

# *Towards a new Indigenous representative body*

**By Bob McMullan**

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## **Towards a new Indigenous representative body**

It was extremely encouraging to see that 90 young Australian leaders of the future, meeting under the auspices of the Australian Future Directions Forum this month declared that ending the disadvantage of Aboriginal and Torres Strait Islander peoples was their number one priority.

“The Indigenous Statement” issued by the young leaders was an outstanding and progressive articulation of the best of Australian values and aspirations. It stated:

We declare that the ending of Aboriginal and Torres Strait Islander peoples (Indigenous) disadvantage is the number 1 priority of the 2006 Australian Future Directions Forum. We stand diminished as a nation unless we act immediately and decisively to address the marginalisation of Indigenous people across all areas of life. This is not only desirable, it is achievable. It would be outrageous for this level of alienation and disparity to continue into the next decade. As future leaders we are determined to take all efforts to address this legacy.

We will do this because it is right. The manifest disadvantage of Indigenous people is intolerable. By doing nothing we stand to witness the irreversible loss of the most ancient cultures in the world.

We need to focus on rights, community engagement, economic independence, and social independence. Achieving these lasting changes requires a partnership between Indigenous and non-Indigenous people. Indigenous people have a right to design, define and develop their own publicly supported and recognised representative structures. As a priority, we need to establish an agreement between Indigenous and non-Indigenous Australia as a foundation document for progress.

There has been considerable detailed work done on the solutions to Indigenous disadvantage and for the recognition of Indigenous culture so we can be confident, that with refinement, the elements for success exist. The focus then must be on commitment, priority and action.

The challenge of overcoming Indigenous disadvantage is a test we are clearly failing to meet.

My previous essay (found at <http://www.progressiveessays.org/?q=node/5>) established the extent of our shocking failure. It also made clear that the situation has deteriorated over the last decade and that amongst countries in comparable situations we are, in fact at world's worst practice.

It was appropriate that the Forum should include in its Statement the importance of establishing an appropriate representative structure.

This is not only a question of rights. The evidence shows it is a necessary part of any successful strategy to improve Indigenous living standards.

International research such as that from the famous Harvard project suggests that if we are to respond effectively to this national shame and public policy crisis we need to address issues of Indigenous representation and empowerment in addition to measures of direct and long-term response to the obvious disadvantage.

According to the Project web site <http://www.ksg.harvard.edu/hpaied> some key findings to date are that:

***Sovereignty matters.*** When tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform non-tribal decision makers. Because tribes bear the consequences of their government's decision making – whereas federal agencies, non-tribal developers, state governments and other outsiders do not – tribes that make their own development decisions do better. Harvard Project research on topics as diverse as timber operations under PL93-638 and Indian Health Service programs under self governance compacts prove the point.

***Institutions matter.*** Harvard Project research shows that successful tribal governments share a few core institutional attributes. They settle disputes fairly, separate the functions of elected representation and business management, and successfully implement tribal policies that advance tribal strategic goals. Fair dispute resolution is essential to the accumulation of human capital, physical infrastructure and investment finance because it sends a signal to investors of all kinds that their contributions will not be used inappropriately or taken over unfairly. Separating business and government is critical because many Indian businesses are government-owned. Finally, effective administration is a feature of successful tribes because, without it, legitimacy deteriorates and sovereignty is eroded as opportunities go untapped or other powers fill the vacuum left by weak tribal government.

***Culture matters.*** Not long ago, the federal government espoused the argument that acculturation was a means to development. Indians, they argued, would develop as soon as they shed their “Indian-ness”. Research by the Harvard Project finds exactly the opposite: Indian culture is a resource that strengthens tribal government and has concrete impacts upon such bottom line results as forest productivity and housing quality. Not only does culture provide important institutional resources, but a match between institutions of government and culture also matters to success.

However, in recent years the Howard government has gone to the extreme in the opposite direction with its so-called “Practical Reconciliation”.

