out of five of these offices are co-located with Indigenous Coordination Centres. It is expected that this will assist in coordinating regional and local planning and ensure greater accessibility for community members.<sup>181</sup>

In **Victoria**, the state government have indicated that they are currently negotiating a bilateral agreement with the Australian Government and that coordination of activity 'will also depend on reaching agreement on key priority areas and outcomes, including representative arrangements and capacity building'.<sup>182</sup> They have indicated that they do not intend to co-locate staff within ICCs.

The Victorian government has also developed the Victorian Indigenous Affairs Framework through consultation with Indigenous communities to provide a whole of government approach to service delivery. Key aspects of this approach replicate the new arrangements at the federal level. In April 2005, the government released *A Fairer Victoria* which sets out a social policy action plan to address disadvantage among Indigenous communities. It commits to the introduction of single funding agreements with Indigenous organisations and the establishment

179 *ibid*, p6-7.

180 Chief Minister (Northern Territory), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p1.

181 NSW Cabinet Office, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 18 October 2005, p5-6.

182 Premier of Victoria, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p3.



of a Secretaries group with a charter to oversee Indigenous issues across the Victorian government.<sup>183</sup>

In **Western Australia**, along with negotiations continuing on a bilateral agreement, the WA government has established Regional Managers Coordinating Forums to meet and develop integrated responses to enhance service provision to the Indigenous community.<sup>184</sup>

In **Queensland**, the state government advises that the bilateral agreement is near finalisation. They anticipate that it will formalise the involvement of the Australian Government in the existing Negotiation Tables and Regional Managers' Coordination Network approach that operates under the *Meeting Challenges, Making Choices* strategy and *Partnerships Queensland*.<sup>185</sup>

In **South Australia**, the state government has indicated that new working arrangements to be implemented under the bilateral agreement are still being developed. The government is working in partnership with the Australian Government at the local level through the establishment of 'Action Zones' in certain regions and through the Aboriginal Lands Task Force. This is in accordance with *Doing it right*, the framework for Aboriginal affairs in the state.<sup>186</sup>

In **Tasmania**, bilateral negotiations continue. The Tasmanian government has indicated that it 'is supportive of using the three priority Outcome Areas identified in the Overcoming Indigenous Disadvantage Framework and the COAG Principles... as central to any arrangements'<sup>187</sup> as well as ensuring that any reporting requirements are consistent with *Tasmania together* – the 20 year social, economic and environmental plan for the State.

In the **Australian Capital Territory**, there appears to be limited progress on developing a bilateral agreement. The ACT government has noted that it continues to work with the Australian Government on the ACT COAG trial and to ensure that this process incorporates the COAG framework of principles. They also note that there 'is no ICC in the ACT' and that they have 'proposed to the Australian Government that an ICC be established'.<sup>188</sup>

The bilateral agreements will provide the overarching framework for federal – state relations on Indigenous affairs. The establishment of these agreements is also a precursor to the involvement of state and territory governments in the SRA process.

A concern I have about these agreements is the absence of Indigenous participation in the setting of agreed priority areas. The NT bilateral agreement, for example, commits to participation of Indigenous peoples and yet there appears to have been no such participation in deciding on the key areas for focusing

183 *ibid.*, pp5-6.

184 Premier of Western Australia, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p1.

185 Premier of Queensland, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p2.

186 Minister for Aboriginal Affairs and Reconciliation (South Australia), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p5.

187 Premier of Tasmania, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p2.

188 Deputy Chief Minister, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p2.



attention. The ATSIC Central Queensland Regional Council have expressed a similar concern about the negotiations in Queensland. They state that there is a:

lack of engagement with Aboriginal and Torres Strait Islander people / communities in the negotiation of the Bilateral agreements at state level, in relation to housing, health etc as the outcomes of the engagement process should inform policy development, implementation and evaluation and the framework for program delivery.<sup>189</sup>

My Office will continue to monitor the formation of these agreements and the terms and priorities identified through such agreements.

#### ***iv) Improving the accessibility of mainstream services***

One of the most significant changes through the new arrangements is the requirement for mainstream government departments to take greater responsibility for outcomes for Indigenous peoples.

The movement of programs previously administered by ATSIC and ATSI to mainstream departments has meant that, in theory at least, it should be easier to align mainstream and Indigenous specific services. Achieving improved accessibility of mainstream services, or 'harnessing the mainstream' as the government refers to it, is a major commitment of the government through the new arrangements.

Addressing this issue is among the hardest challenges to be faced and progress has been slow. Perhaps more than any other area of the new arrangements, the challenge of making mainstream services culturally appropriate and accessible also demonstrates the naivety of blaming ATSIC for the failures to improve Indigenous socio-economic conditions in the past.

The remainder of this chapter notes a number of issues that are of importance in improving the performance and accessibility of mainstream services to Indigenous peoples. It notes for example, the absence of mechanisms for participation of Indigenous peoples – primarily through regional representative bodies but also through mechanisms at the national level and sector specific processes. It has noted the early stages at which efforts to coordinate federal activities with state and territory activities are at. The next section also notes the absence of mainstream data, the lack of linkages between the Overcoming Indigenous Disadvantage reporting framework and mainstream programs, and the absence of appropriate monitoring and evaluation processes. There are, however, steps in train to address some of these issues.

The greatest challenge to accessibility of mainstream services lies in urban areas. OIPC have stated that their approach to urban areas is as follows:

There are a number of mechanisms under the new arrangements that will facilitate improved service delivery to Indigenous people living in non-remote communities, including SRAs.

First, it is important to note that services will continue to be provided to Indigenous people in urban areas through established mechanisms. Arrangements were made by the Australian Government to ensure a seamless transition to new whole of government funding arrangements with continuity of service delivery. A coordinated application, assessment and contracting process has

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189 ATSIC Central Queensland Regional Council, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 30 June 2005, p7.





been implemented for the majority of former ATSI/ATSIS programs, through the Government's network of Indigenous Coordination Centres (ICCs). The Government is also working to ensure that services and programs are flexible, so that they can be adapted to the different needs of Indigenous people.

As part of the new arrangements ICCs have been working with Indigenous people and communities in both rural and urban areas to identify their needs and priorities as well as develop Shared Responsibility Agreements (SRAs). SRAs can be used in both rural and urban contexts, either as a mechanism through which disadvantage can be tackled directly, or to complement and inform the delivery of an existing service. They are also a useful mechanism through which Government can respond to community identified needs by linking programs and closing gaps in current service delivery. There are already a number of examples of SRAs in urban areas.

However, the Government recognises that Indigenous disadvantage will not be addressed through Indigenous-specific programs and services alone. It is important, particularly in an urban context where the majority of mainstream infrastructure is already present, to 'harness the mainstream'. In remote Indigenous communities' access to mainstream services can be inhibited by a lack of services and the long distance necessary to access those services that do exist. In urban and regional environments, where the majority of the Indigenous population lives, physical access to mainstream services is less likely to be the key issue. However, mainstream services have not performed as well as they should in meeting the needs of Indigenous people in urban areas. Therefore, the Australian Government is also working to harness mainstream services, to improve access to, take-up of and outcomes from these services for Indigenous Australians. This is also an issue being raised in various bilateral negotiations with the States.

Australian Government agencies are increasingly applying targeted approaches to better harness their mainstream programs or resources to meet the needs of Indigenous people. For example, the Department of Health and Ageing is directing mainstream funding from the Medicare Benefits Schedule to an Indigenous-specific health check to deploy mainstream resources to address an Indigenous-specific issue without requiring major redesign of the mainstream program. The Department of Employment and Workplace Relations is enhancing its Indigenous Employment Policy – a toolkit of services to enable Indigenous jobseekers to draw on both mainstream and Indigenous-specific resources. This measure will have particular relevance in an urban context.<sup>190</sup>

The overview of SRAs in Appendix 3 shows that there are some SRAs in urban contexts. There are, however, very few in number. The SRA process has not, to date, been a significant tool in harnessing the mainstream.

My impression of SRAs to date is that the majority of funding does not come from mainstream funds, but instead from Indigenous specific expenditure. Ultimately, if this remains the case, then SRAs will remain a supplementary funding source and will play a similar role to that of ATSI. SRAs have the potential to build linkages with mainstream services. This is a critical role of solution brokers in ICCs and so the government should expect much greater penetration of mainstream services through the SRA process.

My Office will continue to monitor the making of SRAs in urban contexts over the next year and will pay particular attention to the source of funding for these SRAs.

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190 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit., p5.



In light of the importance of improving the accessibility of mainstream services and the limited developments on achieving this to date, my Office will also focus attention on best practice examples for accessing the mainstream.

**v) Improving coordination between mainstreams and Indigenous specific services – Reform to the CDEP scheme**

Perhaps the most significant development over the past year in aligning Indigenous specific services with mainstream services was the reform process undertaken by the Department of Workplace Relations for the Community Development Employment Projects (CDEP) Scheme.

■ *Background – CDEP*

The CDEP Scheme was established in 1977 as an alternative to passive welfare payments or 'sit down' money. The intent of the program was to offer work and skill development opportunities for those members of a community who wished to participate in activities, such as developing community infrastructure and the provision of basic services. Participants of the CDEP scheme forego unemployment benefits in exchange for a minimum wage, for part-time work - an early incarnation of mutual obligation.

The program has been variously described as:

An employment program, a form of income and a form of welfare benefits, a source of training or skilling, community development, a transition to employment in the mainstream labour market, a substitute provider of essential services, a source of community cohesion and cultural maintenance, an Indigenous initiative and even a form of self-determination.<sup>191</sup>

The program has received a mix of praise and criticism over the years from both community and government alike. Praise, as it has provided in most of the communities it operates in, much needed community development as well as opportunities to participate in work activities and skills development. Criticism, for the lack of equality it actually achieves for Indigenous people, including concern over lack of access to long-services leave, superannuation, and union membership.

CDEP remains a major source of work and cultural activity in many Indigenous communities and has continued to respond to specific circumstances of the communities it operates in.

The program was administered by the Aboriginal and Torres Strait Islander Commission (ATSIC) and later Aboriginal and Torres Strait Islander Services (ATSIS). It was transferred to the Department of Employment and Workplace Relations (DEWR) in July 2004, as part of the Federal Government's transfer of programs to mainstream agencies, as part of the new arrangements.

At 30 June 2004, there were over 36,000 CDEP participants and 220 CDEP organisations.<sup>192</sup> In 2002 the CDEP scheme accounted for over one-quarter of the total employment of Indigenous Australians, with 13 per cent of the working-age population being employed in the CDEP scheme. Using the official definition

<sup>191</sup> *Social Justice Report 2001*, Human Rights and Equal Opportunity Commission, Sydney 2001, p49.

<sup>192</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, 2005, p11.12.



of unemployment, the unemployment rate for Indigenous Australians is 23 per cent.<sup>193</sup>

The majority of CDEP participants (62%) were in very remote areas, 11 per cent were in remote areas, 11 per cent in outer regional areas, 9 per cent in major cities and 7 per cent in the inner regional areas.<sup>194</sup> The length of time that participants spend on the CDEP scheme varies across regions. In very remote areas, 40.6 per cent of participants had been on CDEP for five years or more and 21.8 per cent had been on the CDEP scheme for less than one year. Similarly, in remote areas, many participants had been on the scheme for a number of years, but the average duration was shorter. In non-remote areas only a minority (15.2%) of participants had been on the scheme for five years or more and 30.8 per cent had been on the scheme less than one year.<sup>195</sup>

#### ■ *CDEP reform process*

In February 2005 the Minister for Employment and Workplace Relations released the *Building on Success – CDEP Discussion Paper 2005* at the National CDEP/Indigenous Employment Centre Achievement Awards in Alice Springs. The paper outlined the government's proposed changes to CDEP.

The first of the Department of Employment and Workplace Relations (DEWR) community consultations about the proposed changes to CDEP were held in Alice Springs the next morning. Over the next 3 days, 40 consultations were held nationally. Two hours were scheduled for each consultation.

The discussion paper also invited written feedback on a series of questions outlined in the discussion paper (see chronology), providing one month for submissions to be prepared and submitted. No prior consultation had been held with CDEPs or other relevant Indigenous groups before the discussion paper's release.

Jumbunna Indigenous House of Learning expressed concern that:

decisions regarding the structure and function of the CDEP scheme were made and announced before any consultation with Aboriginal and Torres Strait Islander communities and CDEP organisations. We believe this indicates a lack of commitment to genuinely working with Indigenous communities to achieve the stated aim of the proposals set out in this Discussion Paper ...<sup>196</sup> the consultation process outlined for these proposed changes to the CDEP is inadequate and disingenuous.<sup>197</sup>

193 Altman, J., Gray, M.C. & Levitus, R., *Policy Issues for the Community Development Employment Projects Scheme in Rural and Remote Australia*, CAEPR, Discussion paper 271/2005, p4.

194 *ibid.*

195 *ibid.*

196 Jumbunna Indigenous House of Learning, University of Technology Sydney, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*, p5.

