

## **The abolition of ATSIC – Implications for democracy**

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The Aboriginal and Torres Strait Islander Commission (ATSIC) had two democratic dimensions to its operation. It had an elected arm and it had a legislative mandate that gave it an alternative voice on policy to government, one that better reflected the perspectives and interests of Aboriginal people.

In order to better assess the impact of ATSIC's abolition, it is important to have a clear view of what it did. Established in 1989, ATSIC had both an administrative and elected arm and so it had to play a delicate balancing act as the primary representative voice for Aboriginal and Torres Strait Islander peoples at the national level while also operating as a government agency.

### **ATSIC's strengths**

ATSIC's strengths lay in its broad legislative mandate which included the formulation and implementation of programs, monitoring the effectiveness of programs conducted by all bodies and agencies, developing policy proposals, assisting, advising and cooperating with all stakeholders, advising the Minister, protecting cultural material and information, and collecting and publishing statistical material.<sup>1</sup> These functions were designed to assist ATSIC in meeting its legislative aims of 'maximum participation', 'the development of self sufficiency and self management', the 'furtherance of the economic, social and cultural development' and the 'coordination in the formulation and implementation of policies ... without detracting from the responsibilities of ... governments'.<sup>2</sup> That is, ATSIC was tasked to maximise the participation of Aboriginal and Torres Strait Islander peoples in the formulation and implementation of programmes and to provide an effective voice within government. However, at no time during its life was this broad

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<sup>1</sup> These functions were set out in s.7 of the *ATSIC Act 1989 (Cth)*.

<sup>2</sup> The objects of the *ATSIC Act 1989 (Cth)* were set out in s.3.

mandate was not used to its full capacity. ATSIC was not responsible for all federal Indigenous programs. It never had fiscal responsibility for education, lost responsibility for health in 1995 and had only supplementary responsibility for areas such as housing and domestic violence.

Another characteristic that made ATSIC unique was its capacity to engage with government at the highest level. It was the first national representative body that gave Indigenous peoples both advisory and decision making capacity. The dual role provided ATSIC with a legitimate role in determining the direction and priorities in respect of Commonwealth policy, albeit within fairly tight constraints. This very real power provided ATSIC with a capacity to negotiate on the playing field and, although not level, this was a far cry from the powerless positions experienced in negotiations by Indigenous representative bodies up until that time.

From this position, ATSIC was able to make positive contributions to a broad range of agendas and initiatives including the response to the Royal Commission into Aboriginal Deaths in Custody, the National Aboriginal Health Strategy additions and the response to the Bringing Them Home report. ATSIC was also able to take a seat at the MCATSIA table and was influential within COAG (twice) putting forward the National Commitment to Improved Service Delivery to Aboriginal and Torres Strait Islander People. It also was actively involved with the COAG Reconciliation Agenda. These were positive initiatives emanating from COAG and had substantial merit. These gains were hard fought and marked significant advances in attempting to reform the way government conducted business in the Indigenous portfolio. These points of interaction and influence must not be cast aside.

Under the ATSIC legislation, the Regional Councils were required to formulate a regional plan and to assist, advise and co-operate in the implementation of that plan. Importantly, this process required broad consultation and negotiation with various levels of government and regional Indigenous communities. The Regional Councils also had a legislative obligation to receive and to pass on to ATSIC the views of their constituents

about the activities of government bodies in their region and to represent and to advocate on their behalf. These powers and functions provided a governance structure at the regional level that served as an important source of advice on policy and priorities at the national level to assist with the allocation of resources and participation in decision-making processes.

### **ATSIC's weaknesses**

ATSIC's ability to exercise its functions and meet its aims was impeded by some inherent structural problems. One of the key problems was its lack of executive authority. Under its enabling legislation, ATSIC was given the function to monitor the effectiveness of other agencies, to coordinate the development and implementation of policies and to formulate and implement program proposals. To fulfil this responsibility ATSIC needed the active cooperation and involvement of Commonwealth agencies and State and Territory governments. This in turn required an interface backed by executive authority from the Department of Prime Minister and Cabinet. This authority was never given to ATSIC and the activities of Prime Minister and Cabinet were often to the contrary to ATSIC's stated policies and intentions.

Other key weakness included the lack of a State/Territory interface in the legislation (this impeded ATSIC's ability to work on issues that were shared between the state/territory and federal governments, such as housing, health and education) and the undefined relationships between the ATSIC Board, CEO, Minister and Regional Councils (in particular, it was not clear how the CEO was to balance his responsibilities to the Board and to the Minister when the two could have opposing views).

### **ATSIC's abolition**

When the government finally announced ATSIC's abolition in June 2004, there were several reasons suggested to explain its dismantling. This was facilitated by a policy announcement by the Australian Labor Party that, if elected, they would abolish ATSIC.<sup>3</sup>

### **A 'failed experiment'**

It was often argued by government that, because socio-economic statistics for Aboriginal and Torres Strait Islander people still showed large levels of disadvantage compared to other sections of the population, ATSIC was not working.

ATSIC was often portrayed as being responsible for every Indigenous issue. However, it was not widely appreciated that it did not, at the time of its abolition, have fiscal responsibility for the areas of health and education and was only a supplementary funding provider on issues such as domestic violence, languages, heritage protection and housing. In addition to this, there has also been a failure to understand that a large percentage (almost 80 per cent) of the ATSIC budget was quarantined for programs such as the Community Development Employment Program (a work-for-the-dole scheme) and the Community Housing and Infrastructure Program. These misconceptions about ATSIC's role directed attention away from government departments (federal and state and territory) with the actual responsibility for Indigenous policy and service delivery.

