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A large, vertical, stylized Aboriginal artwork on the left side of the cover, featuring bold black, red, and white patterns, including a prominent 'X' shape and various geometric motifs.

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**ATSIC: Origins and Issues for the Future.
A Critical Review of Public Domain Research
and Other Materials**

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ATSIC: Origins and Issues for the Future

A critical review of public domain research and other materials

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1. Introduction

The Review of ATSIC

In 2002 the Federal government initiated a review of the Aboriginal and Torres Strait Islander Commission. In February 2003, the Council of the Australian Institute of Aboriginal and Torres Strait Islander Studies met with the three members of the Review panel, the Hon. John Hannaford, Ms Jackie Huggins AM and the Hon. Bob Collins. Following discussions of the issues surrounding the Review, AIATSIS Council resolved to develop a discussion paper for the ATSIC Review that would synthesise options, issues and substantially contested matters in relation to ATSIC. The author was asked to write this discussion paper, which was completed in April 2003. It subsequently formed a part of the AIATSIS's submission to the inquiry. This paper is an edited version of that submission.

Methodology

There is no shortage of written material on ATSIC. The difficulty was in sifting through it to decide what might be helpful in writing a critical review of the issues that had been relevant to the organisation over the last decade or so. Valuable assistance was provided in this regard by contacting researchers who had worked on projects relating to ATSIC's structure and policy direction. Discussions with those acknowledged above resulted in many articles and book chapters being identified for review. The author then used the catalogue of the AIATSIS library to find other works relevant to the study. An initial search on the key word 'ATSIC' yielded some 953 records, a somewhat daunting result. Items that appeared to be of particular significance were marked and printed out. These in turn were further whittled down to provide a list of some sixty works that form the basis of this paper. Each article or paper was read and annotated. These annotations were then matched to themes, and the discussion paper that follows was developed from these references. Several searches were also conducted of the ATSIC Website with a view to discovering any particular papers or reports that related to reviews of the organisation, and some materials resulting from this search are also reviewed in what follows.

The work upon which this discussion paper is based was constrained by limitations of time and resources. Consequently, this paper is not an exhaustive review of all materials relevant to ATSIC that are within the public domain. It is an attempt to provide an overview of the more important research papers and other materials that have been produced and which are relevant to the organisation.

In addition to the 2002-2003 review, there have been three other major reviews of ATSIC (ATSIC 1993; Daffen 1994; ATSIC 1998), and an initial consultancy commissioned a review of the staffing and structure of the Commission once established (McIver 1988). There were also numerous other reviews of ATSIC's programs (e.g. Spicer 1997; Altman, Gillespie and Palmer 1998). While the three major earlier reviews of ATSIC will be discussed below, those relating to specific program delivery will not, as they lie outside the scope of this paper.

The creation of a separate Regional Authority for the Torres Strait was the subject of several articles (e.g. Sanders 1995; Sanders and Arthur 1997; HRSCATSIA 1996 and 1997). These had relevance for the review in so far as the creation of additional separate

regional authorities was an issue that would have a significant impact on any future ATSIC structure. However, the issue of the Torres Strait Regional Authority, *per se*, is not addressed in the following accounts.

A complete list of the materials consulted is set out in the References listed at the end of this paper.

The range of materials available

This paper reviews materials topically as a point of departure. Within the broad range of materials available for review several themes are evident. There is a substantial body of material that relates to the origins of ATSIC, its forbears and the intellectual and political history that surrounds its foundation. These materials are important for setting the scene, but they also help to explain why (and how) ATSIC has become the organisation we know today. Much of this material was written at the time of ATSIC's creation but is frequently cited by later writers seeking to contextualise current issues.

There are also many public statements made by both ATSIC (often through the Chairperson) and by federal politicians that relate to the aims, purpose and future of the Commission. Policy statements by federal politicians provide indications of how the two major political parties saw the future of the organisation. Since ATSIC was set up neither of these two parties has stated any intention to change fundamentally the structure of the organisation¹, at least until quite recently when Federal Minister Ruddock announced that he was proposing a radical separation of powers between the elected and administrative arm of ATSIC². Articles in the popular Press have not been included in this review, although ATSIC frequently has been the subject of news reports, as well as more general articles in the Press.

A third and considerable body of work exists on ATSIC that comprises reviews and debate about public policy, ATSIC and its role in the representation and administration of Indigenous affairs in Australia. Since its inception, the ATSIC innovation (as it was seen by many at the time of its creation) has occasioned comment and debate on various aspects of what ATSIC does or might achieve. This debate generally goes to the structure and function of ATSIC in its fundamentals. These reviews and discussions range from scholarly academic works to more general, less informed discussion. In this review, it is the former category that are considered for the most part.

Finally, there is a small but important body of material that represents fundamental research into ATSIC. As far as the author has been able to ascertain, there have been only three people who have conducted original research into ATSIC (Taylor 1992; Rowse 1996b; Ivantitz 1998). Dillon (1992) could also be considered within this broad category since his paper was based on first-hand experience within the Commission. Since reviews of ATSIC are also based on fundamental inquiry, these are considered under the same section of this paper.

Classifications run the risk of compartmentalising the huge diversity of materials covered while facilitating exclusion of both substance and subject matter that eludes broad categorisation. While these areas of interest form the basis for the review that follows, they are considered as integrated and overlapping: a heuristic tool for a review that seeks to amalgamate diverse views toward the stated purposes of the study. This manner of classification, developing as it does from the material to hand, is also predominantly about ATSIC's role in the administration of Indigenous affairs in

Australia, representation of Indigenous issues and the role of public policy and the state in both. The internal structure of ATSIC as an organisation is peripheral to these debates, except at the fundamental level of the administrative / representational divide and with respect to the generic programs for which the organisation should be responsible. The lessons to be gleaned from the literature are, therefore, lessons that relate to the overall architecture of the Commission, rather than an enumeration and critique of its component parts.

A quick look at the dates of publication of materials considered shows that there has been a steady decline of interest in ATSIC over recent years. This is in contrast to a significant period of commentary and writing in the first years of the organisation's operations. Of the sixty-three articles and papers reviewed initially, thirty-two were produced to the end of 1994 (a little over 50%). While this includes material produced before the Commission was established and so represents a period longer than the four years of ATSIC operations at that date, there is no doubt that ATSIC's creation and early years of operations excited more comment than has been evident latterly. There were seventeen articles noted between 1995 and the end of 1997 (27%) and from 1998 to the present only twelve (a little over 19%). Two articles were not dated but evidently belong to the early period.

The decline in the production of materials that have looked closely at ATSIC is most probably a result of the fact that many now consider that almost everything of importance has been said about ATSIC and that there is little point in going over old ground. It is also true that ATSIC was for many years seen as an organisation that was rapidly evolving in the context of a very different public and political environment than is currently observable. This means that comment about ATSIC can appear very out of date, even after a comparatively short period of time. The views of writers noted in this review should then be considered in the context of the time in which they were written, rather than of the here and now.

2. Origins and forebears

The issues

The history of ATSIC is important because it helps to explain the origins of many of the current preoccupations and difficulties identified by commentators who critique the Commission. The history is also important because it is illustrative of the path taken by successive federal governments in the administration of Indigenous affairs in Australia and is reflective of their relationship to Indigenous minorities and their attitude to their political aspirations. This history is a long one, stretching back as far as 1788, so in the context of ATSIC it is possible to view only a recent portion of it. It is also a history that needs to be understood in the context of post-colonial administrations. Indeed, much that has been written about ATSIC's origins and creation is settled upon acceptance of these understandings.