197 *ibid.* p7.



Similar concerns were expressed by the Barkley Region group of CDEPs claiming the government:

should have undertaken more community discussion and consultation prior to the draft being launched. Particularly, more discussion should have been held with Communities/organisations that this discussion paper mostly impacts on...<sup>198</sup>

Ali Curung Council Association Inc also commented that:

every time there are changes, the right people are never asked for input. The CDEP Managers and Coordinators are such people... the government would be surprised how much we would have been accommodating to change if it had been done in a more connecting way ...<sup>199</sup>

DEWR in response to feedback has undertaken to:

improve its communication with Indigenous people and communities so that they will know where and how to get help, especially with employment and business development.<sup>200</sup>

The discussion paper outlined the government's proposed changes to current CDEP frameworks with the aim to improve upon current funding arrangements and enhance employment outcomes for Indigenous people and communities. The paper proposed:

- CDEP organisations will work more closely with Indigenous communities to improve links between CDEP activities and local needs and goals, based on the three elements of employment, community activity and business development;
- A stronger focus on results in the three key areas of employment, community development and business development;
- Building better links between CDEP and other employment and business services; and
- Supporting CDEP organisations to improve the ability to achieve good results.<sup>201</sup>

The proposed changes to CDEP constitute part of DEWR's broader policy platform, the *Indigenous Employment Policy*, which reflects the government's commitment to practical reconciliation measures. The *Indigenous Employment Policy* specifically aims to improve the employment prospects, and hence economic status, of Indigenous Australians by:

- increasing the level of Indigenous Australians' participation in the private sector;
- improving outcomes for Indigenous job seekers through Job network;

198 Barkley Region of CDEP Organisations (NT), *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

199 Ali Curung Council Association Inc, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

200 Department of Employment and Workplace Relations, *Building on Success – CDEP Future Directions*, DEWR, Canberra, 2005, p3.

201 Department of Employment and Workplace Relations, *Building on Success – CDEP Discussion Paper 2005*, DEWR, Canberra, February 2005, p3.



- helping Community Development Employment Project (CDEP) sponsors to place their work ready participants in open (non-CDEP) employment; and
- supporting the development and expansion of Indigenous small business.<sup>202</sup>

The changes to CDEP therefore incorporate the broader DEWR policy and program aspirations. As Will Sanders has observed:

as DEWR is the employment portfolio, it would not be surprising if it understood and focused more on employment outcomes than other aspects of the [CDEP] scheme.<sup>203</sup>

In April 2005, two months after the release of the discussion paper, the Minister for Employment and Workplace Relations released *Building on Success, CDEP – Future Directions*, a summary of the feedback received in response to the discussion paper and an outline of the government's policy directions for the CDEP.

The Minister's foreword stated:

The process of change will begin immediately with the changes being negotiated into the CDEP schedule of the Programme Funding Agreements for 2005-06. CDEP participants and communities need to know that CDEP can provide a stepping stone to improved income and economic independence.<sup>204</sup>

Generally, submissions received by DEWR in response to the discussion paper *Building on Success* support the three proposed activity streams - community, employment and business as appropriate areas of activity for CDEP. The streams in themselves are uncontroversial, with most submissions agreeing that CDEP will benefit from improved links with the communities in which it operates including links to Shared Responsibility Agreements (SRAs).

DEWR is clear about its intentions for linking CDEP and SRAs:

If the CDEP is in a community with a Shared Responsibility Agreement (SRA) the CDEP's activities should link to the SRA. If there is no SRA relevant to the CDEP organisation's activities then another arrangement for measuring community satisfaction with the CDEP organisation's activities will be negotiated with DEWR and included in the funding agreement.<sup>205</sup>

However some communities believe that community development and the provision of service has always been a focus of CDEP. Peedac Pty Limited, an Indigenous organisation from Perth, commented:

Community activities will always be the predominant activity while CDEP seek to redress lack of government services and adequate responses to local Indigenous community needs.<sup>206</sup>

202 Department of Employment and Workplace Relations, *Indigenous Employment Policy (IEP)*, DEWR, Canberra, [www.workplace.gov.au/workplace/category/SchemesInitiatives/IndigenousPrograms](http://www.workplace.gov.au/workplace/category/SchemesInitiatives/IndigenousPrograms).

203 Sanders, W. *CDEP under DEWR: the flexibility challenge*, paper delivered at ACOSS Annual Congress, Alice Springs, October 2004 as cited in Altman, J. (2005) *CDEP 2005, A New Home and new Objectives for a Very Old Program?* CAEPR Seminar Series, 2 March 2005, p6.

204 Minister for Workplace Relations, *Building on Success, CDEP – Future Directions*, *op.cit.* Minister's Foreword, piii.

205 Department of Employment and Workplace Relations, *Building on Success CDEP – Future Directions*, *op.cit.*, p4.

206 Peedac Pty Ltd, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.



Indeed the Secretary for Prime Minister and Cabinet commented earlier this year:

CDEP is the classic shared responsibility program. The government puts in the money from welfare benefits and it foots capital on costs in return for the community doing certain things with the resources it receives—fundamentally, a shared responsibility agreement.<sup>207</sup>

CDEP schemes are ideally placed to link with SRA activities. In fact many activities currently performed by CDEP schemes could be the subject of a current or future SRA.

To ameliorate any concerns that CDEP will diminish in some communities if not tied to an SRA, DEWR states:

The changes to CDEP will not reduce the availability of community services in remote communities. DEWR will start working with all levels of government to identify those CDEP activities that support government services and to ensure services are funded and delivered effectively, starting with Australian Government programmes and services. Through this process, potential business and contracting opportunities for CDEP organisations will be identified.<sup>208</sup>

Indeed the relationship between SRAs and CDEPs has the potential to strengthen employment and training opportunities while simultaneously addressing social and economic needs as identified by a community. However, outcomes of CDEP (and SRAs) will require careful monitoring and evaluation before any such claims can be made beyond asserting the potential.

#### ■ *The phasing out of Remote Area Exemptions*

An additional strategy aimed at encouraging community participation, as well as to further embed the government's ideological position to mutual obligation, is the plan to lift Remote Area Exemptions (RAEs). This plan was not mentioned in the *Discussion Paper* or in the *Future Directions* paper, but will nevertheless impact on the daily activities of a CDEP scheme.

RAEs exempt those people in remote communities receiving social security benefits from activity testing which is normally required for receipt of Centrelink allowances. Lifting RAEs will mean that all able bodied community members, in receipt of social security benefits, will be compelled to participate in either a CDEP or SRA (where they exist), or other community activity, as negotiated with DEWR. This participation will effectively become a means of activity testing. It is expected however that negotiations between CDEP organisations and DEWR ICC staff will develop agreements that take into account the unique circumstances of each community.

RAEs were originally put in place in remote communities because opportunities for meeting the requirements of the activity test were limited. Signalled the lifting of RAEs, Community Participation Agreements (CPAs), an earlier incarnation of SRAs, were voluntary agreements in which community members agreed to participate in community development activities to meet the activity test. The

207 Dr Peter Shergold, Secretary Department of Prime Minister and Cabinet, *Senate – Hansard*, 8 February 2005, p11.

208 Department of Employment and Workplace Relations, *Building on Success CDEP – Future Directions*, *op.cit.*, p4.



government, in return, provided funds towards the community activity. A number of SRAs have involved the replacement of a previously negotiated CPA.<sup>209</sup>

Plans to phase out RAEs and CPAs with 'all in CDEPs' will compel people to meet the activity test no matter how small the prospect of finding employment. 'All in CDEPs' will not only supervise community members meeting the activity test requirements but also supervise the 'work for wages' component of CDEP. It is not clear at this stage how or if the two types of activities will be differentiated in communities.

However it is anticipated, because of the small financial benefit to be made, where possible people will opt for 'work for wages' CDEP rather than simply meeting the activity test. There is a concern that the phasing out of RAEs could potentially create a two-tiered workforce, with community members competing for the limited CDEP jobs.

In terms of negotiating SRAs (inclusive of CDEP work) it seems like many Indigenous communities have been down this road before. The *Social Justice Report 2001* in a discussion on the lifting of RAE in relation to compliance with Community Participation Agreements noted:

... the customising of compliance measures to suit the culture and circumstances of individual Indigenous communities through the CPA initiative presents an opportunity for achieving improved outcomes in terms of participation and reduced breaching rates.<sup>210</sup>

In relation to the new arrangements the OIPC has stated that 'SRAs will not put additional conditions on Indigenous peoples' access to benefits or services available to all Australian...'<sup>211</sup> However there are clearly concerns that the lifting of RAEs and the accompanying agreements made by communities may have the potential for creating a more burdensome test for some.

The negotiations that will lead to the lifting of RAEs and the development of SRAs also raises concern as to the ability of community members on income support to give their free, prior and informed consent to such agreements, especially if they perceive that their income support depends on the making of the SRA, or the CDEP funding agreement.

These issues will require careful monitoring to ensure that community members are not being coerced or misled into participating in activities that other Australians are not required to undertake in order to receive income support. Access to the range of CDEP activities will also require cautious observation.

#### ■ *Performance Indicators for CDEP*

Measuring outcomes of CDEP previously focussed on the number of participants and the completed activities undertaken in the community. Under the new funding regime there will be a key focus on outcomes under the three proposed streams.

209 See for example the Bidyadanga SRA.

210 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, Human Rights and Equal Opportunity Commission, 2001, p89.

211 Office of Indigenous Policy Coordination, *What are Shared Responsibility Agreements (SRAs)? op.cit.*



The government has recognised the limitation of existing data and its inability to reveal detailed information on CDEP scheme outcomes. It has stated that it will attempt to develop better indicators by monitoring:

- *Employment Activities* – number of participants placed in non-CDEP jobs, links to Job Network, CDEP Placement Incentive payments;
- *Community* activities to SRAs and other identified community wants and needs; and
- *Business* – developing new and existing businesses to become commercially viable.<sup>212</sup>

Some submissions received by DEWR detail concerns as to how government would monitor outcomes such as community benefits which are more likely to be based on less tangible outcomes such as community well being. This raises an important question regarding evaluation methodology insofar as, how will community satisfaction and well-being be measured? DEWR will need to meaningfully engage with communities in order to reach agreement on a definition on this type of outcome.

Noting similar concern Jumbunna comment:

It is also problematic that CDEP organisations may be assessed by performance indicators ultimately determined by government and that potentially do not reflect community or cultural considerations.<sup>213</sup>

Measuring cultural benefits aside, one of the main concerns raised by CDEP organisations was in regards to the emphasis placed on the number of people moving from CDEP to mainstream employment (non-CDEP) and the perceived lack of recognition given to CDEP as 'real' employment for some communities.

Tangentyere Council (Alice Springs) stated:

many of the jobs carried out by the CDEP workers are in fact real jobs that would be funded through state/territory and commonwealth government departments in other areas. Such jobs include waste management, aged services, municipal services and administration. These services are ongoing and CDEP has been used as a way of funding their delivery whereas these same services elsewhere are funded through the relevant programs. The assumption that these services can be delivered through CDEP funded jobs takes responsibility away from the responsible areas and can be to the detriment of the service if these jobs are not seen as "real" jobs, with associated expectations.<sup>214</sup>

Altman observes:

CDEP has become highly politicised in the 21st century, in part because as a form of active welfare it has not been sufficiently differentiated from passive welfare. As such, it is viewed as a part of the unreal economy, when in many situations it is actually the real economy.<sup>215</sup>

212 Department of Employment and Workplace Relations, *Building on Success – CDEP Discussion Paper 2005*, *op.cit.*, p9-10.

213 Jumbunna Indigenous House of Learning, University of Technology Sydney *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*, *op.cit.*, p11.

214 Tangentyere Council Incorporated, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

215 Altman, J. (2005) *CDEP 2005 A New Home and New Objectives for a Very Old Program?* Centre for Aboriginal Economic Policy Research, CAEPR Seminar Series, 2 March 2005, p.3.





The Northern Territory Council for Social Services (NTCOSS) also warned:

any reforms must not be too prescriptive and should be able to be responsive to a range of local needs and priorities. While it seems to be appropriate to recognise three streams, as such giving greater impetus to achieving pathways to real employment and economic opportunities, there needs to be flexibility.<sup>216</sup>

And the Tweed Aboriginal Cooperative Society Ltd asserts:

CDEP is already helping local communities meet their needs and goals by employing local people to do work. By just being employed, everyone benefits because the participant is working. Don't try to measure this by trying to make it fit into a box of your making, when it already fits into a box of our making and is working just fine and has since 1977.<sup>217</sup>

Most CDEP organisations agreed that positive outcomes in regards to non-CDEP employment and business development were vital for the continuing viability of CDEP, but advised that performance monitoring or results based measures that relied solely on non-CDEP employment was unrealistic. Outcomes have to be flexible and take into account local labour markets (where they exist).