Under this so-called practical reconciliation policy the situation has deteriorated.

As the recent study by John Altman and Boyd Hunter of the Centre for Aboriginal Economic Policy Research (CAEPR) made clear, the approach of so-called practical reconciliation has been far from a success. It is time we tried something new.

Using the coincidence of timing of the change of government at a federal level with the 1996 census Altman and Hunter compare the progress of Indigenous Australians against a set of indicators derived from 1991, 1996 and 2001 census data.

They conclude that the relative standing of Indigenous people declined in the 1996-2001 period which suggests that “Indigenous Australians have not shared in national economic growth to the same extent as other Australians” and that “areas of improvement evident to 1996 have been eroded over the period 1996 -2001”.

This leads to the conclusion that if we are to give proper recognition to Indigenous prior ownership of this continent and the consequences of their subsequent dispossession we need, amongst other things, to create an efficient and effective representative structure which can advocate on behalf of Indigenous people and which can hold accountable those government agencies whose task it is to develop and implement programs to overcome Indigenous disadvantage.

Even those who do not accept the legitimacy or significance of the prior ownership and dispossession argument must accept that there is a special and unique level of disadvantage suffered in this country by Indigenous Australians.

The first serious attempt to move towards an effective representative option for Indigenous Australians was the Hawke Government’s decision to create the Aboriginal and Torres Strait Islander Commission (ATSIC).

At the time of its establishment the rationale for creating it was outlined by the then Minister for Aboriginal Affairs in the following terms:

“The achievements and new proposals I have presented today represent the most far-reaching and innovative reform in Aboriginal affairs since the Commonwealth became involved at the national level two decades ago. We believe that these proposals lay the foundation upon which real progress and achievement for Australia’s Indigenous peoples can be built. Aboriginal and Islander people will have the means, as never before, to determine their own future as part of this nation”

This was an important and positive stage in the evolution of Indigenous policy. But, it should have been seen as just that: a step forward rather than the end of the journey.

Right from the start there were flaws in the ATSIC model. Despite its many virtues the Senate Select Committee which I chaired in 1989 to look into the proposed legislation to implement the ATSIC model saw an inherent conflict in the proposed balance of structure and function, which we expressed in the following terms:

[The committee] considers that the Commissioners of ATSIC will have a difficult and at times ambiguous role in seeking to reconcile their representative and executive responsibilities”

The other principal shortcoming only became evident later. When the model was amended to introduce an elected Chair, which was the right thing to do, the electoral model made the elected Chair extraordinarily remote from Indigenous grass roots voters and effectively unaccountable.

The problems caused by this model rapidly became obvious but were never fixed. They were used as an excuse to throw out the whole experiment rather than to clarify its structure and function and improve the electoral model.

To illustrate how bizarre the electoral arrangements were we need only examine two facts:

- There were more intermediate layers of representation between Geoff Clark and Indigenous voters than there are between John Howard and voters in the general Australian constituency. Clark was elected to the Victorian ATSIC Board, from the Victorian ATSIC Board to the National Board and then by the Commission as Chairman – twice removed from the voters.
- It required fewer than 100 votes for Clark to be elected at all three levels – and yet it was a system intended to generate representation of and accountability to 460,000 Indigenous Australians.

In effect, the Chairman's only real constituency was limited to a small locality and then the members of the various boards which elected him. This must change under any new system.

This critique sets two challenges for the structure of any new proposed national Indigenous representative body.

First, it will be necessary to clarify the functions it is hoped the new body will undertake and ensure that there is compatibility between structure and function. Second, if it is desired that the advocates chosen have both legitimacy and effective accountability it will be necessary to develop an electoral process which achieves these purposes.

## **Functions of a Proposed New National Indigenous Representative Body**

The determination of the appropriate range of functions for an Indigenous representative body is not as simple as it might seem. Inevitably there are a number of elements in any balanced assessment of the appropriate functions for such a body.

The first and obvious element of any range of functions is advocacy and representation. Any representative body must be able to speak on behalf of those they represent.