The creation of the National Aboriginal Consultative Committee (NACC) in 1973 was a bold political initiative to give a voice to Australia's Indigenous minorities. After a review by Hiatt (1976) it was replaced by the National Aboriginal Conference (NAC) in 1977; this in turn was reviewed by Coombs (1986) and abolished by Minister Holding in 1986³. While there were other Indigenous consultative mechanisms (for an overview see

Coombs and Robinson 1996:2-7), the era was notable for the attempt by the Commonwealth to provide a national representative voice to Aboriginal and Torres Strait Islander peoples, which was a key component in an attempt to implement policies of self-determination and self-management. While the exact meaning of these policies was variable, and indeed the terms employed seemingly a matter of choice on the part of politicians⁴, the enunciation of the principle that Indigenous peoples should have greater control over their affairs was apparent. Upon its creation, ATSIC was strongly supported by some Indigenous leaders as being the vehicle for the realisation of self-determination (e.g. O'Donoghue 1991). However, there was no universal agreement on this point. The matter at issue was the extent of Indigenous control and whether the control was within the machinery of government, or outside of it. Much of the subsequent debate about ATSIC's role developed from the confused thinking that accompanied the early experiments in government surrendering at least some authority to Indigenous control. Had the roles and responsibilities of both the NACC and the NAC been better spelt out, many of the subsequent difficulties might not have eventuated (Coombs and Robinson 1996:8). This confusion of roles and powers spilt over into the new body, ATSIC, which was announced by the new Hawke government in 1987 and enacted into legislation in 1989, becoming operational in 1990⁵.

In seeking a replacement for the NAC the government had commissioned reports from both Coombs (1986) and O'Donoghue (1985, 1986). The reports did not fully sketch a commission of the sort that was to see the light of day under the ATSIC legislation. Both were supportive of a national representative organisation. O'Donoghue saw such an organisation as primarily advisory with regional assemblies and a national body. Representatives were to be drawn from communities rather than elected as in a Westminster system (O'Donoghue 1986:27-8). Coombs wanted a national body, 'designed to give Aborigines an effective influence on Government policies' (1986:13), seeing it as a 'Congress' elected along community lines. He also stated that it should be quite separate from the federal Department of Aboriginal Affairs (DAA) (1986:38).

What eventuated was outlined by the then Minister for Aboriginal Affairs, Gerry Hand, in his Ministerial statement *Foundations for the Future* (Hand 1987). The extensive consultations, legislative drafting and the turbulent passage of the bill through the Parliament are well known (Dillon 1996:91-2; Rowse 2000:200-1). But the most significant feature of the new organisation was that it was a radical departure from the bodies that had preceded it; while representative functions remained central, ATSIC also combined the functions of the DAA and the Aboriginal Development Commission (ADC). It thus had a dual role in both the administration of programs and the representation of interests. These two functions in particular (along with others spelt out in the ATSIC Act) were to provide the focus of much commentary and debate in the years that followed. Principal amongst the issues raised was the ability of the organisation to separate its dual responsibilities, a predicament that has been called 'separation of powers', but which is probably better termed 'separation of responsibilities'⁶. The new organisation also inherited many bureaucrats from the old DAA who were regarded by Coombs (and many others) as an impediment to the achievement of Indigenous autonomy (Coombs and Robinson 1996:11; Rowse 2000:222). Moreover, these employees were to be Public Servants, answerable, ultimately, to the government of the day rather than the elected Commissioners. These matters were to inform debate about the effectiveness in practice of ATSIC in administering programs according to the wishes of Indigenous representatives.

This was compounded, in some commentator's views, by the manner in which Commissioners and Councillors were to be elected. Community representation had been abandoned for practical reasons, and a formal electoral system was imposed, substantially different from the 'grass roots' approach suggested by Coombs (1986:18-22) that some saw as being more culturally appropriate. This too raised issues about the effectiveness of the new body as a truly self-determining organisation that represented Indigenous points of view.

Finally, the new body, combining as it did executive and representative powers, suffered heavily at the hand of the Opposition during the passage of the Bill, since it was seen by some as setting up an alternative government, beyond the control of the Parliament (Dillon 1996, 94). The price that was paid for this greater perceived autonomy was increased accountability along with other practical measures that ensured that ATSIC remained answerable to the Parliament (Rowse 2002:184-5). This was what Hawke called, 'finding the right balance between the principles of self-management and of overall ministerial responsibility' (Sanders 1993:3). It was a 'renegotiated policy bargain' whereby self-management would be 'widened and deepened' at the price of stringent accountability and greater ministerial oversight (Sanders 1993:8). Subsequently, this stringent system of accountability was to be oft cited as a serious (and unnecessary) impediment to ATSIC's operations, one which inhibited progress in the achievement of better outcomes for Indigenous Australians. This is a recurrent theme in the literature on the Commission. However, had there not been a policy bargain, ATSIC might never have come into being.

Summary

The information provided by writers looking at the origins of ATSIC speaks to elemental aspects of the Commission structure that were brought into being on its establishment. This architecture is not immutable. However, to change it would be to alter fundamentals. Principal amongst structural issues is the unique combining of representative and executive powers. It would be possible to separate these, as was the case prior to ATSIC's inception, to have a representative body (like the NACC), while requiring administration of programs to be done by a department of State. How this would sit with the ideal of self-determination is hard to imagine, unless perhaps the department was to be controlled by Indigenous employees. During the discussions that the Review team had with the AIATSIS Council (noted above), one Commissioner, who is also a member of the Institute Council, remarked that 'without money no one would listen to you'⁷. However, Sullivan (1996a) has pointed out that ATSIC remains dependent upon the government for funding, so that this power is severely limited. Despite the tensions between the two parts of the Commission, and that ATSIC is a 'contested structure' (Smith 1996:29) no writer reviewed here has suggested a reversal of the amalgamation of representation and executive arms that is basic to the structure of ATSIC today.

Another structural issue that develops from this review of ATSIC's origins relates to the nature of the election processes. As I will note below, there has been much debate over the current system, and it represents a radical departure from that suggested by both O'Donoghue and Coombs (above). However, the reasons for not following a community-based representational system was that it was impractical – most areas boasting a great many community organisations – so deciding which should send representatives would have been complex, vexatious and probably inequitable. Moreover, there was a real chance that larger organisations might have exercised undue political influence over the process and thus subverted the rationale for adopting the system in the first place.

However, the representational powers of the regional Councillors and their role generally, in both providing policy advice and making decisions over the allocation of funds, is a recurrent theme to which I will return later in this paper. Coombs (1986:18-22) saw the power of the regional representatives as extremely important to the success of the venture and cautioned against an overly centralised organisation.

The final fundamental structural issue for consideration relates to the application of self-determination / management. Critics of ATSIC say that it either delivers too much or too little in this regard. For the former, the solution presumably would be to remove all executive control from the Commission and revert to providing programs through mainstream departments. This, as a trend, is already observable and was noted with concern by Dillon (1996:101-2). However, for the latter, solutions would appear to lie in the bolstering of ATSIC's powers, loosening the shackles of accountability and the eventual establishment of an autonomous body (or bodies) with consequential jurisdictional powers. Whether there is the political will to accomplish this is doubtful, given the present climate in federal government circles.

The issues and themes examined in this section have been described as elemental. They are systemic to the structure of ATSIC because they were imbedded within the architecture of the organisation as it was created. This was the product of extensive political compromise as well as a mixing of what was desired by some Indigenous leaders (real self-determination) and what was deliverable. The issues that developed from these compromises and negotiated policy measures turn up time and time again in the literature on the Commission. While there remain alternatives, it would appear, realistically, that their systemic nature counsels that they are here to stay. Measures there may be further to ameliorate their impact, but they stem from a basic and insoluble problem. In a post-colonial regime, men and women of good will wish to accommodate displaced Indigenous minorities, but have the political will to do so only in so far as the systems designed to accomplish this can be comprehended within currently accepted practice. It is hardly surprising then that ATSIC is a 'contested structure'.