Western Desert Puntukurnaparna Aboriginal Corporation outlined in their submission:

Outcomes for CDEP are important but flexibility is needed in their measuring. Remote communities such as the ones we administer have no mainstream employment opportunities so an indicator like "participants placed in non-CDEP jobs or businesses" has little relevance in the Western Desert ... participation levels, safety and the completion of activities [are] the most important outcomes.<sup>218</sup>

Referring to the lack of opportunities in the local labour market, Cooramah Housing and Enterprise Aboriginal Corporation comment:

...it is the experience of this organisation that no matter how much training and how many courses the participants attend, the opportunity for employment in Glen Innes and Tenterfield is negligible.<sup>219</sup>

Wirrimanu Aboriginal Corporation contends:

Remote CDEP organisations struggle with the "outcome" based approach .... It's hard to move CDEP participant's attitudes about CDEP being a destination not a transition when not one job exists in your community for an Indigenous person.<sup>220</sup>

Reassuringly, DEWR has stated that it will take into account local circumstances and the CDEP schemes capacity to partner with Job Network agencies and non-CDEP employers when negotiating targets for performance. The DEWR CDEP

216 Northern Territory Council for Social Services (NTCOSS), *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

217 Tweed Aboriginal Cooperative Society Ltd, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

218 Western Desert Puntukurnaparna Aboriginal Corporation, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

219 Cooramah Housing and Enterprise Aboriginal Corporation, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

220 Wirrimanu Aboriginal Corporation, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.



*Guidelines 2005-06* state that targets will be individually negotiated with CDEP organisations and be 'realistic and based on local circumstances'.<sup>221</sup>

Nevertheless, one of the main thrusts of the changes to CDEP is the push for participants to seek mainstream employment opportunities and develop business enterprises. CDEP organisations will be expected to make links with a range of government programs aimed at supporting Indigenous people into mainstream employment or to develop business opportunities.

Some programs that CDEP can access are:

- Indigenous Employment Centres (IEC)
- Indigenous Employment Programme (IEP)
- Structured Training and Employment projects (STEP)
- Job Network (JN)
- Disability Open Employment services (DOE)
- Indigenous Business Development Programme (IBDP)
- New Enterprise Incentive Scheme (NEIS)
- Indigenous Youth Employment Consultants (IYEC)
- Pathway to Employment (PEP)
- Job Seeker Account
- Indigenous Self Employment Programme

These programs are able to be accessed by CDEP participants via an Indigenous Employment Centre (attached to some CDEPs) or through Job Network.

While a multi-pronged approach may benefit many Indigenous people and communities, for many others barriers remain impenetrable. Although remoteness and the associated absence of labour markets are an obvious obstacle in accessing the mainstream labour market there are other factors that can impede Indigenous people's participation in the labour market.

Issues such as systemic discrimination, poor literacy and numeracy, poor educational outcomes, English as a second language, lack of work experience, lack of driver's licence and having a criminal record, impact on some Indigenous people's ability to access mainstream employment.

For example, Wallaga Lake CDEP comments:

In an outer urban labour market, holding a driver's licence is an essential pre-requisite. Out of 70 employees, we have 6 that have a current driver's licence. Why? Low numeracy and literacy, unwillingness or inability to pass a test because of bad experiences at school, lack of self-confidence, RTA sanctions imposed for non-payment of fines, cancellation of licence due to traffic infringements – the list goes on. These are not simple matters to address.<sup>222</sup>

In recent discussions with communities concerning issues faced by Indigenous women exiting prison, one of the concerns raised was the difficulties many Indigenous people faced in accessing employment after their release from prison. While some jurisdictions are providing employment programs in an attempt to address this issue, Indigenous people remain severely disadvantaged with regards to employment if they have a criminal record.

221 Department of Employment and Workplace Relations, *CDEP Guidelines 2005-06*, DEWR, Canberra 2005, p4.

222 Wallaga Lake Community Development Employment Program, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.



In its submission to HREOC's inquiry into *Discrimination into Employment on the Basis of Criminal Record*, DEWR acknowledges:

The characteristics that put Indigenous Australians at high risk of offending are to a large extent the same characteristics that are barriers to employment: low levels of education, homelessness, mental health issues, addictions, poor health and inadequate housing. Other significant factors are social, community and family dysfunctions that occur in many communities. These dysfunctions can be attributed to a loss of traditional identity and a breaking down of social and cultural control mechanisms. These factors often become enmeshed forming a continuing cycle that contributes to a higher involvement with crime and an over-representation of Indigenous people as both perpetrators and victims of crime.<sup>223</sup>

Access to training and education will improve employment outcomes for some Indigenous people, and the efforts made to access non-CDEP employment should not rest purely with Indigenous individuals and communities. Mainstream employers also need to receive appropriate training with regards to Indigenous specific issues in relation to work and employment practices. There seems to be no weight given to this important issue in regard to the changes to CDEP.

The Productivity Commission noted similar concerns relating to barriers to Indigenous employment in its 2002 Review of the Job Network. It noted:

Systems for referral to the Job Network should be culturally sensitive. There are high barriers to the involvement of Indigenous Australians in the Job Network, particularly in remote Australia. This reflects the acute disadvantages of Indigenous Australians in gaining employment, the disincentives for engagement with a system that is distrusted, and practical obstacles even to commencing in the system (such as lack of transport or even a fully functioning labour market). This suggests the need for a more targeted approach to this group, with changes to processes for referral to Job Network providers. The capacity for introducing outcome payments for shorter duration jobs under Intensive Assistance ... may also help Indigenous job seekers, for some of whom full integration into the workforce may need to be a staged and gradual process.<sup>224</sup>

Reflecting this concern some CDEPs have expressed caution about working more closely with mainstream Job Network providers. Bingalie CDEP comments:

the discussion paper on the one hand gives CDEP organisations the option of strengthening their current operations as they relate to job, community work and business development with the carrot that CDEP's have the possibility of moving onto the area of Job Network Providers, it equally offers the option to Job Network Providers to move into the area of CDEP management. With restrictions on funding and training ... it is most likely that CDEP's will find it difficult to compete and therefore be vulnerable to a "management takeover" by them. In our dealings with Job Network providers we have found a distinct lack of appreciation or understanding of the Indigenous system, as well as the cultural and educational constraints in dealing with ATSI peoples and their adoption of employment norms.<sup>225</sup>

223 Department of Employment and Workplace Relations, Submission No.49 in response to HREOC Inquiry *Discrimination In Employment On The Basis Of Criminal Record*, February 2005.

224 Productivity Commission (2002) *Independent Review of the Job Network, Inquiry Report*, Report No. 21, AusInfo, Canberra, pxxxvii.

225 Bingalie CDEP, ), *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.



Cooramah Housing and Enterprise Aboriginal Corporation also state:

Indigenous community members ... won't go to mainstream offices, such as employment agencies or government departments, but they will approach the office of Cooramah to gain assistance. Cooramah has found great success in recent times by organising for the job link agency to conduct interviews through Cooramah's administration office. The participants will more readily attend a venue they are comfortable with, than down-town.<sup>226</sup>

■ *CDEP and a whole-of-government approach*

CDEP is an integral component to the government's whole-of-government approach to delivering Indigenous services, especially in relation to carrying out the nuts and bolts of its flagship – Shared Responsibility Agreements.

CDEPs will be responsible for performing many of the activities agreed under SRAs. These activities will range from essential service delivery activities such as garbage collection to community development activities such as building community halls and basketball courts.

Because CDEP activities are now closely tied to SRAs, and community has negotiated those SRAs with a range of stakeholders including federal, state/territory and local government, CDEP is unavoidably linked to a whole of government process.

Funding agreements will clearly articulate that CDEP schemes are now expected to engage more fully with government employment programs and other agencies like Job Network providers. This linking up with other agencies will provide CDEP participants with a web of information about employment and training opportunities outside of CDEP.

Peter Shergold in a speech discussing government partnerships explained:

It is true that mainstream agencies have now been given responsibility for many of these programmes. That is for the purpose of ensuring that the Indigenous and general programmes are properly integrated: it is, for example, no use young Aboriginal job-seekers being supported by an Indigenous Employment Programme or finding part-time employment in a Community Development Employment Projects (CDEP) programme if they do not also have equal access to the Job Network array of labour market services.<sup>227</sup>

Not only will CDEP schemes now be encouraged and expected to connect with other employment and training programs, as well as manage its everyday activities, including those agreed to under an SRA, it is also responsible for a number of other programs such as the *Working for Families* initiative. Under the *Working for Families* initiative, DEWR provides funding for 1,000 CDEP placements to implement and expand the strategies designed to prevent and/or to assist victims of family violence and substance misuse in remote areas. Originally an ATSI program it now falls under the DEWR program budget.

While the onus of undertaking and completing activities is the responsibility of the community generally, and the CDEP scheme more specifically, there is a concern that responsibility of government is being diminished, reduced to

226 Cooramah Housing and Enterprise Aboriginal Corporation, *Submission to Department of Employment and Workplace Relations Building on Success CDEP Discussion Paper 2005*.

227 Dr Peter Shergold, Secretary of the Prime Minister and Cabinet, *Speech delivered at Government and Communities in Partnership Conference*, Melbourne, 18 May 2005, downloaded 6 September [http://www.pmc.gov.au/speeches/shergold/sharing\\_responsibility\\_2005-05-18.cfm](http://www.pmc.gov.au/speeches/shergold/sharing_responsibility_2005-05-18.cfm).



being the provider of funds. There is concern that CDEP may become the catchall services provider, responsible for not only providing employment and training but also to take carriage of all activities agreed to under SRAs.

#### **vi) Conclusions and follow up actions**

Effective engagement of government with Indigenous communities is a fundamental factor that will determine the success or failure of the new arrangements. This section of the chapter has detailed some of the structures and processes currently being developed to achieve this.

Crucial to the implementation of the new arrangements is an informed and experienced workforce. An appropriately skilled public service is fundamental if the Government is to succeed with this ambitious undertaking.

A good first step has been the appointment of an Aboriginal and Torres Strait Islander Employment Coordinator with the Australian Public Service Commission and the development of the *Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees* and related activities. It is hoped that these steps will provide momentum for Indigenous peoples to participate and thrive in the public sector. I welcome opportunities to improve Indigenous recruitment and retention in the APS and will be following these initiatives closely.

However, I am concerned about the recruitment and training approaches of some agencies especially in relation to positions that will be working closely with Indigenous communities and the inconsistent use of Identified Criteria. Given that, in varying degrees, mainstream agencies are located in ICCs it is imperative that that appropriately experienced staff are selected for these positions as these are people who are in the front line of the new arrangements.

Related to this point are the teething problems in the coordination of service delivery, with reports that some departments are resisting the whole of government approach with local ICC staff expressing frustration at managers who are not familiar with local situation and issues. Also frustrating the process is the apparent mismatch between agencies and their level of understanding of the SRA process.

This illustrates the importance of suitably qualified and experienced staff and that ill coordinated programs not only impact on the morale of staff but also negatively impact on the communities they are meant to be serving.

The meta level of the new arrangements rely on Bilateral Agreements between State and Federal Government. At this stage, only one has been signed between the Northern Territory Government and the Commonwealth Government. The agreement sets out the ways in which governments will coordinate the whole of government approach including agreed accountability and outcome measurements. Further agreements are likely to be forthcoming in the next year.

Improving the accessibility of mainstream services is one of the main commitments of the federal government in establishing the new arrangements. Over the past 12 months the government has found this to be an extremely challenging task. Bilateral Agreements will play a role in coordinating programs across governments, and there have also been some positive developments with states and territories re-aligning their processes for service delivery. Harnessing the mainstream remains one of the key challenges for the new arrangements, as well as addressing the needs of urban Indigenous communities.



The reform to the CDEP Scheme highlights the potentiality of aligning Indigenous specific services with the mainstream. This is primarily focused on rural and remote areas. One of main principles of the new arrangements is the government's desire to see Indigenous people relying less on passive welfare and participating in mainstream employment. The changes to CDEP are aimed at addressing this issue. The lifting of remote area exemptions is another prong to this approach and one that will impact on the daily affairs of CDEP organisations.

The changes to CDEP will mean that CDEP activities must be tied to SRAs as well as the CDEP building better links with mainstream employment opportunities and developing business enterprises. The government has said that it will take into account local conditions and employment opportunities rather than being too prescriptive in their approach to outcomes. However, the lack of consultation during the development of the proposed changes as well as the perfunctory approach to community consultations after the release of discussion paper is not consistent with communities and governments being equal partners in this process. As CDEPs will be responsible for undertaking many of the activities agreed to under SRAs the lines of communication between governments and Indigenous peoples must be improved if individuals and communities are truly going to prosper under the new arrangements.

The focus on welfare reform also needs to be broadened to consider long-term challenges to the sustainability of Indigenous communities in rural and remote areas. This includes considering the relevance of educational opportunities available in such areas, the opportunities provided by the availability of new forms of technology, challenges for housing, economic development and employment. Debates about these issues to date are disjointed, often based on factual inaccuracies and do not look to the long term or sustainable outcomes.

