



Secretariat of National Aboriginal and Islander Child Care Inc.

***Submission on the development of a
National Indigenous Representative Body***

September 2008

More Information:

Julian Pocock SNAICC Executive Officer
Level One - 252 St Georges
Rd North Fitzroy
Phone: 03 9489 8099
Fax: 039 489 8044
Email: julian@snaicc.asn.au

Overview

SNAICC supports the development of a national Aboriginal and Torres Strait Islander body to fill the void left since the Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished and to replace the National Indigenous Council.

Such a national body must have the capacity to:

- draw together the issues and aspirations of Aboriginal and Torres Strait Islander communities from across the country at a local and regional level
- advocate for detailed policy responses to those issues, and
- provide the Australian public with a mechanism through which they can assess the impact of the combined efforts of all governments to improve the well being of Aboriginal and Torres Strait Islander communities, families and children.

It should be established as a statutory authority with broad powers including the power to monitor and evaluate government expenditure (or the lack of) with scope to monitor at the federal, state and territory levels. It must be able to, with or without the consent of the Federal Minister, inquire into particular issues and report to the federal parliament on those issues.

SNAICC prefers a model that draws on existing Aboriginal and Torres Strait Islander community based structures and organisations rather than the directly elected model that ATSIC was based upon. The governing board or council of the new organisation should reflect the diversity of Aboriginal and Torres Strait Islander cultures, have a gender balance and represent the interests of rural, remote and urban communities.

The new body should not make the unrealistic claim that it truly represents all Aboriginal and Torres Strait Islander people and communities but rather that it aims to represent the interests of Aboriginal and Torres Strait Islander people.

It should not have a direct role in service delivery but should focus on establishing outcome measures and performance indicators and monitoring and evaluation across those areas. Within that role it should pay close attention to workforce development issues with a view to securing increased employment for Aboriginal and Torres Strait Islander people as an embedded policy objective from all areas of government investment. It should have a high level role within the Council of Australian Governments, COAG, and assess the performance of all levels of governments in meeting their obligations and commitments to Aboriginal and Torres Strait Islander people.

Principles to underpin the creation of a new National Indigenous Representative Body

In relation to the principles that underpin a new national body SNAICC believes that an important principle is that the new organisation is transparent about the extent to which it can claim to be representative. Specifically we believe that a new national body should not claim to be representative of all Aboriginal and Torres Strait Islander communities. Rather it should aim to represent the broad interests of all Aboriginal and Torres Strait Islander communities.

Support for the organisation will be limited if the body claims to be representative and its structures do not provide for directly elected representation at the local, regional and national levels. It is questionable if any organisation created by government could ever be seen as broadly representative of all Aboriginal and Torres Strait Islander communities.

SNAICC would prefer a model where the national body aims to vigorously pursue and represents the interests of Aboriginal and Torres Strait Islander communities. SNAICC for instance aims to represent the interests of Aboriginal and Torres Strait Islander families and children but we do not claim to directly represent all Aboriginal and Torres Strait Islander families and children.

SNAICC broadly supports the principles outlined in the issues paper prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner; *Building a sustainable National Indigenous Representative Body – Issues for consideration*.

The principles that underpin the new national body should be enshrined in national legislation with acceptance and agreement from the Federal, State and Territory governments.

These principles should not only be about how the national body operates internally but about how governments and the national body operate together. SNAICC believes it would be appropriate to include within legislation that establishes a new national body two sets of principles.

Firstly a set of high-level principles that focus on how the new organisation and governments work together with these modelled on those principles proposed by ATSIC at the time of the 2003 ATSIC review and outlined in the issues paper as follows:

- **The right to self-determination** based on inherent rights and the laws, traditions and cultures of the Indigenous peoples of Australia is central to the development of the national representative body as an organisation.
- **Aboriginal and Torres Strait Islander peoples should be able to engage with governments** on the basis of equality and mutual respect about policies and programs affecting them.
- **The goal of sustainable and equitable outcomes** for Aboriginal and Torres Strait Islanders peoples in respect of economic, social and cultural rights is a major priority in achieving social justice.
- **Flexibility of the national representative body's structures and processes** is important in order to reflect and represent the full diversity of Indigenous cultures and situations in Australia, whether at family, clan, community, language group or national level.
- **The rights of traditional owners and native titleholders** need to be protected through negotiated agreements regarding new regional structures

Secondly the new national body should state and adhere to a set of principles about how it works with its constituency - Aboriginal and Torres Strait Islander communities. The principles included in the issues paper, see below provide a good starting point for such principles.