3. Public and Political Statements

The issues

Despite the Coalition's opposition to ATSIC during the turbulent exchanges of 1989 and 1990, the Commission's future under a Liberal-National Party appeared secure if not immune to reform. A brief overview of the statements made by various Ministers and the major parties indicates that successive governments did not see ATSIC as a target for abolition. Rather, there was a desire to reform operational aspects of the new organisation. To this end, the Coalition's statement, released in 1992, foreshadowed many of the reforms that were to flow from the 1993 review; reduction in the number of Regional Councils, devolution of powers to the Regional Councils, as well as a reduction in the number of commissioners and the reallocation of programs to ATSIC, currently outside the portfolio (Wooldridge 1992). The following year, then Minister Tickner (1993:3) took a rather different tack, asserting that

ATSIC has established itself as an authentic and respected national voice for Aboriginal and Torres Strait Islander people, and a responsive and responsible administrator of government programs. It has been firm both in the independence of the advice it has provided and in the standards of accountability it has set for the programs it delivers.

Tickner went on to stress that ATSIC represented the government's most significant achievement in providing a means of self-determination for Indigenous Australians (Tickner 1993:26). More recently, the Australian Labor Party's policy statement for the 2001 elections promised to provide for greater regional authority, and that Labor would work with ATSIC to accord with their priorities to concentrate on advocacy. However, it would continue to ensure accountability (Australian Labor Party 2001).

This, of course, is hardly a comprehensive review of political statements, and is somewhat incidental to this review. Inclusion of the material is instructive because of two perceived trends. Gone from the 2001 Labor's policy was the strong emotive language used by Tickner and the recognition that ATSIC has an important function beyond service delivery and advocacy. This would appear to suggest that scope for greater autonomy is now limited, and that political rhetoric from both sides of the Parliament has moved away from terms like 'self-determination' and 'self-management', to talk more loosely about 'empowerment' and 'outcomes for Indigenous Australians' (cf. Sanders 2002:2-3). However, the essentials have been put in place, with the establishment of Indigenous representative organisations, including Land Councils and ATSIC, which yield public policy recognition. While the move toward autonomy is necessarily constrained, there is an emergence of 'an indigenous order of Australian government' (Sanders 2002:9ff). A strengthened ATSIC is well placed to take a lead in this activity.

The second trend that develops from this brief look at the statements of political parties relates to regionalisation. Both political parties have promised more regional authority, a proposal that could have implications for ATSIC's current structure. It is an issue to which I will return later in this paper.

The early years of ATSIC saw much criticism of the new body⁸. Here follow just a few examples, which are perhaps typical. Some writers criticised the extent to which 'true' self-determination would be achieved (Bond and Martin 1990). Langton (1994), like Coombs (1990:44), was critical of the bureaucrats inherited by the new Commission and considered that it was a means whereby the federal government could rid itself of the 'trouble' of dealing with Indigenous peoples. Langton (1994:136) also was critical of the twin structure of ATSIC (executive and representational) that she likened to two pyramids, the former inverted, which lacked contact with each other. O'Shane (1993) was more generally critical of the new Commission, complaining that it was impossible to learn from the 'glossy' brochures produced by the new organisation where the money would go.

These complaints were balanced by others who welcomed the new organisation with cautious optimism. Rowse, in reply to Bond and Martin, and in the same article (Bond and Martin 1990), stated that he considered the issues to be a matter of political perspective and that he preferred to be optimistic at that time. Articles by FAIRA (1990) and Brennan (1990) were also cautiously optimistic, while Coombs (1990:46) urged Indigenous peoples to see ATSIC as

... a first step on the road to an Aboriginal structure of local and regional government within the Commonwealth on bases similar to, but independent of, Commonwealth territories.

The critics of the new structure did not suggest alternatives, although Langton argued that there was a need for self-government, independent of the States, by accessing untied Commonwealth grants to the States and Territories, which were not, so Langton (1994:139) asserted, properly directed to Indigenous purposes. While self-government

lies outside of any review of ATSIC, issues of funding for Indigenous Australians do not, and are explored further in relation to regionalisation issues latter in this paper.

The then Chair of ATSIC, Lowitja O'Donoghue, was energetic in her promotion of the organisation (e.g. O'Donoghue 1990, 1994 and 1997), setting out the basis of the new Commission, while stressing that ATSIC, 'is, of course, the leading example of the Commonwealth's endorsement of the principles of self-determination and self-management' (1994:5). O'Donoghue (1994:10) also stated that

... clearly, the establishment of ATSIC in early 1990 and the subsequent development of its regional council structure have represented a radical advance in the application of self-determination principles within Commonwealth government arrangements.

ATSIC was to be seen as an important vehicle for the empowerment of Indigenous Australians and would ensure their maximum participation in policies that affected them. She also stressed ATSIC's role as an adviser to governments on Indigenous matters. Later, in 1997, she was more subdued and, following the heavy cuts made to ATSIC by the Howard government, spelt out the difficulties that ATSIC faced. She noted that the Coalition government was 'confronting' not 'adopting' ATSIC (O'Donoghue 1997). In a similar vein, an ATSIC publication of 1998 attempted to rectify a common perception that ATSIC was responsible for everything to do with Indigenous affairs. The point was made strongly by the inclusion of a quotation from the then CEO of ATSIC, Peter Shergold (ATSIC 1998a:25⁹):

There is a profound lack of understanding that what ATSIC undertakes and what other agencies undertake ... have got to be supplementary to equitable access to mainstream programs. We cannot be the provider of all the housing, the infrastructure and the health services that are required by Australia's most disadvantaged group.

Other articles reviewed noted the importance of internal reviews, accountability as well as further devolution (ATSIC 1996), while another writer outlined the changed situation that had resulted from the creation of ATSIC (Dillon 1996). Prior to that time, the Minister had total control over the way money was spent on Indigenous matters, and there was little or no accommodation of diversity (1996:95). Dillon saw the benefits of the Commission as allowing for the decentralisation of decision-making with more power flowing to the regions, the provision of open advice and transparent decision-making with the creation of a national representative body. This was not achieved by any other Indigenous organisation (1996:96).

Summary

The brief review of political materials is instructive in showing how entrenched the idea of a Commission had become in mainstream political thinking. While it remains constrained (and perhaps more so now than in the past) by expediency, there remains a solid foundation upon which to continue to build a legitimate Indigenous order of Australian government. ATSIC, while only one component in this order, is probably the most significant player. On the stage of national as well as international affairs, ATSIC has an important role to play in a process of providing greater power to Indigenous peoples, which is not inconsistent with the political aspirations of either major political party. In terms of ATSIC's structure, this role can only be played to the full if the organisation continues to exercise power and to have sufficient resources to operate successfully.

The critics and supporters of ATSIC raise issues relating to structure and function to which I return in greater detail in the next section. One important issue emerges that relates to the devolution of power to regional organisations that has significant implications for the present structure of the Commission. Again, it is an issue that will be considered further in the next section of this paper.

Finally, it is evident that ATSIC has laboured under much criticism and, despite the many positive statements made by its senior representatives, has been forced into a defensive position and has had to use time and resources to do so. This is common knowledge and is evident even from the brief range of materials reviewed here. This raises issues about ATSIC position within the administration of public policy and also of its relationship to government. Being situated, as it is, in a position of confrontation with government, rather than being adopted by it, is a structural and locational matter. ATSIC's position as a legislated arm of government is not in dispute, but its structural relationship to government, and government's responsibilities to it are in question. No writers reviewed here have put forward suggestions as to how these structural relationships could be amended to remedy this problem. However, there is clearly room for innovation in this regard.