In light of the issues raised in this section of the chapter, I identify the following activities that my Office will undertake in the coming twelve months to monitor issues of ongoing concern.

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### **Follow up action by Social Justice Commissioner**

4. The Social Justice Commissioner will examine approaches adopted by the government to improve the accessibility of mainstream services to Indigenous communities and individuals. This will include:

- conducting consultations and case studies with the participation of select urban, regional and remote Indigenous communities, to identify best practice as well as barriers to the accessibility of mainstream services;
- examining the role of solution brokers in Indigenous Coordination Centres and in the negotiation of Shared Responsibility Agreements (for example, by considering the percentage of funding allocated through SRAs from mainstream programs as opposed to Indigenous specific funding or the SRA flexible funding pool); and
- considering the impact of reforms to the CDEP Scheme, including changes to align the program more closely with mainstream employment programs.



## 6) The accountability and transparency of the new arrangements

The new arrangements for Indigenous affairs have been in place for over 12 months. It is now critical that steps be taken to ensure that the government's intended policy and program goals are properly monitored and outcomes appropriately evaluated. As the Office of Indigenous Policy Coordination has noted, 'improved monitoring and reporting are basic to devising good policy and measuring progress.'<sup>228</sup>

To date, progress has been slow in ensuring that the new arrangements are subject to rigorous and transparent monitoring processes. The absence of sufficient processes amounts to a failure of government accountability.

There are four main issues in relation to this:

- evaluating the COAG trials;
- improving performance information and data collection;
- ensuring monitoring and evaluation processes for the new arrangements; and
- linking the new arrangements to the *Overcoming Indigenous Disadvantage Framework*.<sup>229</sup>

### i) Evaluation of the COAG trials

One of the main concerns outlined in the *Social Justice Report 2004* was the lack of evaluation of the COAG trial sites and publicly reported information about the trials. A particular concern was the reliance on the COAG trial model in implementing the new arrangements in the absence of evaluation of the workability of the approach.

In 2003, after the establishment of the trial sites, the Indigenous Communities Coordination Taskforce emphasised the importance of monitoring and evaluation. In the performance monitoring and evaluation framework for the trials, the taskforce stated:

All governments and Indigenous stakeholders will want to know whether this approach has worked to improve outcomes for Indigenous people. The basic aim of evaluation will be to determine what has worked and why, what did not work and why, and whether the approach should be adopted more widely...<sup>230</sup>

In their report into capacity building and services delivery to Indigenous communities in 2004, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs also expressed concern at the lack of formal evaluations of the COAG trials. The report states:

228 Office of Indigenous Policy Coordination, *Five principles – A Whole of Government Commitment and Changed Engagement*, OIPC, Canberra, online at: [www.oipc.gov.au/About\\_OIPC/Indigenous\\_Affairs\\_Arrangements/2FivePrinciples.asp](http://www.oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/2FivePrinciples.asp), accessed 5 October 2005.

229 My previous report identified ten 'follow up actions' that my Office would take during the subsequent year. This section of the chapter considers follow up actions 1 (evaluation of COAG trials) and 10 (adequacy of performance monitoring and evaluation processes, and links to the commitments of COAG).

230 Indigenous Communities Coordination Taskforce, *Shared Responsibility Shared Future, Indigenous whole of government initiative: The Australian Government performance monitoring and evaluation framework*, Australian Government, Canberra, October 2003, p5.



The Committee is concerned that strong emphasis is being put on the COAG trials when they are yet to show tangible results, or to set or to achieve benchmarks in all Trial sites. The Trials are being promoted as a symbol of change, and as an indication of a Commonwealth commitment to both Indigenous communities and to whole of government coordination. However, the Committee has concerns regarding their experimental nature and that concrete indications of progress or publication of outcomes are yet to be produced, and believes that an effective reporting and accountability process needs to be implemented.<sup>231</sup>

■ *Timetable and terms of reference for trial evaluations*

Twelve months on, there are still no formal evaluations of the trials that are publicly available. The OIPC have indicated that:

An Australian Government monitoring and evaluation framework for the COAG trials was agreed in late 2003. This framework has been refined and is being progressively implemented.

Each of the COAG trial sites is different, and there is not a single approach to evaluation that fits the circumstances of all sites. However, the Australian Government will be conducting independent evaluations for all trial sites in 2005, wherever practicable in collaboration with State or Territory Government agencies and the Indigenous community involved. Planning for these evaluations is well advanced in most sites; in the Murdi Paaki site the first evaluation report is nearing completion. The Office of Indigenous Policy Coordination (OIPC) will tender for an independent person to draw together and synthesise the findings from these individual trial site evaluations towards the end of 2005. OIPC is also looking to a subsequent round of site evaluations in 2007-08.

A number of other mechanisms have also been used to allow feedback to be considered in future planning. These include 'lessons learned' papers provided by all governments to COAG, and workshops conducted for both governments and community members to allow the exchange of innovative ideas across the sites.

All these activities are part of the Australian Government's commitment to the COAG principle of developing a learning framework for Indigenous service delivery. They will be used to share information and experience about what is working, what is not working and to strive for best practice in the delivery of services to Indigenous people, families and communities.<sup>232</sup>

The terms of reference for the independent evaluations to be conducted in 2005 has now been finalised. It is proposed that the evaluations will address issues including the following:

- A history and broad overview of the conditions and challenges at the start of the Trial.
- Any commitments made by governments and the community, including the extent of involvement of the community in setting the objectives and priorities for the Trial.
- What has and has not worked with the lead agency arrangements and why.

231 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Many Ways Forward – Report of the inquiry into capacity building and service delivery in Indigenous communities*, Parliament of Australia, Canberra 2004, p244.

232 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 19 September 2005, p1.





- The mechanisms in place to improve coordination between and within governments and what difference they have made.
- The kind of working relationships that have been built between the government and community partners and how this is affecting the operation of the Trial and community outcomes.
- What responsibilities have been shared. How these have worked.
- Whether governments and community have delivered on their respective commitments/undertakings.
- Who was involved when the Trial began, and who is involved now. Any changes that have occurred. Whether the work of the Trial is largely confined to governments and service providers.
- What the broader Indigenous community within the Trial site has done to demonstrate its support for and/or ownership of the Trial.
- The extent to which the community continues to support the objectives/priorities agreed at the start of the Trial. Whether they have changed, and if so why.
- What has worked and not worked from both the community's and the government's perspectives.
- Whether one part of the Trial is working better than others and why.
- Whether there is better coordination of government programs and services. Whether this has led to improved service delivery arrangements.
- What interim evidence exists of better outcomes and better ways of working together.
- Whether there have been any (good or bad) unintended consequences, outcomes or changes.
- Whether the Trial has progressed as far as hoped, and if not what the critical barriers were. What could be done about any barriers that exist.
- Whether the Trial should continue at all or continue in its current form. Whether there would be benefit in revisiting the agreed objectives, priorities or commitments for the Trial.
- Whether the Trial will be ready for evaluation in 2007-08.
- Whether agreements have measurable and achievable objectives and priorities. Whether there are baseline and/or ongoing performance monitoring reports.<sup>233</sup>

■ *Status of trial evaluations in each jurisdiction*

Various governments, and federal departments who are lead agencies for the trials, have also advised my Office as to the status of the evaluations of the trial sites. There appear to be differing views among governments on what evaluation activity is likely to be undertaken in 2005.

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233 Office of Indigenous Policy Coordination, *A possible reporting framework for evaluating the COAG trials*, Correspondence dated 26 October 2005.



In relation to the **Tasmanian trial**, the Tasmanian government have advised that it is:

currently in the process of developing a monitoring and evaluation framework for its COAG trial. At this stage, it is envisaged that the evaluation will consist of two main components. The first part will be a qualitative, independent review of the work of the project officer and the progress of the trial more generally, based on questions around outcomes and performance effectiveness. This will be coupled with an assessment of the extent to which progress has been made in each community within each trial site location. The second component of the evaluation will be an assessment of the shared responsibility agreements (SRAs) that monitors and assesses the extent to which progress has been made under each SRA. The evaluation will be based on established milestones and benchmarks.<sup>234</sup>

In relation to the **East Kimberley trial**, the Western Australian government has stated that:

An evaluation of the WA COAG trial has not yet been undertaken, but is planned to commence in 2005. The Western Australian and Australian Governments have commenced planning for a formative evaluation in 2005, followed by a summative evaluation in 2008.<sup>235</sup>

The Department of Transport and Regional Services (DoTARS) has informed my Office that in relation to the same trial:

The Office of Indigenous Policy Coordination is undertaking the evaluation of the COAG trial in the East Kimberley on behalf of DOTARS, with DOTARS input and oversight. Discussions with the Western Australian lead agency have commenced. The evaluation is expected to be completed by before the end of 2005.<sup>236</sup>

In relation to the COAG trial on the **Anangu Pitjantjatjara Yankunytjatjara (APY) Lands**, the South Australian government have advised there had been no progress in the trial up to June 2004. Since then, however:

an historic meeting initiated by the (AP) Executive was held at Alice Springs (in April 2005). State, commonwealth and Anangu organisations were brought together with the intention of identifying an effective way for all organisations to work and plan together to achieve the Anangu objectives of providing better outcomes in law and order, health, education, employment and housing and to create better opportunities for young people.

As a result of this meeting, a group that consists of senior APY and government representatives has been formed. (It) will oversee service delivery on the APY lands... The state government is currently developing a set of indicators to evaluate progress against the five year APY Lands strategic plan that will also provide a means for evaluating the effectiveness of the COAG trial.<sup>237</sup>

234 Premier of Tasmania, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 22 August 2005, p1.

235 Premier of Western Australia, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

236 Department of Transport and Regional Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 14 July 2005, p4.

237 Minister for Aboriginal Affairs and Reconciliation (South Australia), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 9 September 2005, p2.



In relation to the **Wadeye trial** in the Northern Territory, the NT government advise that:

The terms of reference for the evaluation... have been provided to Thamurrurr. Once comments... are received, the evaluation will be able to proceed.<sup>238</sup>

In relation to the **Cape York COAG trial**, the Queensland government has indicated that they provided COAG with 'an evaluation which focuses on lessons derived from the COAG Trial over the last twelve months.'<sup>239</sup> They provided a copy of this 'lessons learned' paper to my Office. They also advise that a detailed evaluation of the *Meeting Challenges Making Choices* strategy is also underway.

The evaluation of the Cape York COAG trial site notes the importance of the Cape York Strategy Unit which 'provides communities with a single point of contact to discuss their issues with Commonwealth and Queensland government officials' as well as the Government Champions process (which sees Chief Executive Officers of Queensland government departments lead activities in communities). They also identify the success of the negotiation table process and the development of Community Action Plans as having 'improved the day to day outcomes of government-community interaction.' The evaluation also states that the COAG trial 'has also created a positive platform for greater government collaboration, including the formation of networks and identification of new ways to work together.'<sup>240</sup>

The Queensland evaluation also notes the following factors in relation to the COAG trial:

#### **What doesn't work?**

COAG has endorsed principles of aligning and re-engineering programs to deliver practical outcomes for Indigenous communities. These reform objectives would be better met through improving the allocation of resources to areas of acute need, and through increasing flexibility to respond to community priorities. The trial's focus on process is time-consuming and has the potential to delay outcomes, and it is tangible results that are needed to maintain stakeholder confidence.

Government agencies need to engage with communities in a consistent and regular manner. While good conceptual ideas have been presented regarding red tape reduction, these have not always translated in action and communities continue to face significant bureaucratic procedures and excessive contractual obligations. The delivery of more effective responses to community needs may be facilitated by shorter timeframes for funding approvals and more coordination on the parts of government.

The Queensland and Commonwealth governments are currently looking at mechanisms to reduce red tape, initially focusing (on) Lockhart River. While this issue presents challenge, both governments recognise the importance of reducing the bureaucratic load on communities and more coordination on the part of government.

While overall engagement between the Queensland and Commonwealth Governments has been improved by the COAG trial, further work is required to set up joint government programs. Both Commonwealth and Queensland agencies

238 Chief Minister of Northern Territory, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p1.

239 Premier of Queensland, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, p1 and Attachment 2: *Evaluation of the COAG Trial Site in Cape York*.

240 *ibid.*, pp1-2.



would benefit from clearer funding responsibilities and standards of services, and the identification of future priorities. Communities would also benefit from a government approach to information exchange and data sharing that forms a reliable evidence base for measuring outcomes and progress. One area that would benefit from increased coordination and information exchange is drug and alcohol rehabilitation, in which the Commonwealth Government's whole-of-health plans and the Queensland Government's alcohol management plans continue to operate discretely.

Strengthened participation of non-governmental organizations and private enterprise would also enhance coordination and improve outcomes for communities. Westpac Bank has provided financial and business-planning services within several Cape York communities. However, other businesses have been slow to take up this opportunity and economic investment in the trial site is still limited.

#### **What can be applied more broadly to future activity and arrangements?**

The trial provides models of collaboration that could be applied in a broader context without the need to expend financial and human resources on such a large scale.