- A representative body will, therefore, require **‘two way’ accountability** –to government and to Indigenous peoples and communities.
- Such **accountability** will come from the representative body being **transparent** and accountable in its operations. This requires transparency in the mechanisms for determining membership or election; in its policy making processes; as well as financially.
- The **credibility** of the representative body will come from it being regarded as truly **representative** of a diverse Indigenous polity This might be achieved through a variety of means, such as from ensuring participation of different groups of Indigenous people including stolen generations, traditional owners, Torres Strait Islanders, youth and women for example.
- The credibility of the representative body will also come from having a **structure** that is internally **consistent** and **‘connected’**, so that there is a clear relationship between the national body and Indigenous peak bodies, service delivery organisations and other representative mechanisms that may exist at the State, Territory or regional level.
- The **legitimacy** of the representative body will also depend on whether it is seen as **independent** and robust in its advocacy and analysis.
- A critical issue to be considered by Indigenous peoples is what is meant by **independence**. It can mean that the policy advice and advocacy is not restricted to occurring within the confines of the policies of the government of the day, but it may also extend to sustainable funding options to reduce the vulnerability of the organisation to the political process and the threat of budget cuts if the advice provided is not to the liking of the government.

The functions of a National Indigenous Representative Body

SNAICC is aware that perhaps the most critical issue in relation to the function of the national body is the issue of whether or not it has a service and program deliver role.

The SNAICC National Executive resolved at their most recent meeting that the functions of the new national body should be focussed on the following:

- Policy development and advocacy to government (not program delivery)
- Establishing performance benchmarks and targets relating to the well being of children and families
- Monitoring performance of government programs and services; and
- Capacity to consult and liaise with communities and existing organisations to develop its policy views and 'set the agenda' for governments

SNAICC does not support a new national body having a program or service delivery function.

Our view is that the dual policy development and program delivery roles of ATSIC diverted the energies of that organisation away from high-level policy development and advocacy. There was a tendency, particularly at the regional level, for the engagement between communities and ATSIC to become pre-occupied with accessing some share of a diminishing pool of ATSIC program grants. This proved counter productive fuelling negative views about ATSIC and its capacity to respond adequately to community needs. As a supplementary program provider it was not ATSIC's role to provide services across all portfolio areas to fully meet the needs of all communities.

Significantly the program delivery role created an environment within which other government agencies falsely presumed that they carried diminished or no responsibility to ensure their programs and funded services met the needs of Aboriginal and Torres Strait Islander communities. Hence a vicious circle of diminishing delivery from 'mainstream' departments and increasing expectation of ATSIC to fill the gap was created.

Ensuring that all government programs and government funded agencies have specific obligations to Aboriginal and Torres Strait Islander communities, families and children, and that they meet these obligations should constitute the central role of the organisation in relation to service delivery. It should advocate for communities in relation to the services, infrastructure and supports that governments have to fund and deliver.

SNAICC believes that what is meant by 'national organisation' requires careful consideration. From our perspective for this new organisation to be truly national it must have the authority, resources and scope to examine not only the impact of Commonwealth investments in, and approaches to, improving well being but also the investments and approaches of State and Territory Governments. Without this scope it would in reality be a federal body and not a national body.

Ensuring it has the authority to operate nationally will be particularly important given the reformed Council of Australian Governments funding arrangements with fewer but broader special purpose payments (SPP's). The key areas for funding agreements to replace the existing 92 special purpose payments to the States and Territories, health, affordable housing, early childhood and schools, vocational education and training, and disability services are all areas where all levels of government need to improve outcomes for Aboriginal and Torres Strait Islander communities, families and children. Monitoring and reporting on outcomes from these agreements should be one of the functions of the new national body.

A particular and specific focus within this monitoring should be workforce development and securing the maximum possible training, skill development and employment opportunities for Aboriginal and Torres Strait Islander people. All government investment for improving the well being of Aboriginal and Torres Strait Islander people should produce a training and employment dividend for Aboriginal and Torres Strait Islander people.

SNAICC supports the other functions outlined in the issues paper being included within the functions of the new national body, ie

- Advocacy;
- Policy formulation and advice;
- Coordinating long term planning processes at regional level;
- Contributing to legal reform;
- Review and evaluation of government programs;
- Clearinghouse role;
- International role;
- Research; and
- Facilitation and mediation.