4. ATSIC and the Exercise of Public Policy

Introduction

ATSIC was created from the ideology of self-determination¹⁰ while being an institution of the state responsible for the development and implementation of public policy. This unusual arrangement is primarily responsible for the numerous contradictions, conflicts and dilemmas facing the Commission, and which have been identified, in part, so far in this review. Public policy is ultimately driven by government, although there are many intermediate players. Governments in Australia are popularly elected. Yet ATSIC contemplated that a portion of public policy could be devised and implemented by those who were elected by only a small minority of the population. The justification for this develops from the ideal of self-determination. Control was afforded only to those matters that affected Indigenous Australians. The right of Indigenous peoples to achieve some form of autonomy within an overall system of mainstream government was accepted by all major political parties as a desirable outcome – within certain limitations.

A majority of the materials reviewed here deals with aspects of the debate that surrounds the unique position occupied by ATSIC, particularly as regards its unusual relationship with the state (the Parliament and Ministers) as well as its own constituents. In promising to deliver self-determination, some saw the relationship with the state as too tenuous and liable to undermine the foundations of the unified democratic ideal. In promising some autonomy and control, others within the political context of the times saw that it would in fact deliver only half-measures and was, in fact, merely another institution of government. Many issues hang off these points of view, including philosophical and practical implications of self-determination, structural and governance issues that affect implementation, issues of representation, funding and accountability. In what follows these broad headings will be used to accommodate the many papers and articles considered.

Several writers have written broadly about these amalgamated issues in relation to ATSIC. Rowse (1990, 1992b) identified many of them positively as early as 1990, but two years later, had become more cautious, identifying what he saw to be potential difficulties relating to staff employment under the *Public Service Act* (PSA) (1992b: 158, 170), while seeing demands for accountability as contrary to ideals of self-determination (1992b:171). He also saw the strength of ATSIC as lying in its regional structures (1992b:159). By 2002, Rowse was able to review the numerous discussion papers produced by the Centre for Aboriginal Economic Policy Research at the ANU that had focused on ATSIC (Rowse 2002), and which together cover most of the principle issues that relate to the ideology, structure and function of ATSIC. These papers are also reviewed here.

In his brief introduction to the only book devoted to ATSIC, Sullivan (1996) also overviewed most of the major issues confronting the Commission. He noted that all authors agreed that there should be greater regionalisation, aggregation of funding, and better representation of community views, while seeking answers to fundamental questions such as identification of ATSIC's central role and why there was so much frustrating confusion over its functions.

These papers represent good overviews of the problems. Like those considered below, they do not often offer solutions and perhaps, at best, indicate possible ways ahead.

Self-determination

Political philosophy and institutional practice

The political philosophy of ATSIC's inception was well set out by O'Donoghue in an address she gave in 1993 that provided a positive view about what ATSIC could achieve. O'Donoghue (1994:10-11) told her audience that ATSIC's goal was

... to secure the empowerment of our people so that, through self-determination, we can make the decisions that affect our lives and share in Australia's land, wealth and resources, contributing equitably to the nation's political life, with full recognition of our indigenous cultural heritage as the First Australians.

O'Donoghue (1994:11) was also positive about ATSIC's expected role in providing independent advice to government, and co-ordinating programs, particularly between the Commonwealth and other levels of government involved in the administration of Indigenous programs.

A couple of years later, Sullivan (1996a) wrote critically of the Commission, pointing to the limited power of its elected representatives and the fact that it was dependent upon the government for funding and so subject the sensitivities of the Commonwealth in relation to spending on Indigenous peoples. In a more comprehensive article, published the same year, Sullivan (1996b) inquired whether ATSIC met Australia's international obligation to uphold Indigenous self-determination. While his answer was that it did not, he expanded upon the points raised in his other paper, taking the view that ATSIC was perceived (and was) a part of the nation-state and not a part of Indigenous systems of representation and governance (1996b:120-1). He also asserted that the representational system lacked fairness and was inappropriately structured (1996b:125, 127).

Other writers have also been critical. Some broader issues that relate to the scope of ATSIC's functions (some of which will be considered in the next sub-section) also have implications for the implementation of the ideal of self-determination. Pearson (Pearson and Sanders 1995:7) considered that ATSIC should be a resource provider, not a service provider. This point was taken up by Rowse (2000:222) who wrote that ATSIC limited self-determination because of its neglect of community development and its concentration on program and service delivery. Earlier, the same writer had reviewed a DAA submission to the House of Representatives Standing Committee on Aboriginal Affairs (HRSCAA) that, 'candidly ... revealed the federal government's philosophical and practical difficulties in delivering services ... while simultaneously affirming Aboriginal self-determination' (Rowse 1992a:1). While the author noted that the same submission expressed the hope that the new Commission would change things, a report by the Committee in 1990 (HRSCAA 1990) was critical of the new ATSIC, seeing it as an imposition of government and that Regional Councils would not have their own staff, while employees of the Commission would be answerable to the Chief Executive Officer (1990:41). Rowse concluded that the Committee had reservations about the 'imposed from above' nature of much of the structure (Rowse 1992a:92). In short, practical applications of the ideals of self-determination had the effect of limiting those very ideals.

Sanders, writing in the same article as Pearson, was critical of the employment of ATSIC staff under the PSA, as being a strong disincentive to the realisation of self-determination (Pearson and Sanders 1995:13; cf. Coombs 1990:43). This recurrent theme, noted above, was also explored by the 1998 review, which recommended the practice cease (ATSIC 1998:42-3). In a similar vein, writers have also seen the self-determination ideal diluted in practice by the bureaucratic culture that was seen to inform ATSIC from the start, and which, as noted above, saw Coombs raise his concerns (Rowse 2000). Wolfe (1993), reviewing regional planning in the Northern Territory, saw ATSIC's bureaucratic culture as an impediment to the innovations required for the successful implementation of elements of self-determination (Rowse 1996a).

Structures, functions and governance

Activities of the Commission find articulation in administrative structures and these either enhance policy ideals or impede them. The way ATSIC was set up and its subsequent operations have been the subject of numerous articles and papers. The issues raised in them are not so different from those examined in the previous sub-section, but are, for the most part, more specific to function. Few systematically differentiate between the representational and executive arms of the organisation, although functional issues of each are quite different. Perhaps one of the most comprehensive articles on this issue was written by Dillon. In this he covered a wide range of issues in a positive manner, being mindful of the many criticisms that were levelled at the Commission during its early years (1996:94). Despite these criticisms, Dillon asserted that the fundamental structural arrangements were sound. These combined the representative and executive functions to ensure that Indigenous interests gained access to the executive processes of government. The power to make funding decisions had been taken from the Minister and handed to the Commission, while Regional Councils ensured diversity and heterogeneity, while gaining real power over decision-making. Finally, Dillon argued that ATSIC staff were under the control of the Commission, despite criticisms that as Public Servants they were answerable to the government (1996:93).

Building on this positive view, Smith (2002) wrote of 'jurisdictional devolution' that would assist self-determination, and its evident implications for ATSIC, which had adopted a strong regional bias from the beginning. Martin (2003) explored ideas of Indigenous organisations and their relationship to mainstream bodies, again hinting at possible models for ATSIC. Sanders, whose important paper has already been noted (Sanders 2002), saw ATSIC as filling a role in an 'Indigenous order of Australian Government' despite the difficulties faced by the organisation. In these views, then, ATSIC, as presently structured, has a role in the further development of Indigenous governance at a regional and possibly a national level.

Elections and representational issues

There remain several more practical issues for consideration that relate to the implementation of the ideal of self-determination. Fundamental to this is the manner in which ATSIC regional Councillors and Commissioners are elected.