The Negotiation Tables process is broadly applicable as a means for governments to engage with communities. It provides a forum for communities to communicate their interests and goals and for governments to provide information and state their priorities. Community Development Plans drawn from negotiation tables provide for immediate and tangible responses to the identified needs of communities.

Assigning a Queensland Government CEO to a community as a Government Champion can build community confidence in engaging with government. It can also draw attention to indigenous issues throughout mainstream government agencies.

Most importantly, governments must recognise the need for strong partnerships with communities. Through partnership and cooperation, governments and communities can take full advantage of opportunities to improve outcomes for Indigenous Australians.<sup>241</sup>

In relation to the evaluation of the **Murdi Paaki trial site**, the Department of Education, Science and Training (DEST) states:

DEST is working closely with the NSW Government to using its data collection tools through the NSW *Two Ways Together Policy* to identify benchmarks to measure progress through the COAG trial.

As part of the *Monitoring and Evaluation Framework*, a project commenced in March 2005, which evaluated the effectiveness of community governance structures, and identified issues that may either improve or hinder the development of effective partnerships between Indigenous communities, government and non-government agencies. ... Six Indigenous communities participated in a series of focus group meetings in Bourke, Lightning Ridge, Goodooga, Gulargambone, Menindee and Broken Hill. The project is scheduled for completion in July 2005.

The trial in Murdi Paaki is continuing to evolve. Working in a Whole of Government environment is a challenging task. It is resource intensive and building trust and effective working relationships takes time and commitment. While formal evaluation processes are still being finalised, some emerging lessons in Murdi Paaki include:

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241 *ibid*, pp3-4.



- The importance of building strong relationships cannot be over-valued.
- Building governance and leadership capacity within government and community is essential to this process.
- Among those with a good understanding of the purpose of the COAG trial and the mission of the CWPs [Community Working Party], there is a good deal of optimism and support in most of these communities for the current arrangements.
- Organisational matters represent a problem for several CWPs, with a lack of skilled secretariat support being of concern in most communities.
- Work needs to be done on linking the key indicators of Indigenous disadvantage to the bottom up priorities emerging from communities.
- The ambition and expectations of working in a whole of government way need to be matched with a reality and rigour in the way they are articulated.
- Work needs to be done to ensure that all programs and services have the necessary flexibilities for joined up approaches and quick responses.<sup>242</sup>

The New South Wales government has expanded on this information in relation to the evaluation of the Murdi Paaki trial site. They note that:

Evaluation and monitoring to date has included:

- Development of a Murdi Paaki Indicators Framework based on the National Reporting Framework on Indigenous Disadvantage.
- Focus groups and interviews with 6 CWPs and broader community representation between March and April 2005. The focus groups and interviews examined levels of community governance, relationships with government agencies and knowledge and perspectives on the Community Working Parties.
- Monitoring the development and implementation of SRAs by the Murdi Paaki COAG Trial Steering Committee and Regional Group. The Murdi Paaki Regional Council (now Regional Assembly) is represented on both these groups.
- Evaluation by the Murdi Paaki COAG Trial Regional Group of improvements in the coordination of service delivery between and within government agencies.
- Community governance and COAG trial processes are evaluated twice a year through Community governance workshops. Three representatives from each of the 16 CWPs attend these workshops.
- Informal monitoring of the COAG trial processes through COAG Action Team representation at CWP meetings.<sup>243</sup>

Similarly, the draft evaluation report by URBIS – *Community governance in the Murdi Paaki region* – indicates that:

- Among those with a good understanding of the purpose of the COAG trial and the role of the Community Working Parties (CWPs), there is a good deal of optimism and support for the COAG Trial. It was agreed that the trial process, the CWPs and Community Action Plans are good mechanisms for seeking better coordination of government services based on community priorities.

242 Department of Education, Science and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit.,p5.

243 NSW Cabinet Office, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 18 October 2005, pp2-3.



- Uncertainties exist among some CWP members about the roles and responsibilities of the CWP, and some varying views about its powers and the range of matters that it should deal with.
- Consideration could also be given to ways of achieving better ongoing communication between CWPs and their communities.
- Some CWPs continue to struggle with practical problems relating to organisation or administration. Improved support or resources would help ease the administrative load on Chairs and other CWP members, help in the task of communicating more effectively with the community, and hopefully lead to more efficient and effective CWP operations.
- Community feedback through Community governance workshops, CWP meetings and the focus group evaluation indicates strong community support for the community planning process.<sup>244</sup>

In relation to the **Shepparton trial**, the Victorian government have indicated that:

The Trial is in the early stages of development, limiting benefit from comprehensive evaluation at this stage. Recent research indicates that the 'start up' phase of community capacity building initiatives can take two to three years and that limited value is gained from implementing evaluation strategies at this stage as initiatives that are focused on changing outcomes are usually still in the process of being developed...

There has been work undertaken to collect baseline data for future reference... Development of the evaluation will be a joint effort across the community, State, Commonwealth and Local Government. This is intended to occur over the next 12 months.<sup>245</sup>

In the absence of any government evaluation, the community partners in the Shepparton COAG Trial commissioned an independent evaluation of the trial in 2004. The report of the evaluation *Take It Or Leave It* revealed why the COAG trial in that region was failing. One of the key findings of the report was:

the lack of accountability of the government entities involved in the COAG pilot. Neither the Commonwealth nor the State Government publish any performance criteria by which their management of the Shepparton COAG project can be measured...

If the COAG pilot is unable to function successfully in an innovative and tested Aboriginal community such as Shepparton, the question must be asked: Where can it succeed? The results of the unfolding COAG trial in Shepparton go straight to the heart of social justice for Aboriginal people. They also speak directly of a crisis in accountability from all three levels of Australian government.<sup>246</sup>

In 2005, Shepparton's Aboriginal community commissioned a follow up report titled *Measuring Success* which aims to 'focus on the detailed analysis of how the COAG pilot might be assisted to better deliver on its potential.'<sup>247</sup>

<sup>244</sup> *ibid.*

<sup>245</sup> Premier of Victoria, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

<sup>246</sup> The Eureka Project, *Take It Or Leave It – How COAG is failing Shepparton's Aboriginal People*, The Eureka Project Pty Ltd, Melbourne, October 2004, p6.

<sup>247</sup> The Eureka Project, *Measuring Success – Sharing power and accountability with Shepparton's Aboriginal people*, The Eureka Project Pty Ltd, Melbourne, September 2005, p9.



The report reiterates the earlier reports findings:

After three years of interaction between COAG and the Shepparton Aboriginal community, the continued absence of baseline data means that there has been no development of milestones to be achieved by the pilot. There is a lack of rudimentary knowledge to the extent that there is still no reliable estimate of how many Aboriginal people live in the region. Consequently, there is no agreed understanding of what success might look like, were it ever achieved.<sup>248</sup>

The report recommends the establishment of a group of eminent Australians who would keep a 'scorecard' on the progress and outcomes of the COAG trials. The report recommends the 'scorecard' will:

identify what success 'looks like' in plain English based on the aspirations of Aboriginal people, the wider Shepparton community and the governments and businesses involved in the region. Initially the scorecard will focus on the key areas of identity, health, employment, education and governance.

The scorecard will not be a 'misery index'. It will focus on the activities that are tangibly contributing to success and will actively seek to propagate their characteristics across wider gamut of activities and partnerships. The flipside is that the scorecard will need to identify those areas of the partnerships that are not contributing to success and to analyse the reasons for blockages occurring. The scorecard will apply as rigorously to the Aboriginal community as it does to any other partner organisation or sector.<sup>249</sup>

In relation to the **Australian Capital Territory trial**, the ACT government advise that they are 'presently working with the Australian Government to develop an evaluation process for the... Trial.'<sup>250</sup> The Department of the Environment and Heritage notes:

In conjunction with the ACT Government, the Office of Indigenous Policy and Coordination is engaging a consultant to conduct a 'formative' evaluation of the ACT COAG trial. The objectives of the evaluation are:

- to ascertain what is working well and to make recommendations to improve the work of the trial; and
- to suggest possible approaches to ensure that governments and the ACT Indigenous community are well placed for further evaluation of the trial site in 2008.<sup>251</sup>

#### ■ *Concerns relating to the COAG evaluations*

Progress in advancing evaluation frameworks for the COAG trials is mixed. As reported in last year's *Social Justice Report*, preliminary evaluations of the COAG trials were due in 2004. They are now due in 2005, and some appear unlikely to be produced until 2006.

248 *ibid.*

249 *ibid.*, p10.

250 Deputy Chief Minister, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, op.cit., p1.

251 Department of the Environment and Heritage, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, 13 July 2005, p4.



I am particularly disturbed by the statements of some governments and departments which tend to suggest that in some trials the baseline data for the evaluations still does not exist. This is illustrated by the inclusion in the OIPC evaluations terms of reference of an item to establish whether 'the Trial(s) will be ready for evaluation in 2007-08', 'have measurable and achievable objectives and priorities' and if 'there are baseline and/or ongoing performance monitoring reports.'<sup>252</sup>

It appears that the quality of evaluations will vary between trial sites, based on how advanced each site has been in putting into place the necessary steps to enable an evaluation to take place. I have doubts that each evaluation will be able to address the full range of matters identified by the OIPC in the evaluations terms of reference based on the information provided by governments above.

I am concerned also by the lack of independence in the conduct of some of the evaluations. Given the importance of the trials and their lessons for the implementation of a whole of government approach to Indigenous issues (across all layers of government, not just within one level of government) evaluations should be done at arms length and based on solid evidence. The statement that evaluations will be 'formative' also does not suggest that the evaluations will be based on solid, verifiable evidence.

The lack of progress and lack of transparency on this issue has the potential to undermine the credibility of the trials. This would be a great shame, given that there are positive lessons to learn from these major initiatives.

Concerns have also been raised with my Office that the focus in COAG trials in being lessened by some federal government lead agencies. This is particularly in the Murdi Paaki, Cape York and Shepparton trials.

My Office will continue to monitor progress in the conduct and evaluation of the trials over the next twelve months. Hopefully, during this time we will see the completion of the proposed evaluations and their results being made public and open to scrutiny.

***ii) Improving performance information and data collection, and ensuring adequate monitoring and evaluation processes for the new arrangements***

The change to a whole of government approach through the new arrangements necessitates rigorous monitoring and evaluation processes. It also creates a number of challenges for the collection of performance information and data to support decision-making and to measure both inputs and outcomes. This is particularly so given the commitments through the new arrangements to ensure improved accessibility of mainstream services and a holistic approach to service delivery.

At present, data collections and performance information systems do not provide information on a consistent or comparable basis. Furthermore, there is at present very little opportunity to identify the extent of usage of mainstream services by Indigenous peoples and consequently, very little information on which mainstream services Indigenous peoples experience the most barriers for access and use.

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252 See above.





The absence of consistent and comparable data is problematic as it can result in inefficiencies, duplication and a lack of accountability. It does not provide appropriate support for policy development within a whole of government framework, nor assist in the monitoring of program performance in a holistic manner.

In relation to Indigenous specific services, the programs formerly managed by ATSIC (totalling \$1 billion) are now managed by 16 mainstream agencies through the ATSIC Grants Management System. The remaining Indigenous specific funding of \$1.9 billion for 2004-05 is being managed through the separate and different financial systems of each mainstream agency.<sup>253</sup>

The Commonwealth Grants Commission *Report on Indigenous Funding 2001* identified a range of actions that governments should implement to improve performance monitoring and to be able to allocate funding based on relative need. These remain relevant for whole of government activity. The report states:

Improving the availability of up-to date, accurate and comparable data is an essential investment for effective planning and resource allocation. If objective resource allocation is to be achieved, especially allocation on the basis of indexes of relative need, priority must be given to collecting comparable regional data for many variables. These include:

- (i) basic demographic data – such the number of Indigenous and non-Indigenous people, their age distribution, household size, income characteristics, employment status and where they live;
- (ii) the use of services by Indigenous and non-Indigenous people – such as primary health care, hospital inpatients, school and training enrolments, and participation in labour market programs;
- (iii) availability of facilities and access to them – including access to health facilities and schools, and the availability of housing;
- (iv) outcomes of services – such as literacy and numeracy achievements, indicators of health status, employment status, housing occupancy and housing conditions; and
- (v) funds available for services provided to both Indigenous and non-Indigenous people – for both mainstream and specific purpose programs provided by Commonwealth, State and other providers.

To achieve good consistent data, we think that the Commonwealth, State and other services providers should, with urgency:

- (i) identify minimum data sets and define each data item using uniform methods so that the needs of Indigenous people in each functional area can be reliably measured;
- (ii) prepare measurable objectives so that defined performance outcomes can be measured and evaluated at a national, State and regional level;
- (iii) ensure data collection is effective, yet sensitive to the limited resources available in service delivery organisations to devote to data collection;
- (iv) negotiate agreements with community based service providers on the need to collect data, what data should be collected, who can use the data, the conditions on which the data will be provided to others and what they can use it for; and
- (v) encourage all service providers to give a higher priority to the collection, evaluation and publication of data.