Many people claim to speak on behalf of some or all Indigenous people. Some are self-appointed. Others have legitimate claims to speak on behalf of traditional groups, communities or regions. And, of course, there is no problem with a multiplicity of voices. The Indigenous community has all the complexity and diversity of any human

grouping. But there are important challenges facing Indigenous Australians which require effective liaison with governments to address. This is a job which can best be done by a person or number of people who have a recognised mandate. This could have been the case with the ATSIC Board and Chair but was not effective due to a combination of personal and structural factors. The shortcomings of that approach should not lead us to conclude we do not want or need a representative advocacy structure. We just need to get it right.

The effective implementation of this function has significant implications for the structural choices which need to be made. I will return to this after an examination of other functional priorities and their structural implications.

Closely related to the representation and advocacy function is the very useful role of liaison. That is, a central contact point for those wishing to inform themselves of Indigenous views or the implications for Indigenous people of a proposed course of action.

This is very important, and not merely for government, at both a national and a regional level. Particularly at the regional level this liaison function has on occasions developed into a negotiating function. One of the untold stories has been the proliferation of agreements between Indigenous Australians and governments and corporations.

The Indigenous agreements database (<http://www.atns.net.au/>) shows the hundreds of ILUAs, other Native Title agreements and other agreements between Indigenous and non- Indigenous Australians. This data shows that there are now hundreds of such agreements including more than 230 ILUAs. The database also gives examples of agreements in similar circumstances in other countries (eg Canada).

Therefore, there are two fundamental functions: representation/advocacy and liaison/negotiation. Any representative body would expect to have something similar.

The key decision to be made with regard to the functions of an Indigenous representative body relates to whether it has executive responsibility for policy relating to Indigenous Australians or whether it should be charged with holding accountable those who are responsible to ensure that they are efficiently and effectively discharging those obligations.

It is here that the ATSIC structure/function balance became confused.

The structure of ATSIC was more suited to an accountability/scrutiny process but the functions were executive in character.

Of course, later the situation became even less clear as the functional responsibilities of ATSIC were diluted and responsibilities passed to other agencies.

Eventually we got to the worst of both worlds. ATSIC was blamed for shortcomings which it did not have the power to address while those responsible did not have to answer for their failures to those for whom the programs were developed.

Personality factors and failures of leadership made ATSIC vulnerable to a Prime Minister who had never believed such a structure had any part in our governance structures. After all, he said that at the time of its introduction:

... I think it is a very bad step for the long term unity of this country to establish the structure envisaged under the ATSIC legislation...

But, the imbalance of structure and function meant it would have needed a drastic overhaul even without John Howard's old-fashioned prejudices.

Therefore, the abolition of ATSIC and the failure of the Howard Government to set up anything relevant or appropriate in its place provide an opportunity for a positive new proposal for an Indigenous representative structure.

There have been a number of options canvassed, most notably by the ill-fated and ignored ATSIC review which the Howard government established and then ignored.

They canvassed a range of options which might be summarised as follows:

The Status Quo or "Parliamentary" model involves ATSIC's elected representatives setting policy and priorities, but removes from the elected arm any involvement in determining funding to reflect those policies and priorities, including in relation to the delivery of services.

The Regional Authority model replaces the existing 35 Regional Councils with 16 Regional Authorities which would prepare needs-based Regional plans, establish criteria for funding decisions and programs, and report on outcomes. The National Board would comprise the 16 Chairs and a Torres Strait Regional Authority (TSRA) Commissioner.

The Regional Council model incorporates the same roles and responsibilities for the elected arm as the Regional Authority model. It retains the existing 35 Regional Councils with full-time chairs elected by each Council. Instead of Zone Commissioners, members of Regional Councils in each "zone" elect one of 16 National Board members (plus there is the TSRA-elected member).

The Devolution model proposes structural changes that could be implemented as a means of delivering more effectively the outcomes that Indigenous and non-Indigenous Australians are seeking through this current review. In particular, it would involve the Commonwealth delivering appropriate Indigenous-specific programs and services through State/Territory agencies.