I have outlined above how the electoral system was designed, and that it was at variance with proposals that delegates to the new body be elected from community groups or organisations. However, once the new system was instigated, there appears to have been strong support for it, though the mechanics of the arrangement are subject to frequent debate. For example, Rowse (1991) critically examined the difficulties faced by regional Councillors in representing their constituents in the contexts of leadership and unity. The electoral boundaries are reviewed after each election, a requirement of the legislation (Section 141). Not surprisingly, the ordering of these boundaries has been the cause of repeated inquiry, as was remarked upon by both the 1993 and 1998 Reviews. The whole arrangement was reformed in 1993 by a significant reduction in the number of Regional Councils, from sixty to thirty-six (Smith 1996:35). It would appear that these matters are subject to on-going review, and as a matter for the administration of the legislation, are not of concern here. It is sufficient to note that since the 1993 changes, there has been little or no commentary about the numbers of Regional Councils or Commissioners. Indeed, the 1998 review did not propose changes to either the number of zones (and so the number of Commissioners) or Regional Councils (ATSIC 1998b:16). However, and as noted in several places in this paper, there has been substantial argument for increased devolution of powers to regional bodies.

There have been three articles that have addressed electoral issues. Two of these (Brunton 1991, 1997) were highly critical of both the process and the democratic legitimacy of the results. The issue of compulsory voting crops up in a number of articles about ATSIC, as does the idea that voting eligibility should be based on the electoral roll, as is the case in State, Territory and Commonwealth elections. Brunton considered that the choice of whether to vote or not, offered to Indigenous Australians in these regards, is discriminatory (Brunton 1997).

Scholarly research by Sanders, Taylor and Ross (2000) went a long way to answering some of these criticisms. The authors explained the complexity of statistical information relating to voting numbers, and pointed out that it is easy to draw incorrect conclusions. They also noted a huge variation in voter numbers according to location. They concluded that ATSIC elections are keenly contested, that voter participation had risen and stabilised, that it was higher in remote areas, and that numbers were generally comparable with other voluntary elections. While making voting compulsory is an option, this was not seen as desirable or necessary by these writers.

Summary: Self-determination; philosophy, practice, functions, governance and representation

Materials reviewed in this section have fallen typically into two parts: those dealing with philosophical and political issues on the one hand and those that address more practical issues of the implementation and practice of self-determination on the other. Of the former, commentary is necessarily constrained by the subject matter for it is not easy to summarise and contextualise abstract issues. ATSIC was founded on an ideal and the ideal remains significant.

Originally underpinned by the ideology of self-determination, ATSIC reflects attributes that cannot be abandoned without the loss of the original ideal. In practice, a number of tenets of the ideology were squeezed, compromised and became misshapen. Some critics of ATSIC have argued for a purer form of the ideal, which would resolve some of the difficulties that have arisen from the necessary compromises of the renegotiated policy bargain. While that option remains, no writers reviewed here have indicated that it is politically achievable or even whether it is desired. Other writers reviewed here have seen ATSIC as a part (in varying degrees of importance) of a larger move toward Indigenous governance. By implication they are suggesting that ATSIC's role will be the more valuable and comprehensive if ATSIC works from a position of strength in all its functioning parts. Unless the fundamental underpinnings of ATSIC are to be re-thought and the ideal of self-determination (as it is generally understood) abandoned, then the option for the continuance of the Commission is to ensure that these principles, however compromised and tortured, are sustained and enhanced.

Finally, this section has considered some of the issues that surround the practical aspects of the representational structure, particularly the nature of the ATSIC elections. Options identified for consideration include changing the nature of elections, making voting compulsory and implementing the use of the electoral role. These are issues that have been debated since ATSIC's inception. With one exception, no option receives much support from those who have written about them.

Regional control

Coombs (1986:18-22) viewed the regions as providing the 'grass roots' representation for a national body. ATSIC's structure, as it emerged, endorsed this construct, but the manner of representation has led to criticisms of the representativeness of Councillors and Commissioners (Rowse 1991). ATSIC itself was initially optimistic about the role of the regions in undertaking mandatory planning exercises (ATSIC 1994a, 1994b), but the relatively limited powers of the Regional Councils has remained a theme in the literature reviewed (Sullivan 1995; ATSIC 1998:26). The creation of the Torres Strait Regional Authority in 1994, from the Torres Strait Regional Council, gave impetus to this debate (Sanders 1995, 2000) although any further development of autonomy was thwarted by lack of government commitment (Sanders and Arthur 2001:6-7). Greater powers for Regional Councils was a recommendation of the 1993 review (ATSIC 1993:24-8) and regionalisation was a theme of the 1998 review (ATSIC 1998:24ff). The latter review also examined the case for facilitating the creation of regional authorities and put forward some possible models (1998:29-33). However, it was cautious about recommending directly that provision be made in the ATSIC Act for the establishment of regional authorities until after the Commission had considered the matter further (1998:34). While the Commission comprises Regional Councillors, their corporate interests may not necessarily reflect regional aspirations for greater autonomy from the Commission, a fact

that may explain why the matter has not been much progressed. The review also listed thirteen issues that needed to be resolved before the matter could be taken further (1998:74-5), which, from a practical point of view, would provide a valuable point of departure for anyone wishing to pursue this option further.

Academic writers have explored the case for regional organisations. Sullivan endorsed Coombs' view that community organisations provide the best basis for Indigenous representation. Writing of the Kimberley, Sullivan (1995:5) stated that ATSIC was seen as a 'government bureaucracy with an Aboriginal front line'. He recounted how there was a move for greater autonomy, while ATSIC primarily offered an administrative solution to Indigenous problems rather than being able to develop principles for accommodation between two peoples (1995:8). Sullivan considered the development of regional authorities in the context of regional agreements, integrating aspects of the administration of the *Native Title Act* in the establishment of a system of regional Indigenous governance.

In considering Sullivan's account, it is not hard to see why the authors of the 1998 review expressed reservations about regional authorities. Sullivan's proposed regional authority has no clear links to ATSIC and would presumably replace the role of one or more Regional Councils. However, the issue of regional control can also be seen to relate to ATSIC's relationship to other regional organisations. Coombs' ideal that they provide a direct and sound means for regional Indigenous representation was not a part of the ATSIC plan. Regional organisations, like land councils and other large corporations, have played an important role in national policy-making and some exercise very real regional and even national influence. The relationship of ATSIC to these organisations has never been properly worked through, and there is undoubtedly a need for some decisive action in this regard.

In 1996 Smith explored some of the tensions that existed between the Regional Councils and the central body (both Board and administration) against the background of ATSIC's development. Smith (1996:26) noted that, as a result of the 1993 review, powers of the Regional Councils were increased with the delegation of financial powers. The analysis poses a series of questions as to where 'true' representativeness rests – with the Board, with regional Councillors or within the electorate and their communities. Perhaps anticipating that further regionalisation was inevitable, driven by the imperative to recognise diversity, she cautioned that this could be the death knell of ATSIC. At a more practical level, Finlayson and Dale (1996:80-81) related how a regional planning exercise was frustrated by tensions between regionalisation ideals and the extent of actual regional control. Regional autonomy was seen to be hampered by a legion of difficulties and the 'us' and 'them' mentality that exists between the regions and central office in Canberra. The authors stated that the theory and vision of self-management sat uncomfortably alongside its practice, while structural relationships were determined 'largely by bureaucratic practices and administered by centralised administration' (1996:85)¹¹.