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253 Office of Indigenous Policy Coordination, *Australian Government Indigenous Management Information System (AGIMIS) Project Strategy – Stages 1 and 2, Overview*, OIPC Canberra 2005, p3.



Without these steps, data will never be adequate to support detailed needs based resource allocation. Many of these principles are being followed in the work that is underway. However, it is likely to be a long time before the benefits are obtained in the form of more complete and comparable data that can be used to measure needs as part of resource allocation processes.<sup>254</sup>

■ *Developments in performance information systems and the budget process*

There have been some positive developments over the past year that are aimed at addressing a number of the issues that relate to performance information. In particular, OIPC have commenced a scoping project to introduce a new comprehensive federal government information management system and a single line budget approach has been introduced across all Indigenous funding as part of the Federal Budget 2004-05.

In relation to the government's performance information systems, the Office of Indigenous Policy Coordination has noted that there are a number of program and implementation issues raised by the transition to a whole of government approach and that this 'requires the development over the longer term of a comprehensive management information system.'<sup>255</sup> They state:

the success of the new arrangements will partly rely on effective and timely information exchange between agencies and the reporting capabilities at all levels... Ideally, adequate and comparable information and data should be available in the agencies, in OIPC, and at all levels, from the Communities and ICCs to the Ministerial Taskforce...

Improved provision of information across government will support better accountability, efficiency and reduction in duplication. An agreed reporting framework and improved monitoring arrangements will enhance the quality of the information to Government on where and how money is spent, on whom, and who benefits.<sup>256</sup>

The OIPC have commenced to develop such a coordinated information management system, to be called the Australian Government Indigenous Management Information System (AGIMIS).

Through the initial stage of the AGIMIS Project the following findings have been made:

- there are up to 196 separate programs that are Indigenous-specific or have a distinct Indigenous component;
- the degree of Indigenous access to mainstream programs cannot yet be identified on a whole of government basis;
- the reporting on many programs is driven primarily by annual reporting requirements at the agency level;
- few agencies use performance reporting frameworks for their Indigenous programs;
- there is inconsistent treatment of performance indicators and measures between agencies and sometimes within agencies;

254 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, CGC Canberra 2001, pp95-96.

255 Office of Indigenous Policy Coordination, *Australian Government Indigenous Management Information System (AGIMIS) Project Strategy – Stages 1 and 2, Overview*, op.cit., p5.

256 *ibid.*, p4.



- there is little explicit articulated connection reported between program outputs/outcomes and government strategic Indigenous frameworks;
- the performance and service delivery data captured about Indigenous programs varies widely, with the most comprehensive data being based on budget, and less comprehensive data available on service providers, recipients, locations and expenditure; and
- the connectivity between data sets, and even data about the same program is often poor.<sup>257</sup>

While addressing these issues is likely to be a long term project, AGIMIS is being developed with the following objective:

The main objective of the AGIMIS Project is to develop an Indigenous management information system to support the long term policy, program implementation and reporting requirements of the “joined up”, whole of government approach to Indigenous funding, program performance monitoring and reporting.<sup>258</sup>

The AGIMIS Project will collect data and provide reports to monitor investment by Government, initially on Indigenous-specific activity and that at a later stage on mainstream services accessed by Indigenous people. The information will allow input to the measurement of overall outcomes and the assessment of effectiveness and efficiency of programs.

It will not operate by creating a new project management system for all government agencies to use. Instead, it will:

*harvest* data collected by agencies – not... be a point of collection itself. In this way, AGIMIS minimises duplication of collection, and does not become an impediment to improvements in management of Indigenous programs.

the coverage and depth of AGIMIS reporting will therefore be determined by the capacity of agencies and their systems to provide current data, collect new or different data, and to enhance their data collection systems... this is a major undertaking for the agencies concerned, including the OIPC.<sup>259</sup>

The OIPC note that the development of the AGIMIS database is a long term project and ‘it’s implementation is expected to take several years as agencies have not generally been geared to whole of government data provision and/or reporting.’<sup>260</sup> It is intended that the project will involve collection of a minimum data set (with collection and reporting during 2005-06); an extended data set will then be developed to provide service level data (to commence in 2006); and scoping of processes to collect mainstream data will also commence in 2006.

The prime challenge for this project is consistency and compatibility of data. Another significant challenge will be whether there is the ability for the data collected by AGIMIS to be related to data on Indigenous socio-economic outcomes.

257 Office of Indigenous Policy Coordination, *Initial Scoping Report – AGIMIS project unit*, Version 1.1, OIPC Canberra 2005, pii.

258 *ibid.*, p5.

259 *ibid.*, pi.

260 Office of Indigenous Policy Coordination, *AGIMIS – Implementation*, Website information, available at: [www.oipc.gov.au/AGIMIS/Implementation/default.asp](http://www.oipc.gov.au/AGIMIS/Implementation/default.asp), accessed 15 September 2005.



AGIMIS is potentially a powerful tool for identifying the nature and scope of government activity on a local and regional level and supporting whole of government activity and reporting. It may have longer term benefits in improving the performance information available for government activity and could provide a useful tool for advancing the proposals first made by the ABS and the Commonwealth Grants Commission for identifying funding and matching it to Indigenous need on a regional basis.

My Office commends the OIPC for the preparatory work done in developing the AGIMIS system and will maintain an interest in developments in this system over the coming years.

Commencing with the federal budget in 2004-05, the government has also introduced a new process for the Indigenous budget. All Indigenous specific funding is allocated through a single line budget process. The Secretaries' Group explained this process as follows:

Under the new arrangements:

- all new policy proposals from Ministers for government investment in Indigenous-specific initiatives are now considered together in a single Indigenous Budget submission;
- strategic decisions can be taken against government priorities for Indigenous-specific expenditure, including opportunities to maximise coordination and minimise duplication or overlap; and
- proposals and decisions are informed by an assessment of the performance of existing Indigenous-specific programmes and services.<sup>261</sup>

The process for preparing the single line budget intends to improve coordination of government funding and programs, through the oversight of the Ministerial Taskforce and Secretaries' Group.<sup>262</sup> It constitutes a significant advance in streamlining government funding processes and aligning programs to the priority areas identified by the government.

#### ■ *Data collection issues*

At present, there is limited data available to indicate progress on a variety of measures through the new arrangements.

Outcomes for the period since the new arrangements have been in place will not show up in data collections and analysis for at least another 2 to 4 years. This is because we are unlikely to see analysis of the 2006 Census until 2007 or 2008, and analysis of the next National Aboriginal and Torres Strait Islander Social Survey (NATSISS) until at least 2008. The latest report on Overcoming Indigenous Disadvantage by a Productivity Commission Steering Committee, released in July 2005, reflects on data that pre-dates the new arrangements on most indicators. Therefore, it will not be until 2007 that any data compiled in accordance with the commitments of COAG and reported in a holistic manner, will relate to the new arrangements.

261 Secretaries Group on Indigenous Affairs, *Bulletin (May 2005) – The Budget*, Available online at: [www.apsc.gov.au/indigenousemployment/bulletin0505.pdf](http://www.apsc.gov.au/indigenousemployment/bulletin0505.pdf), accessed 15 September 2005.

262 For details of the review process see: *ibid.*



Similarly, it is not easy to manipulate current data to identify regional trends and variations. Given the reliance of the new arrangements on regional approaches and coordination through regional ICC offices, the proposed use of Regional Partnership Agreements for structuring regional representation and priority setting, and the continuation of COAG trials in select regions, being able to disaggregate to the regional level is very important to establish the success or otherwise of the new approach.

There also remains an ongoing need for improvement to data quality and collections to support policy. The *Overcoming Indigenous Disadvantage report* has identified the strengths and weaknesses of current data collection sources as follows:

- *Census data*: censuses takes place every 5 years, with the next planned for 2006. They are generally robust, rich in information and potential for disaggregation. Census tables showing population characteristics are not adjusted for undercount. In 2001, the undercount for the total Australian population was estimated to have been 1.8 per cent. The Indigenous population undercount in 2001 was estimated at 6.1 per cent.
- *Survey data*: such as the National Aboriginal and Torres Strait Islander Social Survey and the National Health Survey, provide a rich source of data at higher levels of aggregation, for example, national, State and Territory data, with non-remote ad remote area disaggregation available. The ABS has introduced a three year rolling program of specific Indigenous household surveys, the next being the 2004-05 National Aboriginal and Torres Strait Islander Health Survey, with results due in 2006. These surveys are designed to ensure that core data items are retained for each survey cycle to enable key data comparisons over time. Data are subject to sample error, especially when disaggregated to a level beyond that the survey sample was designed to accommodate.
- *Administrative data*: are frequent (often annual) but are prone to differential levels of coverage of Indigenous identification across jurisdictions. Furthermore, there may be disparities amongst jurisdictions in the definitions used within collections, which can render national comparisons problematic.<sup>263</sup>

Another weakness resulting from the demise of ATSIC is the lack of structures currently in place that provides a framework to consult with Indigenous peoples. Effective data collection includes consulting with Indigenous peoples. As previously mentioned the *Aboriginal and Torres Strait Islander Commission Act 1989 (Cth)* established requirements for various federal agencies (including the Australian Bureau of Statistics) to consult with ATSIC on specified issues. The provisions were repealed as part of the abolition of ATSIC and alternative provisions for consulting with Indigenous organisations or peoples were not substituted into the amended Act.

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263 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: key Indicators 2005*, Productivity Commission, Canberra, Foreword, pp2.18-2.19.



What these factors indicate is that over the next few years it is not going to be easy to use existing data collections to establish the impact of the new arrangements on Indigenous socio-economic outcomes. This will particularly be so at the regional and sub-regional level.

■ *Monitoring and evaluation processes for the new arrangements*

One aspect of the new approach that has received limited attention from government to date is the establishment of processes to monitor and evaluate the new arrangements at a system wide level.

As already noted, there has been limited progress in evaluating the COAG trial sites, despite their significant influence in the design of the approach adopted through new arrangements.

There has also been limited attention paid to monitoring the Shared Responsibility Agreement process. As noted earlier, there are inconsistent provisions for measuring outcomes under these agreements (with confusion in the use of terms such as targets, outcomes, benchmarks etc) and unclear processes within agreements for monitoring and evaluation. OIPC have confirmed that SRAs will initially be evaluated on a limited basis by OIPC itself in the first half of 2006 – i.e. not through independent processes.

The OIPC has stated that programs and service delivery to Indigenous communities will be assessed in the new arrangements through:

multiple layers of evaluation and performance monitoring. Collectively, these constitute the key accountability mechanisms for the new arrangements, and will also help to develop a learning framework to share knowledge about what is working, what isn't and why.<sup>264</sup>

They have identified the key streams of evaluation as:

- Evaluations by independent authorities, including:
  - the Office of Evaluation and Audit (Indigenous Programs) (OEA(IP));
  - the Australian National Audit Office; and
  - the Aboriginal and Torres Strait Islander Social Justice Commissioner;
- Departmental evaluations of Indigenous specific programs and services; and
- Cross portfolio and multi-agency evaluations – coordinated by OIPC.<sup>265</sup>

In addition, there are also the various projects being undertaken by the Australian Public Service Commission in accordance with the *Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees* that will include evaluative components on the new arrangements.

The OIPC note that the accountability framework for the new arrangements also links to a series of performance monitoring systems, which include:

- the Overcoming Indigenous Disadvantage Report (which is based on the National Reporting Framework on Indigenous Disadvantage);
- the annual Report on Government Services from the Steering Committee for the Review of Government Services;
- regular reports from the ABS and AIHW;

<sup>264</sup> Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p1.

<sup>265</sup> *ibid.*



- performance information and reporting through Portfolio Budget Statements and Departmental Annual Reports; and
- a public annual report detailing the performance of Indigenous programs released by the Secretaries' Group on Indigenous Affairs.

These evaluations and performance reports will be augmented by public-sector, academic and independent research activities.<sup>266</sup>

The Office of Evaluation and Audit (Indigenous programs) (OEA(IP)) is the primary evaluation mechanism for government programs relating to Indigenous service delivery in the new arrangements. The OEA(IP) is located within the Commonwealth Department of Finance and Administration (DoFA).

Its role is to assist in improving the performance and public accountability of Indigenous-specific programs. This is achieved by conducting a regular program of independent, objective and systematic evaluations and audits of:

- relevant programs administered by an Australian Government body;
- related aspects of the operations of Australian Government bodies delivering those programs;
- particular activities of organisations or individuals funded under those programs when requested by the Minister; and
- organisations or individuals where funding or loan agreement provides for evaluation or audit by OEA(IP) and where the Minister consents to the evaluation or audit.<sup>267</sup>

DoFA have advised that the OEA(IP) will play a central role in measuring the performance of the Australian Government's Indigenous programs. The work program established by OEA(IP) for the next two years is set out in Text Box 9 below. It is ambitious and is likely to provide some much needed insight into the progress of the new arrangements.