The ability to treat ATSIC as the source of inadequate policy and ineffective service delivery was increased by the intense media coverage of allegations against ATSIC board members, particularly the Chair, Geoff Clark (for alleged sexual assault and alleged misuse of travel budget) and the Deputy Chair, Ray 'Sugar' Robinson (for alleged corruption).<sup>4</sup> The press coverage given to Board members who were subject to allegations of criminal misconduct undermined the credibility of the institution and that this was exacerbated by the misinformation about ATSIC and its responsibilities. This

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<sup>3</sup> Though, unlike the Liberal Party, the ALP have said that they would replace ATSIC with another representative structure. What this new body would look like and how it would work has not yet been articulated.

<sup>4</sup> No charges were ever proven against either man.

criticism further deflected criticism from the governments and agencies that were responsible for those shortcomings.

**'The people don't support it'**

The second reason often put forward for ATSIC's failure was that it did not have the support of the Aboriginal people. This view was backed by the large number of criticisms that had been directed by ATSIC during a review that delivered its report, *In the Hands of the Regions – A New ATSIC*, in November 2003. It recommended greater emphasis be placed on the role of the regions. Much of the criticism within the report for ATSIC's restructure sought reform of the body rather than advocating for its dismantlement. These calls for reform included increasing democracy within the ATSIC election process<sup>5</sup>, giving more power to the regional councils for policy and service delivery and integrating a state/territory level of representation into the ATSIC structure.

While the standards for assessing the legitimacy of institutions are inherently subjective and controversial, claims of low voter turn out at ATSIC elections were used as evidence that Indigenous people did not support it. While in some areas this was true, voter turn out was higher in some places than at local government and trade union elections and was highest in the area where ATSIC's presence was more likely to be felt. For example, it was only 4.45 per cent in Tasmania but reached 34.68 per cent in the Northern Territory and 27.70 per cent in Western Australia. That is, where there were remote communities that had specific and special needs in relation to services, there was greater participation in ATSIC elections.

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<sup>5</sup> The elected arm of ATSIC was selected through an election at the regional level (at the time of ATSIC's abolition, these numbered thirty-five), with each region electing a Regional Council. The elected members would, amongst themselves elect a Chair and Deputy Chair. The members of thirty-five Regional Councils were divided into twelve zones who would elect a Commissioner to the national board from amongst their number. The twelve elected Commissioners would elect a Chair, Deputy Chair and Alternate Chair to the Commission. This was a process that saw Indigenous people only directly elect their regional council members and the direct election of Commissioners by community people was strongly lobbied for.

**A more likely reason—silencing dissent**

A further reason that has been mooted as to why ATSIC was axed and it relates to ATSIC's activities as a vocal critic of government performance. ATSIC was able to develop policy on some key areas that reflected the position of Indigenous peoples, particularly on issues often conflicting with the Government's position. One such area is native title. ATSIC's strategies and policies on native title often conflicted with the federal government position and it funded Native Title Representative Bodies to litigate native title claims in matters where the Federal Government is a party. Another area of strength has been ATSIC's ability to lobby in the international arena where it frequently advocated positions contrary to the Federal Government's.

ATSIC was also able to maintain a focus on the rights agenda in a period where Federal Government policy has been one of 'practical reconciliation.' ATSIC's position was always that the recognition and enjoyment of rights are also required if any real, meaningful and sustainable progress is to be attained. The 'rights agenda' advocated by ATSIC was a position that directly opposed the Federal Government's but ATSIC was able to continue to focus on broader, structural and long-term rights issues.

ATSIC was a strong critic of government and was active in raising matters where it thought government was failing to meet its human rights obligations in the international arena. It was this capacity to embarrass and challenge government that some have said have led to its being the governments sights for dismantling.

**The fallout**

The dissolving of ATSIC's elected arm meant that Aboriginal people no longer had a representative process by which to elect people to advocate on their behalf at the national level through a body that could influence policy development and program delivery. ATSIC's national body was replaced by the National Indigenous Council (NIC), a government appointed body of 15 individuals. This new body has been criticised for a number of reasons including that the appointed representatives have no responsibility to

represent broader Indigenous interests. The appointees are acting in an individual capacity are not accountable to the community whose interests their decisions will affect.

The Regional Councils were abolished at the end of June 2005. With them went another layer of the representative structure and another body through which Indigenous people could use to advocate for their interests. ATSIC created a structure that linked a regional representative governance model with a national representative body, a governance structure that allowed for regional priorities to be set and met while at the same time providing an opportunity for a unified, and therefore more effective, voice at the federal level.

The removal of accountable and elected representation has meant that there is no national voice to advocate on Indigenous policy positions. In an era that has seen an enormous amount of change in the Indigenous affairs portfolios – the introduction of Shared Responsibility Agreements, the ideologies of mutual obligation, the reform of major pieces of legislation (including the Northern Territory land rights regime and the Aboriginal Councils and Associations Act 1976), the out-sourcing of legal services, the increasing overrepresentation of Indigenous people within the criminal justice system and the mainstreaming of more and more essential services—this loss of a united voice has left many Indigenous people feeling excluded from debates about policies and programs that are going to impact directly on their lives, families and communities.

Professor Behrendt is author of *Achieving Social Justice: Indigenous Rights and Australia's Future* (Federation Press, 2003).