Rowse (1996b:48) saw regionalisation, achieved through devolution of powers, as the road to ATSIC's political redemption. He reported research that he undertook, in which he interviewed some twenty-five regional Councillors. Fundamental to the research was an examination of the relationships, identified by the Councillors, between their constituents and ATSIC (the bureaucracy) and ATSIC (the Board). These relationships were fraught with compromise and tensions and remain a significant issue (1996b:68). Rowse concluded that giving more power to the Regional Councils would

alleviate these pressures and answer many of the criticisms about ATSIC's lack of true representation of its constituents.

During the late 1990s, ATSIC formulated a policy on the regionalisation of its administrative functions. Mark Sullivan, as Chief Executive Officer, initiated steps to increase regionalisation of the administrative arm, a process that was subsequently reversed, at least in part. While there is no research reported on these processes, administrative regionalisation, its successes and failures, are issues that any review should address.

Summary: Regional issues

Options to further devolve power to Regional Councils have been aired for some years now and remain central to academic debate about the role, function and structure of ATSIC. While devolution is a means of increasing local influence over decision-making, and is likely to increase the responsiveness of the organisation to constituents, there are implicit dangers. First, devolution dilutes the power of the national body and has the potential to reduce rather than enhance its effectiveness as a national representative body. Second, retaining a uniformity of purpose and consistent application of policy could be seriously impeded. Finally, devolution could result in the national body becoming redundant or largely ineffectual. Regional authorities have been seen as providing an alternative to Regional Councils, with expanded roles that could embrace regional Indigenous government and consequential autonomy. However, the models for these, and the implications for ATSIC of their adoption, have not been fully worked through.

It is evident that the regional issue is one that must entertain the minds of those contemplating recommending changes to ATSIC. Representation of diversity, localism and the desire for people to own the decisions that affect them most, all support the ideal that greater decision-making and responsibility be devolved to local organisations. The challenge is how this might be accomplished without gutting the essentially national nature of the Board, which remains, potentially, one of ATSIC's greatest strengths.

Funding

The context of any discussion of funding for Indigenous affairs has to include recognition of the relatively small amount of funding available compared to the need. This point was made as long ago as 1986 by Altman and Dillon, and as recently (and with some authority) by the Commonwealth Grants Commission, in its review of Indigenous funding (Commonwealth Grants Commission 2001:xx, xxi). A rigorous national study (Neutze *et al.* 1999) showed that while more was being spent *per capita* in most program areas on Indigenous peoples, this was insufficient to off-set multiple disadvantages suffered in other areas, including barriers to access by Indigenous people to mainstream programs. Several writers have noted that ATSIC controls only a part of the funding available to Indigenous communities and individuals (e.g. Altman 1990:7)¹², while the Commonwealth has little or no control over the way in which funds are allocated by the States (Commonwealth Grants Commission 2001:xvi, xix). There is a popular misconception that ATSIC provides all funding to Indigenous people (ATSIC 1998a:24) leading to accusations, when programs fail, that ATSIC is responsible.

Actual levels of expenditure are a matter for Commonwealth and State governments and there are few options available to ATSIC to influence these. Langton (1994) referred to payments made by the Commonwealth to the States that include a factored component

to account for Indigenous disadvantage. Langton's view was that this component of the Commonwealth grant should be given to independent Indigenous governing bodies (1994:139). The issue of special-purpose and general-purpose payments to the States has also been discussed more recently by Ivanitz who noted (1998:27) the impossibility of discovering how the money is spent. The Commonwealth Grants Commission (2001:xix), whose report on Indigenous funding is discussed above, recommended that extra conditions attached to grants be sought, 'that target some of the expenditure of mainstream SPPs [Special Purpose Payments] to aspects of the services that are important to Indigenous people'. The review also recommended that 'performance reporting, Indigenous-specific performance criteria and greater Indigenous involvement in decision-making' be required (2001:xix). There is clearly a role for the Regional Councils in implementing these recommendations, were they given the powers to do so, as it would allow localised monitoring of expenditure ensuring it was targeted at points of greatest need. The proposal would also fit nicely with any progress made towards the establishment of regional authorities¹³.

Smith, in two papers (1993a, 1993b) looked at the way that ATSIC distributed its funding to regions for subsequent allocation. She noted, as do other observers, that somewhere over eighty percent of ATSIC's budget was excluded from the Commissioners' discretion, being already committed to major projects like the Community Development Employment Projects (CDEP) scheme (1993a:6). This, in itself, raises issues about the degree to which ATSIC is truly able to self-determine, and that matter has already been well aired in earlier sections of the current paper. Smith's principal concern is with the manner in which the remaining funds are allocated to the regions. She was critical of the fact that there appeared to be no real system employed to ensure that there would be an equality of distribution according to need (1993a:7), which works to the substantial disadvantage of some. She also called for a review of program delivery and a move away from the plethora of programs current on offer. She identified an, 'absence of a holistic, integrated approach ... apparent at all levels of ATSIC's financial allocations' (1993a:14).

In her second 1993 paper, Smith (1993b:5) set out a framework for what she termed 'fiscal equalisation' similar to that employed by the Commonwealth Grants Commission, where disability measures are used to weight allocations according to agreed principles. However, she also noted that horizontal fiscal equalisation formulae can be complex and rely heavily on data sets that are probably not available for Indigenous communities (1993b:10-11)¹⁴. Despite the obvious difficulties of implementation as well as changes wrought within ATSIC since 1993, essential components of Smith's arguments remain relevant. Options need to be explored that ensure there is an equitable distribution of funding, while measures that reduce the complexity of the funding environment (and consequential acquittals, see below) can only be welcomed. A recent 'Organisational Structure' for ATSIC (Gibbons 2003) reveals something of the organisational complexity that is ATSIC, founded as it is on five¹⁵ 'policy groups' each responsible for the administration of a major program, and each having numerous sub-groups. Amalgamation of funding, along with greater flexibility in how it would be used by Regional Councils would both simplify the funding and accounting processes, while yielding substantially greater powers to the regions.

Accountability

The subject of accountability and the degrees of its imposition within ATSIC has been the subject of much commentary, some of which has already been discussed above. I

noted that the high levels of accountability were a result, in part, of a political trade-off that made the establishment of the Commission achievable, but was seen to reflect poorly on the ideal of realising self-determination for Indigenous peoples. There is also perhaps the unstated implication that Indigenous peoples are not to be trusted to spend their money properly. On the contrary, Mick Dodson has noted that ATSIC's financial probity is far better than is to be found in other mainstream areas of business management (Ivantitz 1998:29), a situation endorsed by several recent events in the business sector.

Two papers are reviewed here that deal with ATSIC's own internal processes to ensure public accountability. In the first, Ley (1996) outlined the findings of a review undertaken by the Attorney-General's Legal Practice in 1995 on ATSIC's decision-making and review of decisions. The report was generally positive and its recommendations were accepted by ATSIC as a means to strengthen process. Dillon (1992) provided a case study from the Office of Evaluation and Audit. While the report in question was critical of the program under review (whose activities were suspended for a time until systems were changed), Dillon argued that the process of internal accountability works well in ensuring efficiency and desired outcomes. He also saw a role for the regional Councillors in evaluating the success or otherwise of programs (1992:103), an idea that reflects that accountability must run both up and down – up to the Commission and ultimately the government, and down to the electorate.

The issue of whether accountability and self-determination are mutual exclusive was tackled by Sanders (1993) and Martin and Finlayson (1996). Sanders' early article was concerned with how ATSIC was set up and how there was an attempt thereby to marry the two principles of self-determination and accountability within the one unique organisation. This led him to a review of what self-determination might actually mean (Sanders 1993:14) and he relied on research by Taylor (below) to conclude that a reasonable balance had been achieved, while adding that it might be a little early to judge.