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**Text Box 9: Office of Evaluation and Audit (Indigenous Programs)  
OEA(IP): Audit Program 2005-06, by agency<sup>268</sup>**

**Attorney-General's Department**

- Family Violence Prevention Legal Services Program (in progress as at July 2005)
- Prevention, Diversion and Rehabilitation Program (to commence 2005-06)
- Evaluation of Indigenous Legal Services (reserve topic)

**Communications, Information Technology and the Arts Portfolio**

- TAPRIC – Community Phones Program (to commence 2005-06)
- Evaluation of Support for Indigenous Visual Arts (to commence 2006-07)
- Sporting Opportunities for Indigenous People Program (reserve topic)
- Indigenous Broadcasting Program (reserve topic)

**Education Science and Training Portfolio**

- Evaluation of Indigenous Strategic Initiative: Away-from-Base (in progress at 1 July 2005)

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266 *ibid.*

267 Office of Evaluation and Audit (Indigenous Programs), *Evaluation and Audit Work Program July 2005-June 2007*, OEA(IP), Department of Finance and Administration, Canberra, 2005, p1.

268 *ibid.*



- Indigenous Education Strategic Initiatives Program (to commence 2005-06)
- National Report to Parliament on Indigenous Education and Training (to commence 2005-06)
- Tuition Assistance (to commence 2006-07)
- Evaluation of Supplementary Recurrent Assistance (to commence 2006-07)
- Homework Centres (reserve topic)
- Parent-School Partnership Initiative (reserve topic)
- **Australian Institute of Aboriginal and Torres Strait Islander Studies**
  - Collection Development and Management (reserve topic)

#### **Employment and Workplace Relations Portfolio**

- Audit of CDEP organisations (in progress at 1 July 2005)
- CDEP Performance Information (to commence 2005-06)
- Indigenous Economic Development Strategy (to commence 2006-07)
- Indigenous Youth Employment Consultants Program (reserve topic)
- Indigenous Community Volunteers (reserve topic)
- **Indigenous Business Australia**
  - Third Party Funding Arrangements – Follow-up audit (in progress at 1 July 2005)
  - Evaluation of Indigenous Business Australia (to commence 2005-06)
  - Business Development Program (to commence 2006-07)

#### **Environment and Heritage Portfolio**

- Maintenance and Protection of Indigenous Heritage (reserve topic)

#### **Family and Community Services Portfolio**

- Audit of Indigenous Housing Organisations (in progress at 1 July 2005)
- Third Party Funding Arrangements – Follow-up audit (in progress at 1 July 2005)
- Aboriginal Rental Housing Program (to commence 2005-06)
- Evaluation of Family Violence Prevention Program (to commence 2005-06)
- Healthy Indigenous Housing (to commence 2006-07)
- Indigenous Community Stores Project (reserve topic)
- Indigenous Child-Care Services (reserve topic)
- Evaluation of Social Support Programs for Indigenous People (reserve topic)
- **Aboriginal Hostels Limited**
  - AHL Community Operated Hostels (to commence 2006-07)

#### **Health and Ageing Portfolio**

- Audit of Croc Festivals (in progress at 1 July 2005)
- Audit of Aboriginal Community Controlled Health Services (in progress at 1 July 2005)
- Primary Health Care Access Program (to commence 2005-06)
- National Aboriginal and Torres Strait Islander Health Performance Framework (to commence 2005-06)
- Implementation of the National Strategic Framework for Aboriginal and Torres Strait Islander Social and Emotional Wellbeing (to commence 2006-07)
- Aboriginal and Torres Strait Islander Substance Abuse Programs (to commence 2006-07)
- Aged Care Strategy for Aboriginal and Torres Strait Islander people – Residential Care (reserve topic)





- Australian Hearing Special Program for Indigenous Australians (reserve topic)
- Eye Health Program (reserve topic)

#### **Human Services Portfolio**

- Centrelink Agents (reserve topic)

#### **Immigration and Multicultural and Indigenous Affairs Portfolio**

- Audit of Native Title Representative Bodies (in progress at 1 July 2005)
- Audit of Indigenous Coordination Centres (to commence 2006-07)

#### **Torres Strait Regional Authority**

- Torres Strait Regional Authority Audit (in progress at 1 July 2005)
- Torres Strait Regional Authority CDEP (to commence 2006-07)
- Torres Strait Regional Authority – Housing and Environmental Health Infrastructure (reserve topic) Indigenous Land Corporation
- Assistance in the Acquisition and Management of Land (to commence 2006-07)
- Aboriginal Benefits Accounts (reserve topic)

The evaluations conducted by OEA(IP), as well as those by the Australian National Audit Office, relate to specific Indigenous programs. At this stage it is not planned that there be any independent evaluation of the system wide operation of key aspects of the new arrangements. For example, there are no evaluations planned of the effectiveness of whole of government coordination through the operation of Indigenous Coordination Centres or processes relating to Shared Responsibility Agreements. In light of the complexity of the new approach, it would be beneficial for there to be an independent review of the systemic issues relating to the new arrangements over the next two years.

#### ■ *Linking the new arrangements to the Overcoming Indigenous Disadvantage Framework*<sup>269</sup>

In July 2005, the Productivity Commission on behalf of the Steering Committee for the Review of Government Service Provision released the second report against the *Overcoming Indigenous Disadvantage Framework*. The report:

documents outcomes for Indigenous people within a framework that has both a vision of what life should be for Indigenous people and a strategic focus on areas that need to be targeted if that longer-term vision is to be realised. It can therefore provide governments with information needed to assess whether their policy interventions are having the intended impacts.<sup>270</sup>

The *National Framework of Principles for Delivering Services to Indigenous Australians* endorsed by the Council of Australian Governments in June 2004 commits

269 Further detail on the issues discussed in this section can be found in the following documents: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social justice and human rights – Utilising Indigenous socio-economic data in policy development*, Speech, *Indigenous Socioeconomic Outcomes: Assessing Recent Evidence conference*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 12 August 2005, available online at: [www.anu.edu.au/caepr/conference2.php](http://www.anu.edu.au/caepr/conference2.php); and Aboriginal and Torres Strait Islander Social Justice Commissioner, *Overcoming Indigenous Disadvantage - Key Indicators Report 2005: A human rights perspective*, Speech, *Overcoming Indigenous Disadvantage report workshop*, HREOC, Sydney, 16 September 2005, available online at: [www.humanrights.gov.au/social\\_justice/conference/oid/tom\\_calma.htm](http://www.humanrights.gov.au/social_justice/conference/oid/tom_calma.htm).

270 *Overcoming Indigenous Disadvantage, op.cit.*, piii-iv.



governments to 'continue to measure the effect of the COAG commitment through the jointly-agreed set of indicators' in this report.<sup>271</sup>

The *Overcoming Indigenous Disadvantage* report is significant because of:

its endorsement by COAG as an ongoing vehicle for monitoring Indigenous disadvantage and the impact of policy. It has had a direct link to broad policy development and review which no other report has had. The second distinguishing feature of this reporting exercise is its strategic two-tier framework. At the top is a shared vision of what life should be for Indigenous people, with headline indicators that can tell us the extent to which it is being realised. That is not so unusual. If reporting stopped there it would be adding much to what is available elsewhere. But the Report does more than this. It contains a second tier of information that focuses on areas where things need to change if the vision is to be realised. And, again, it provides a selection of indicators within those 'strategic change areas' to help us assess whether that is happening.<sup>272</sup>

The reporting framework embodies a vision – committed to by all governments – that Indigenous people will one day enjoy the same overall standard of living as other Australians. They will be as healthy, live as long, and participate fully in the social and economic life of the nation.<sup>273</sup>

This vision is consistent with a human rights approach, which emphasises the importance of providing equality of opportunity. The human rights system:

- emphasises the accountability of governments for socio-economic outcomes by treating equalisation as a matter of legal obligation, to be assessed against the norms established through the human rights system; and
- requires governments, working in partnership with Indigenous peoples, to demonstrate that they are approaching these issues in a targeted manner, and are accountable to the achievement of defined goals within a defined timeframe.

This second element is known as the 'progressive realisation' principle. The content of this principle is set out in Chapter 2 of this report in relation to the right to health. It requires governments 'to take steps,... to the maximum of its available resources, with a view to achieving progressively the full realization of (economic, social and cultural) rights... by all appropriate means.'<sup>274</sup> It is required that these steps should be deliberate, concrete and targeted as clearly as possible towards meeting human rights obligations including equalisation between racial groups.

The progressive realisation principle has two main strategic implications. It recognises that the full realisation of human rights may have to occur in a progressive manner over a period of time, reflecting the scarcity of resources or funds. And it allows for setting priorities among different rights at any point in time since the constraint of resources may not permit a strategy to pursue all rights simultaneously with equal vigour.

271 Council of Australian Governments, *National Framework of Principles for Delivering Services to Indigenous Australians*, Attachment B, Communiqué, 25 June 2004.

272 Gary Banks, Chairman, Productivity Commission, *Indigenous Disadvantage: are we making progress?*, Address to the Committee for Economic Development in Australia (CEDA), Adelaide, 21 September 2005, p3.

273 *Overcoming Indigenous Disadvantage*, op.cit., piii.

274 *International Covenant on Economic, Social and Cultural Rights*, Article 2.1.



This framework provides a very helpful basis from which to address these issues. It shows the inter-connections between issues, which is of assistance when we get down to this prioritisation of need. And it allows us to compare the situations of Indigenous peoples and non-Indigenous peoples over time.

It is beyond the scope of the framework to set as the goal of policy the achievement of equality. However, the Framework enables us to see how well we are progressing in closing the gaps between Indigenous and non-Indigenous people.

There are commitments from the Ministerial Task Force on Indigenous Affairs, on behalf of the federal government, to the 3 priority areas of the *Overcoming Indigenous Disadvantage Framework*.

However, at present there is a disconnection between many programs and activities under the new arrangements and the Key Indicators within the framework.

A number of federal departments have modified their information management systems so they are more consistent with this framework.<sup>275</sup> However, I do not consider that sufficient steps have been taken by the government to link its activities to the indicators in this framework.

As noted earlier in the report, the government is developing guidelines on the design of Shared Responsibility Agreement performance indicators that will mirror the Strategic Change Indicators in the framework. SRAs to date are not strong on addressing data limitations or ensuring rigorous, sustainable links to this reporting framework. My Office will monitor whether there are improvements in the linkages between SRAs and this reporting framework over the coming year.

The *Overcoming Indigenous Disadvantage Framework* also needs to be supplemented by appropriate targets or benchmarks, that are negotiated between governments and Indigenous peoples.

For example, the report tells us what the rate of progress is on particular issues and where there is no progress. Taking this to the next level by incorporating a human rights approach means that governments then need to justify:

- why there is no advancement on some indicators – after all, the progressive realisation principle requires that there be an ongoing improvement and ongoing reduction of inequality; and
- in relation to where there are improvements, to explain or justify whether the rate of progress achieved is a *sufficient* rate of progress given the resources available and the urgency and priority of the issues.

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275 For example, the Department of Communications, Information Technology and the Arts have informed my Office that they have modified the Indigenous Program Performance measures by aligning them with the *Key Strategic Priority Areas* identified in the report in order to enhance their ability to monitor and evaluate service delivery to Aboriginal and Torres Strait Islander people and ensuring the alignment of funded programs with government priorities; and the Department of Transport and Regional Services have also advised that the Joint Lead Agency Action Plan for the COAG WA trial site project in the East Kimberley is structured along the lines of the National Reporting Framework on Indigenous Disadvantage, with all activities and outcomes at the COAG trial site placed within this framework to ensure that they can be monitored, evaluated and compared effectively.



Put differently, benchmarks would provide a level of accountability for government to explain the adequacy of progress under the new arrangements and through whole of government coordination at the inter-governmental level (in accordance with the COAG commitments).

Following on from the setting of equality targets, to be measured by the Key Indicators, benchmarks should also be set so that the rate of progress can be monitored and, if progress is slow, corrective action taken. Setting benchmarks enables government and other parties to reach agreement about what rate of progress would be adequate. Such benchmarks should be:

- Specific, time bound and verifiable;
- Set with the participation of the people whose rights are affected, to agree on what is an adequate rate of progress and to prevent the target from being set too low; and
- Reassessed independently at their target date, with accountability for performance.<sup>276</sup>

The absence of such indicators leaves no way to tell whether policy and program initiatives are having the intended impact.

The need for benchmarks linked to this framework was also identified by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs in their 2004 report, *Many Ways Forward*.<sup>277</sup> The inquiry examined capacity building and service delivery in Indigenous communities and recommended improvements to data collection, monitoring and evaluation of government service delivery to Indigenous peoples. It recommends that:

- basic data collection is nationally consistent and comparable, and focussed on outcomes;
- the Government institute a coordinated annual report to Parliament on its progress in achieving agreed outcomes and benchmarks;
- a comprehensive evaluation is made of the COAG trials, and a regular report on progress is made to Parliament; and
- improved integration, coordination and cooperation within and between levels of government in consultation with Indigenous Australians occurs.<sup>278</sup>

■ *State and Territory developments in implementing the Overcoming Indigenous Disadvantage Framework*

There have been some positive developments in the states and territories to reconfigure policies so that they are consistent with the *Overcoming Indigenous Disadvantage Framework*. This is necessary to affect a nationally consistent approach to policy and program aspiration.