SNAICC supports the new organisation working within a human rights framework and supports this approach as outlined in the issues paper. In particular as noted in the paper,

" that that in developing policy and delivering services, governments should:

- recognize and accommodate the **cultural distinctiveness and diversity** of Indigenous Australians;
- adopt a people-centred approach which values the **full participation** of Indigenous peoples in the process, from the very beginning of policy development, through to service delivery and monitoring and evaluation;
- involve the development of **agreed targets and benchmarks**, so we have a clear picture of what it is exactly that is trying to be achieved; and
- be supported by an **evaluation framework** to assess whether the rights of Indigenous peoples are being 'progressively realised', so that we can be confident that government efforts are effective, well targeted and taking place at the maximum level possible. "

In relation to advocacy, policy formulation and policy advice the new national body should have well structured relationships with existing peak bodies and other non-government organisations that already have roles in relation to policy and advocacy. Whilst being independent includes having the right to take contrary views to other organisations on key policy questions SNAICC would want to see the national body add value to our existing policy and advocacy work - not replicate, contradict or oppose it.

The new national body should seek to build on and support the policy and advocacy capacity of organisations like SNAICC. Working in this way will ensure that the new organisation can extend the capacity of groups like SNAICC rather than consuming our capacity.

Structure and Membership of a National Indigenous Representative Body

In relation to the governance structure the SNAICC National Executive supports a governance structure with balanced representation of;

- Aboriginal diversity and Torres Strait Islander diversity
- States and Territories
- Gender
- Age groups including Elders and young people
- Representation from existing community controlled Aboriginal and Torres Strait Islander service peaks and national NGO's
- Remote, Rural and Urban communities

Further the National Executive resolved that representation on the body be a combination of appointments, co-option and elected representatives nominated from existing national and peak structures.

The elected structures of ATSIC whilst having some democratic appeal did not in our view tend to produce an outcome that reflected the diversity of interests that a national body should have. In particular representation from Aboriginal and Torres Strait Islander women was often limited and representation of Aboriginal and Torres Strait Islander children's issues was often lacking. That elected representative structures will reflect and perhaps reinforce community level inequities is not unique to Indigenous representative structures. Whilst all members of the federal parliament have individually been through a democratic process the group of people that make up our federal parliament do not remotely reflect community diversity. In relation to the form or structure of the national body SNAICC supports a model that resembles and draws on elements from the Productivity Commission and the Australian Competition and Consumer Commission (ACCC).

The new national body should be a statutory authority established by federal legislation with powers to monitor and report on the outcomes derived from the new COAG special purpose payment to the States and Territories. It should, like the Productivity and the Australian Competition and Consumer Commissions, have the power to conduct independent inquiries into particular aspects of improving outcomes for Aboriginal and Torres Strait Islander people with or without a reference from the Federal Minister for Indigenous Affairs.

Similar to the Australian Competition and Consumer Commission it should have a role focused on protecting and promoting the interests of a particular group. In the case of the ACCC, consumers, and in the case of a new national Indigenous body, Aboriginal and Torres Strait Islander Australians.

Legislation to establish the new national Indigenous body should be enabling in nature and outline in broad terms the rights of Aboriginal and Torres Strait Islander Australians that the new body will seek to protect and promote.

SNAICC also recommends that the current provisions of the Aboriginal and Torres Strait Islander Act 2005 Part 4B—Office of Evaluation and Audit (Indigenous Programs) be reviewed, broadened and transferred to the new national Indigenous body. Currently under these provisions the Office of Evaluation and Audit can evaluate Indigenous specific programs for their impact and effectiveness but not broader funding programs. This unnecessarily restricts the audit and evaluation function to a very tiny fraction of government programs and lets broader programs 'fly under the radar' in relation to their delivery to Aboriginal and Torres Strait Islander people.

Relationship with governments and COAG

SNAICC has outlined earlier that to be an effective national body the new national body will need the power to inquire into and evaluate the effectiveness of programs and services delivered by all levels of government.

It should report directly to the Federal Parliament and have a formal relationship and standing within the Council of Australian Governments with the right to attend COAG meetings and relevant Ministerial Councils.

Summary

SNAICC believes that a new national body has the potential to create a sustained long term focus on improving the social and economic status of Aboriginal and Torres Strait Islander people and communities. It will not be a panacea for all the issues that confront Aboriginal and Torres Strait Islander people. But it may at least ensure that Aboriginal and Torres Strait Islander people are less susceptible to whims of short term government agendas that seek to shift the blame for public policy failure from one level of government to the other or onto individual Aboriginal and Torres Strait Islander people and communities.

SNAICC looks forward to participating more detailed discussions about the creation of a new National Indigenous body in the months to come.