Martin and Finlayson's paper is more complex and has the benefit of a greater experience of ATSIC in operation. They identified tensions between official (public) accountability, which is mainly financial or outcome-oriented, and local (internal) accountability, which is to the constituents and may have a range of measures, most of which are not financial. The former is essential at a national and public level, the latter essential as a part of the internal process of sustainable self-determination. Martin and Finlayson (1996:22-23) viewed the two as complementary, rather than separate and opposing and concluded that the latter was generally under-developed within ATSIC, both in practice and requirement, and suggested that this demanded attention.

Summary: Funding and accountability

Funding and accountability are two sides of the same coin. You cannot have one without the other, at least in our current political system. The options that are suggested from the literature reviewed in this sub-section therefore relate to the interaction between the two. States, it is suggested, need to be more accountable for the funding they direct to Indigenous programs and there needs to be a greater role for ATSIC (Regional Councils, regional bodies) in this regard. How achievable this is in practice is hard to say. While the matter could not be legislated, the defining of a role for ATSIC in this regard would assist in encouraging its operationalising. Secondly, funding allocations may need review to ensure that there is true equity in distribution to Regional Councils. The literature reviewed also indicates that ATSIC program structures, while serving the interests of

central control and strict accountability, may not be serving regional interests and local self-determination.

Accountability is seen by three writers as being both an upwards as well as a downwards process. The role of regional Councillors in this is of interest since it confirms a recurrent theme in this review – that Regional Councils should do more and have more power and resources to do it than they do at present. Accountability should be a part of this change, so it is argued, and not just to the public, but to their constituents as well.

5. Reviews and Research Relevant to ATSIC

Reviews

There have been two major reviews of ATSIC and many internal reviews of programs, most of which lie outside the scope of this paper. The major reviews are significant because of the range and depth of the inquiry that they represent, as well as for the cataloguing of issues that they contain. It is not the intention here to summarise each review in detail, but rather to perceive overall trends that might be useful in any subsequent review of options for the Commission.

The 1993 review was undertaken under Section 26 of the Act and focused in part on any perceived conflicts between elected Commissioners' representative and executive responsibilities, as well as issues relating to the electoral system then in place. These and other issues were outlined in a discussion paper released in 1992 (ATSIC n.d.), and were then canvassed in an interim report released the same year (ATSIC 1992). Not surprisingly for an Act that had not long been in operation, the emphasis was on practical and technical issues, many of which were subsequently accepted and legislated. The final report (ATSIC 1993) confirmed earlier suggestions, exploring issues like the number of Regional Councils, separate representation for the Torres Strait, appointment or election of the Chair and CEO, and included a substantial section on the role of Regional Councils, with recommendations that their powers be increased. While the review was important and responsible for many of the changes that followed, it neither challenged nor affirmed the fundamentals of the Commission. These, perhaps, at that time were still taken for granted.

The approach of the 1998 review was somewhat different. Consultation was sought by the means of a discussion paper and a widely distributed question and answer kit, identifying key issues for debate (ATSIC 1997). The items for debate form a useful check-list of issues for consideration in any current review, as all remain significant and some unresolved. They are also issues that recur in the literature reviewed here, and all but the most minor have been touched upon in this review.

The report (ATSIC 1998b) is substantially different from the report of the first review. It is evident that fundamental principles that related to ATSIC were no longer taken for granted. Issues flagged included an expressed concern over the organisation's massive funding cuts (there were major cuts after the Howard government took office in 1997), which were seen as undermining the Commission's ability to promote opportunities for self-determination (1998b:xii). There was also a call for an enhanced preamble to the ATSIC Act, acknowledging prior Indigenous rights to Australia. ATSIC

was to be seen as the primary service deliverer to Indigenous peoples, while reaffirming that it wished to work co-operatively with government to achieve their joint aims (1998b:xv). The review also covered a range of other issues for reform or amendment, some of which have already been noted elsewhere in this paper.

The 1998 review was comprehensive and wide-ranging. The fundamentals of the review did not seek to change the form of ATSIC but sought to strengthen it. It could attract the criticism that it neglected many of the deep-seated problems that some commentators had considered insurmountable. But then, in representing a *status quo*, it was perhaps wishing to improve on what was achieved and sustainable, rather than radically restructure that which was based on well-grounded principles. It sought means to strengthen relationships, particularly those with the State and Federal governments. There was new ground covered in relation to regionalisation, particularly relating to the possibilities and opportunities presented by the idea of regional agreements and authorities.

The Daffen (1994) review of ATSIC's salary resource distributions was the first comprehensive structural review of the administrative arm of the Commission, although there had been an initial report on the proposed structure for the new Commission (McIver 1988), prior to its inception¹⁶. The Daffen review is mostly concerned with detailed and minor structural issues relating to the allocation of staffing positions across the administrative arm of the Commission. While the thrust of the review was to seek ways of better placing resources strategically, there was an overall view that there needed to be less centralised control, more regionalisation and an increased level of resources placed where they would be of direct benefit to the clients. Daffen made little or no comment relating to the representational arm of the Commission, except to recommend that it have greater administrative support (cf. McIver 1988:xiv). The review's contribution, in relation to the evolution of ATSIC, is therefore to provide additional support for a view that ATSIC needs to have a greater regional focus.

The ATSIC Website reveals 660 references to 'reviews', being papers and articles that relate to assessments of the organisation. These would appear to be internal investigations, or commissioned inquiries of particular programs or activities, and a normal part of the performance monitoring expected of any organisations however large or small. Their contribution to a major review of the whole organisation is limited since they have as their subject individual parts of the whole, and consequently do not comprehend the larger issues that make up the architecture of the organisation in its entirety¹⁷.

Research projects relating to ATSIC

Fundamental research projects that have taken ATSIC as their subject are surprisingly few in number. While much has been written about ATSIC, the bulk of the academic and scholarly works reviewed here based their observations on analyses of public policy statements, structural and legislated arrangements, and activity and commentary reported in the media. There are two clear exceptions, though a third is here added since it stems from a dedicated research project into Indigenous public sector management (Ivanitz 1998). This research, as reported, highlights the difficulties that ATSIC faces in attempting a dual role – 'straddling two worlds' – while many other issues are raised in this regard that have already been explored above.

Taylor (1992) researched and wrote an MBA thesis to explore issues of self-determination and accountability in ATSIC and whether the two, while in tension, were contradictory forces within the organisation. Taylor interviewed twelve senior ATSIC bureaucrats to provide his base-line data. He noted (1992:10) that accountability diminishes with devolutionary distance and that this had implications for the level of accountability evident in Regional Councils. Since achievement of the principles of self-determination rested on providing powers to Regional Councils, this was an issue that required redress. Taylor's data, however, suggested that the bureaucrats interviewed did not generally perceive there to be a conflict between the ideals of self-determination and public accountability, although these were not without attendant difficulties (1992:102). The thesis includes coverage of other issues, including equity of funding principles, management structures and administrative arrangements (1992:116-38, Attachment B).

Rowse (1996) interviewed twenty-five regional Councillors with a view to gaining a better understanding of how they effected their role as arbiters between the constituency and ATSIC, and how they situated themselves within the organisation itself. The research developed constructs relevant to the forging of the political identity of the Councillors, while concluding that a real issue to be confronted was that of relationships between the component parts of the organisation (1996:68).