My thoughts follow logically from my previous Essay: *The case for establishing Australian Indigenous Development Goals*.

That Essay sought to start a debate about goals which might be set so that agencies might be held accountable for their success, or failure, in achieving these goals.

The key conclusion of my argument was that a credible Indigenous representative body was needed to give the goals legitimacy, and that a key role for any such body would be to hold agencies accountable for their performance against the agreed targets.

Therefore, my view is that the key functions of an Indigenous representative body should be:

- Representation and advocacy
- Liaison and negotiation
- Accountability and review.

This has clear implications for the national and regional structure which needs to be established.

## **Options for a Revised Electoral System**

The critique of the electoral system establishes the characteristics of an alternative scheme.

Ideally it should provide:

- Effective national and local choices for Indigenous Australians;
- An effective mandate for the head(s) of any representative body.

The balancing imperative is to ensure that the ensuing system is not too complex. Because complexity can disenfranchise as effectively as exclusion.

These two necessary characteristics of any proposed electoral system lend themselves to direct election of as many leadership positions as possible.

A promising option would be:

- Direct national election of the Chair of the NIC;
- Direct regional election of the Chair of the Regional Indigenous Council; and,
- Election of the members of the Regional Council.

However, this structure may involve electoral arrangements which are too complex. It would either entail three ballot papers on election day or two election days in an electoral cycle – one national, one local.

This is not to imply that Indigenous voters are not intelligent enough to distinguish between competing candidates at different levels of government. They have been doing that for years – sometimes in the face of strenuous efforts to prevent them from doing so. (eg the 1977 Kimberley election to the WA state parliament). However, complexity should be minimised if it can be done without compromising the overall structure.

The Chair would probably be best served by a small Executive elected by and from the NIC, with those Executive members serving as Chairs of the various committees which

review agency performance against the Indigenous Development Goals as outlined previously.

## **Conclusion**

Analysis of the strengths and weaknesses of previous representative structures, combined with consideration of the functions it is intended the representative body should perform suggests a structure along the following lines:

### **Proposed National Structure**

1. A full-time chairperson directly elected by all Indigenous voters from across the country.
2. A National Indigenous Council comprising the chairs of all the Regional Councils.
3. A small executive body elected by the NIC.
4. A series of sub-committees of the NIC which should specialise in specific policy areas (similar to Senate Estimates Committees) before which officials would need to appear to report progress (or otherwise) against agreed goals.
5. A small secretariat to support the Chair and the Council.
6. A larger consultative forum comprising the NIC and the Chairs of the major national Indigenous organisations, eg AIATSIS, Aboriginal Hostels, the Association of Native Title Representative Bodies, etc. This body would be important for the liaison function which needs to be performed.

### **Proposed Regional Structure**

1. One full-time chair of each Regional Council (who would also be a member of the NIC) directly elected by all Indigenous people in the council area or by the councillors, depending on local preference.
2. A body such as AIATSIS should be given the task of revising regional council boundaries to more adequately reflect traditional boundaries.
3. Part-time councillors representing the various communities within the council area.
4. It would be desirable if these Councils could perform a similar accountability function at the local government and state government levels, but this would require State government agreement.
5. It is at this level that much of the liaison and negotiation function is currently performed and would be required in future.

Many other details would need to be established but a National Indigenous Council, replacing the existing appointed body, along these lines would provide:

- Representation and advocacy with legitimacy,
- Liaison points at national and local levels for consultation and negotiation, and

- An opportunity to ensure public policy performance in the provision of services to Indigenous Australians is properly accountable to Indigenous Australians as well as to all Australians through the national parliament.

Many other issues need to be addressed. But we will have made a start if in its first term an incoming Labor Government could establish:

- A set of agreed Indigenous development goals against which future performance could be measured

And

- A credible representative body to hold governments and their agencies accountable for their performance.