276 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC Sydney 2000, p97, quoting the United Nations Development Programme, *Human Development Report 2000*.

277 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Many Ways Forward – Report of the inquiry into capacity building and service delivery in Indigenous communities*, Parliament, Canberra, June 2004.

278 *ibid*, pp249-250.



The South Australian Government state that:

The *Overcoming Indigenous Disadvantage* strategic indicators are being used as a reference in the development of the intermediate indicators for South Australia's Strategic Planning reporting. The inaugural report for Cabinet using the two tiers of indicators was presented in April 2005. Subsequent to the first report to Cabinet, the Department for Aboriginal Affairs and Reconciliation will explore with agencies the opportunities it provides for policy review and strategy development and improving existing data recording and reporting systems, the future directions and data identified in the *Overcoming Indigenous Disadvantage* report will be used as a reference in this work.<sup>279</sup>

The Western Australian Government has gone a step further in adopting the reporting framework. They have:

used the National Overcoming Indigenous Disadvantage framework as the basis for preparation of a WA-specific report to provide a finer level of data to reflect the diversity of the Indigenous population in WA. The Overcoming Indigenous Disadvantage Western Australia Report provides the basis from which to improve targeting of services delivery and to monitor Government services and program outcomes over time.<sup>280</sup>

The report includes baseline data that 'more fully reflects the diversity of Western Australia's Indigenous population' as well as including examples of program initiatives addressing the strategic areas for action. The inclusion of these examples is to facilitate:

the sharing of information across regions about the less well know initiatives or projects that may be pushing the traditional boundaries of service delivery; or those that highlight best practice; or creative responses to seemingly intractable problems.<sup>281</sup>

For example under the headline indicator 'Early child development and growth' the strategic area for action highlights several initiatives (some having completed evaluations) such as:

- *Community Swimming Pools* – where the provision of swimming pools and a pool canteen providing an avenue for nutritious food, has the potential to impact directly and cumulatively on almost the full range of indicators, from Hearing impediments, Preschool and school attendance, Retention at year 9, participation in organised sport, arts or community group activities, Transition from school to work (opportunities for training and employment as swimming instructors, pool maintenance, canteen operation and management), Alcohol and tobacco consumption (the pool environment may assist in combating boredom), Drug and other substance use, Repeat offending, labour force participation and unemployment, to Accredited training in leadership, finance or management.

279 Minister for Aboriginal Affairs and Reconciliation (South Australia), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p4.

280 Premier of Western Australia, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*, p2.

281 Department of Indigenous Affairs, *Overcoming Indigenous Disadvantage in Western Australia Report 2005*, Department of Indigenous Affairs, Western Australian Government, Perth, 2005, p8.



- *Schools Based Healthy Eating Program* – This is a Telethon Institute Child Health Research proposal, and is similar to projects trialled in Indigenous communities which have resulted in significant improvements in birthweight, decreases in hospitalisation for nutritional or gastroenteritis conditions, increases in regular school attendance, decreases in truancy and improvements in mental health outcomes. This strategy comprises:
  - The provision of a properly nutritious breakfast and lunch for children attending school;
  - Educational sessions for mothers and pregnant women regarding nutrition and child development, including a focus on ‘weaning’ foods;
  - The setting up of a grandmothers/mothers’ group to oversee the program and to coordinate the delivery of informal training to community members in healthy shopping, cooking skills and related areas;
  - A program of regular visits to local health clinics for children aged 0-12 years; and
  - A partnership with local stores to promote supply and access to foods with high nutritional value.<sup>282</sup>

Although not as comprehensive as the Western Australian report, the Queensland government advise that:

Partnerships Queensland is the new performance reporting framework for reporting on Indigenous outcomes resulting from programs and service delivery to Indigenous communities ... Partnerships Queensland is being implemented as the State equivalent performance reporting mechanism to the Productivity Commission’s *Overcoming Indigenous Disadvantage* reporting framework. The framework aims to monitor the efficiency and effectiveness of whole-of-government performance in improving the social and economic outcomes of Queensland’s Aboriginal and Torres Strait Islander population. The performance framework consists of a range of performance indicators that will form the basis of future government performance monitoring.<sup>283</sup>

Similarly the *Victorian Indigenous Affairs Framework* also reflects the indicator framework established by the *OID* report. For example, they advise that monitoring and evaluation frameworks being developed for the oversight of the Victorian Aboriginal Justice Agreement:

are consistent with the criminal justice system-related indicators in the National Reporting Framework on Indigenous Disadvantage, although will provide data that is much more specific to criminal justice issues.

The *Overarching Agreement on Indigenous Affairs between the Commonwealth and the Northern Territory* (the only bilateral agreement signed thus far) sets out accountability arrangements including:

282 Department of Indigenous Affairs, *Overcoming Indigenous Disadvantage in Western Australia Report 2005*, *op.cit.*, pp106-07.

283 Premier of Queensland, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005*, *op.cit.*, Attachment 1.



joint ministerial oversight and reporting on progress at annual meetings between relevant Australian and Northern Territory Ministers. It is anticipated that these reports will link to the Overcoming Indigenous Disadvantage Framework.

The Government is currently examining implementation of a more systemic approach to identifying key areas of program intervention, prior to developing cross agency policy responses to issues. In addition, where possible, all new policies will use the framework as an important part of the accountability mechanism.<sup>284</sup>

New South Wales submit that through the *Two Ways Together* Framework, they have established a framework that provides a basis for coordinating whole of government action covering the key national strategic change areas. The government states:

Cluster groups of key government agencies and Aboriginal peak bodies have been formed for the seven priority areas under *Two Ways Together* (Health; Justice; Families and Young people; Culture and Heritage; Economic Development; Education; Housing and Infrastructure). These cluster groups have set goals, targets and action plans consistent with the national strategic action areas and report biannually against indicators that are consistent with the national key indicators. The first report to the premier has been released and presents state-wide key indicator data to the regional level.<sup>285</sup>

### **iii) Conclusions and follow up actions**

The development of processes to monitor and evaluate the new arrangements is not as advanced as it should be at this point in time. While the Office of Evaluation and Audit was retained and has a significant program of audits of Indigenous related programs over the coming two years, there is limited opportunity for independent evaluation of key elements of the new arrangements. Such evaluation is necessary given the complexity of whole of government approaches, particularly in relation to Indigenous issues.

Of equal concern is the slow rate of progress in evaluating the COAG trials and apparent limitations in establishing the baseline data from which this will occur. First round evaluations are, however, due for completion in the coming year.

Significant challenges remain to monitor the new arrangements from a whole of government and holistic perspective. Important and innovative work has commenced to coordinate performance information reporting and grant management systems through the AGIMIS project. The government has also made significant progress in developing streamlined and coordinated budget processes, ie the single Indigenous Budget process.

Significant concerns about data quality remain. There will be a lag time of at least another two years before data collections begin to reflect the period during which the new arrangements have operated. This places additional reliance on performance information reporting and evaluation processes.

The *Overcoming Indigenous Disadvantage Framework* is now entrenched at the inter-governmental level and provides a powerful tool for measuring the interventions of governments at a whole of government level. This Framework needs to be supplemented with activity from each government to align policy

284 Chief Minister of Northern Territory, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op. cit., p5.*

285 NSW Cabinet Office, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2005, op.cit.*



and program approaches to the strategic indicators in this framework. There have been some significant developments in the states and territories to achieve this, with the Western Australian reporting framework being best practice. There remains, however, an absence of benchmarks and targets to measure the adequacy of progress against the indicators in the Framework.

Overall, monitoring and evaluation processes for the new arrangements are not sufficiently transparent. They do not provide sufficient accountability of government. Such transparency is an integral element of ensuring the effective participation of Indigenous peoples in decision making that affects them. This undermines the intent of the new arrangements and has the potential to limit their effectiveness.

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### **Follow up action by Social Justice Commissioner**

5. The Social Justice Commissioner will continue to consider the adequacy of monitoring and evaluation processes for the new arrangements. This will include considering efforts by all governments to integrate the Overcoming Indigenous Disadvantage Framework into policy and review processes, including through the establishment of benchmarks and targets; as well as monitoring progress in the COAG whole of government trials and the outcomes of the formative evaluations of these currently underway.





## 7) Conclusion and recommendations

There has been extraordinary activity impacting on Indigenous communities and individuals during the first twelve months of the new arrangements for the administration of Indigenous affairs. This chapter details a significant number of these impacts. It identifies a range of the positive developments over this twelve month period, as well as a number of concerns and challenges for the coming years.

As indicated in chapter 3 of the *Social Justice Report 2004*, the lack of information Indigenous people and communities have about the new arrangements has caused great upheaval and uncertainty. The challenge to government is to ensure that this upheaval is as minimal as possible and short term in its impact, and does not result in Indigenous people feeling further disempowered by government.

Twelve months on, this challenge has not been met. It remains for the Government to develop clear and unambiguous information about the new arrangements generally and shared responsibility agreements specifically. It is becoming more evident that the rationale and objectives of the new arrangements needs to be reinforced with the Indigenous communities and individuals to ensure full and effective engagement can commence in a sustainable manner.

A large focus of this past year has been on organising the internal processes of government to ensure that their activities can meet the challenges of whole of government service delivery. There remains a way to go to ensure that this is the case. The absence of rigorous monitoring processes and a general lack of transparency remains of great concern in this regard.

The consequence of this focus, combined with the abolition of ATSIC, is an absence of processes for Indigenous engagement. Current arrangements are not sufficient to ensure the full and effective participation of Indigenous peoples in decision making that affects them at any level – international, national or regional.

I note that there are significant commitments from government to address this. It is critical that we begin to see outcomes emerge during the forthcoming twelve month period (i.e. the 2005-06 financial year).

This chapter, along with Chapter 3 in the *Social Justice Report 2004*, identify a range of challenges for the government in administering the new arrangements. They both indicate how my Office will continue to monitor this situation to ensure that Aboriginal and Torres Strait Islander peoples do not have their human rights breached. I conclude this chapter by reproducing the recommendations and follow up actions identified throughout this chapter.



## Recommendations

4. 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.
5. That the Office of Indigenous Policy Coordination, in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, agree to *Guidelines to ensure that Shared Responsibility Agreements comply with human rights standards* relating to the process of negotiating SRAs and the content of such agreements.

## Follow Up Actions by Social Justice Commissioner

1. The Social Justice Commissioner will consider the adequacy of processes undertaken by all governments to consult and negotiate with Indigenous peoples and communities on policy development, program delivery and monitoring and evaluation processes. This will include:
  - identifying best practice examples for engaging with Indigenous peoples on a national, state-wide and regional basis;
  - identifying existing protocols or principles for engaging with Indigenous peoples;
  - identify existing processes for engaging with Torres Strait Islander communities on the mainland; and
  - developing a best practice guide to negotiating with Indigenous communities from a human rights perspective.
2. The Social Justice Commissioner will work in partnership with non-government organisations and Indigenous community organisations to promote understanding of the rights of Indigenous peoples in the making of Shared Responsibility Agreements. This will include:
  - disseminating information about relevant human rights standards for engaging with Indigenous communities and to guide the content of SRAs; and
  - consulting with Indigenous people, organisations and communities about their experiences in negotiating SRAs.
3. The Social Justice Commissioner will monitor the Shared Responsibility Agreements process. This will include:
  - considering the process for negotiation and implementation of SRAs;
  - considering whether the obligations contained in agreements are consistent with human rights standards or place restrictions on the accessibility of basic entitlements or essential services; and



- establishing whether the government has fulfilled its commitments in SRAs, including through providing appropriate support to communities to ensure that the proposed benefit in an SRA is realised in the community.

4. The Social Justice Commissioner will examine approaches adopted by the government to improve the accessibility of mainstream services to Indigenous communities and individuals. This will include:

- conducting consultations and case studies with the participation of select urban, regional and remote Indigenous communities, to identify best practice as well as barriers to the accessibility of mainstream services;
- examining the role of solution brokers in Indigenous Coordination Centres and in the negotiation of Shared Responsibility Agreements (for example, by considering the percentage of funding allocated through SRAs from mainstream programs as opposed to Indigenous specific funding or the SRA flexible funding pool); and
- considering the impact of reforms to the CDEP Scheme, including changes to align the program more closely with mainstream employment programs.

5. The Social Justice Commissioner will continue to consider the adequacy of monitoring and evaluation processes for the new arrangements. This will include considering efforts by all governments to integrate the Overcoming Indigenous Disadvantage Framework into policy and review processes, including through the establishment of benchmarks and targets; as well as monitoring progress in the COAG whole of government trials and the outcomes of the formative evaluations of these currently underway.