Summary: Reviews and research

The reviews considered here provide a significant contribution to any current analysis of ATSIC since they provide a catalogue of key issues that comprise the elemental structure of any examination of the organisation. Two points develop from this catalogue. First, ATSIC has been subject to substantial (some might say excessive) review already, which provides a corpus of work that should be seen as a point of departure for any further work. Second, the issues raised by earlier reviewers represent recurrent themes in the literature on ATSIC. That many of these issues are acquiring the characteristics of old chestnuts either means that there is not the will to solve them, or, more probably, that they are systemic to the organisation as it has been created. The problems derive from ATSIC's dual nature. It is, for the one part, charged with the administration of public policy within a Western-style democratic system of governance. It is, for the other part, required to be the representative body for Australia's Indigenous minorities and a primary vehicle for the achievement of their self-determination. While solutions can be found to ease the friction between the operation of this duality, what is perhaps required is a greater acceptance of the structural and ideational reality that is ATSIC.

The research that has been undertaken into ATSIC is surprising for its paucity. Whether this is a result of lack of academic interest or because of barriers to access is unknown. However, for a body that has been subjected to so much introspection and public scrutiny, more fundamental research would be useful in setting straight the record and is a realistic option for the future.

6. Conclusions: Options for the Commission

Drawing together a diverse body of work in a synthesis of common and recurrent issues and the identification of consequential options is a complex undertaking. The methods employed in this discussion paper provide one avenue for the development of a clearer understanding of the nature of the matters to be considered. ATSIC is a diverse

organisation, it has multiple functions, is characterised by numerous activities and has roles assigned to it that are potentially in conflict. This means reviews and analyses of ATSIC are characteristically taken up with a large number of issues, some minor some major. These issues, all of which have implications for any consideration as to how ATSIC might operate in the future, have been identified throughout this paper by means of a thematic approach to this literature review. It is not then the intention here to summarise these issues again, as this has already been done.

From this review of what has been written about ATSIC over the last ten years or so, there emerge four inter-related principles. These principles represent values, ideals and goals. They are the stuff from which policy is derived as a means of effecting their realisation. All issues identified from the literature develop from these principles, as will be apparent from their application to the discussions set out above. Options for the future of the Commission, however they are devised, will to a greater or lesser extent, either confirm or deny one or more of these principles. Their consideration, comprehension and admission to the process are therefore critical.

The first principle relates to the achieving of some degree of self-determination for Australia's Indigenous minorities. ATSIC was founded upon the aspiration that this ideal would be achieved. The two-tiered representative structure, the control over the allocation of funding, policy-making and the idea that the Board should be a national advisory and representative body, all stem from the concept of self-determination. Were this not so, ATSIC would not have been born. It is an ideal that lies at the heart of its inception and at the root of its birth. Many issues develop from the attempt to enshrine this principle in legislation through the creation of the Commission. In fact, it is possible that it is intrinsically bound up with every issue discussed here. In terms of options for a restructured Commission, then, this principle has to be re-evaluated. There needs to be a view as to whether it is still wanted, still holds good, has worth and is achievable. That decision will affect most other ideas that might follow relating to the structure, function and activities of the Commission.

The second principle is situational. It relates to a question of location. Should ATSIC be an organisation within or without government? Part of ATSIC's difficulties have stemmed from unrealistic expectations about what it could deliver. These are reflected in criticisms that it was not *really* a vehicle for self-determination. This was because ATSIC always has been an instrumentality of the state, even though it was provided with the capabilities that far exceeded government departments. As a consequence, ATSIC tended to please no one – those who sought greater autonomy saw it as too limited, those who opposed special treatment for Indigenous Australians saw it as too radical. Coupled with this polarisation of views was a reality that saw accountability and ATSIC as inseparable but uncomfortable bed-fellows. The principle is profound because it again goes to the heart of any consideration of options for the future of ATSIC. If it is agreed that ATSIC must remain within the government's curtilage (affirmation of the *status quo*) then certain outcomes cannot be expected from the organisation. There is a limit to what it can deliver. And these must be admitted to any proposed outcomes that might be expected from options considered. On the other hand, Hawke's view, that it was a matter of getting the balance right is apposite. The nature, extent and definition of that balance are critical.

The third principle relates to devolution. This is a recurrent theme in the literature and substantial changes have already been made to enhance the capabilities and powers of Regional Councils. Regional Councils are considered to be closer to the constituents, more responsive and accountable to local pressures and therefore best able to make

decisions on their behalf. There are, of course, also dangers in this proximity. Moreover, there is a clear tension between the further development of regional powers and the maintenance of a robust central authority. Some have seen the end of devolution as the ultimate demise of the Board. The development of regional authorities is clearly an option for the future that might provide an avenue for increased regional autonomy. I have noted above that many of the difficulties surrounding the further application of this principle have been enumerated in the literature reviewed above. However, it remains a major issue in the literature and one that demands attention.

The fourth and final principle relates to the Board. Both Coombs and O'Donoghue saw the replacement for the NAC as a national representative body that would give a voice to Indigenous peoples, inform government thinking and provide advice to it. Some writers reviewed here have noted ATSIC's contributions and leadership in relation to national issues that demonstrate successes in this regard; reconciliation, native title, deaths in custody¹⁸. However, this success may well be a function of the attitude of the government of the day, since it is neither mandated nor facilitated by required process and conspicuous in its absence at this time. If, as seems inevitable, there is an increase in the devolution of powers, the role of the Board needs to be re-examined. Surprisingly, there is little written about this issue that would appear to be a critical and central issue. If the Board is to be seen, as was the original intention, as a corner-stone of national Indigenous representation and the source of advice to government, then a more robust system than that at present in place needs to be designed to effect the desired outcome. This also requires a better definitional understanding of the relationship between ATSIC and the Minister. Such an understanding might be developed by considering means whereby the Minister becomes a stakeholder in the decisions of the Board, and so a willing partner in a relationship with his (or her) nationally elected representative body. Realisation of such a relationship is pivotal to the success of the whole venture that is bound up in the organisation that is ATSIC.

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- ¹ One Nation, on the other hand, has stated its intention to abolish ATSIC.
- ² Media releases, Hon. Philip Ruddock, 10 April 2003 and 17 April 2003.
- ³ Coombs and Robinson 1996 provide a detailed account. Dillon 1996 also provides a useful historical over-view. Cf. Hiatt 1990; O'Donoghue 1986; Rowse 1990, 1991; Sanders 1993, 2002.
- ⁴ Sanders 2002:1-4 provides a useful review of these terms and their use.
- ⁵ Rowse 2000:199 stated that Hand failed to provide a defence of the view that Indigenous peoples had a right to govern themselves. Rowse goes on to describe ATSIC as 'corporatism tricked out in the rhetoric of "self-determination"'.
- ⁶ Ruddock 2003 has provided recent comment on this issue.
- ⁷ From a tape recording of the AIATSIS Council meeting of 28 February 2003, supplied to the consultant by AIATSIS.
- ⁸ Rowse 1996b:44 provides additional references to critics of the Commission.
- ⁹ Quotation from HRSCATSIA report *Rhetoric or Reality* (1993).
- ¹⁰ I use the term in the limited sense identified by Sanders (2002:1-4) and the term 'self-management' is broadly synonymous with this use.
- ¹¹ The writer found similar impediments to regional autonomy when assisting a regional council develop a policy and plan for its homelands in 2001-2.
- ¹² Figures vary according to the source and time, but are generally no more than fifty percent.
- ¹³ This matter was touched upon in the discussion paper released during the 1993 review of ATSIC.
- ¹⁴ Palmer and Altman 1998; Gillespie and Palmer 1999; Palmer 2000 provide discussions of the application a formula-driven approach to funding within ATSIC.
- ¹⁵ An additional three are largely administrative in function.
- ¹⁶ Daffen (1994:2-3) noted that there had, in fact, been five previous reviews of staffing (including the McIver report).
- ¹⁷ Ley 1996; ATSIC 1994b; Dillon 1992; Altman, Gillespie and Palmer 1998 provide examples.
- ¹⁸ Dillon 1996:99; Rowse 2000:206-7; Sanders 2002:7.