2008

Towards a new National Indigenous Representative Body

A Community Guide

Without genuine engagement with Indigenous Australians, governments will struggle in their efforts to make lasting progress to improve the conditions of our people and in our communities.

There is currently no transparent, rigorous process or mechanism at a national level to engage with Indigenous communities, where policies and priorities can be developed and which can hold governments accountable for their performance.

We need a new National Indigenous Representative Body if we are to achieve long-term, positive change. The new Australian Government recognised this in its Apology speech on 13 February this year.

The Government strengthened this commitment when, along with the Federal Opposition, it signed a Statement of Intent in March 2008. This commits the Government to work in partnership with Indigenous people, and their representative organisations, to 'close the gap' on health inequality and life expectancy by 2030.

It is now time to give substance to these commitments so that Indigenous Australians can participate in the decisions made by government. This is why discussion about a new National Indigenous Representative Body is so important.

From 2006 I have been carrying out research to identify the key issues we need to consider in establishing such a national representative body.

The research was published in an Issues Paper that looks at the lessons we can learn from past Australian experiences, what representative bodies are currently in place in Australia and overseas models of representation for indigenous peoples.

It also raises some key issues we need to consider to ensure that a new National Indigenous Representative Body is effective and sustainable. The Issues Paper is over 100 pages, so I provide this community guide as a summary.

My hope is that we can develop a body that truly represents the interests of all sections of the diverse Aboriginal and Torres Strait Islander community, no matter what their age, sex, background or where they live.

And I hope that such a body will be able to inspire and support our people, while also holding governments accountable for their efforts, so that we can ultimately enjoy the same life chances as all other Australians.

I urge all Aboriginal and Torres Strait Islander peoples to work together to make sure we have a body that we can all be proud of; and a body that will represent us.

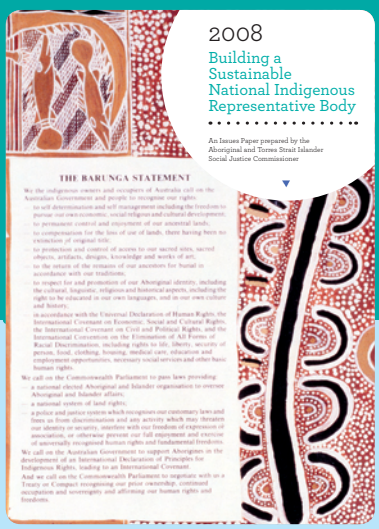
Tom Calma
Aboriginal and Torres Strait Islander Social Justice Commissioner

TOM CALMA is the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Tom, an Aboriginal elder from the Kungarakan tribal group and a member of the Iwaidja tribal group of the Northern Territory, commenced his five-year term in July 2004.

As Commissioner he advocates for the recognition of the rights of Indigenous Australians and seeks to promote respect and understanding of these rights among the broader Australian community.

Tom has been involved in Indigenous affairs at a local, community, state, national and international level and has worked in the public sector for over 35 years.



Aboriginal and Torres Strait Islander Social Justice Commissioner

Human Rights and Equal Opportunity Commission
www.humanrights.gov.au

Indigenous representative bodies in Australia: a short history

The experiences of the past provide valuable lessons that we can draw on when it comes to establishing a new National Indigenous Representative Body.

Our research looked at previous representative bodies, including the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCATSI), the National Aboriginal Consultative Committee (NACC), the National Aboriginal Conference (NAC) and the Aboriginal and Torres Strait Islander Commission (ATSIC).

There are a number of reasons why these bodies did not work as effectively as they intended, including:

- their relationships with governments, Indigenous communities and organisations, and other stakeholders, were not clearly defined
- they did not always deliver what Indigenous people wanted because their roles and functions were not clear
- a lack of resources made it difficult to undertake some responsibilities, while having too many functions – such as advocacy, policy development, program delivery and evaluation – created conflicting responsibilities
- the wide diversity of Indigenous concerns – from urban to remote communities; women, young people, Stolen Generation members – made it difficult to represent all groups successfully
- a tension between the expectations of Indigenous Australians for a strong organisation to represent their views and the preference of governments for them to act as 'advisory' bodies.

About the research project

This research project was carried out following a commitment I made in my *Social Justice Report 2006*. In that report I said that I would "work with Indigenous organisations and communities to identify sustainable options for establishing a national Indigenous representative body".

In 2007, I hired the National Centre for Indigenous Studies at the ANU to conduct research. That research has been incorporated into an Issues Paper that I released in July 2008.

The full version of the Issues Paper is available at: www.humanright.gov.au/social_justice/repbody.

Research projects such as this are an important part of the Social Justice Commissioner's statutory role to promote awareness and discussion of the human rights of Indigenous Australians.

Cover image:
The image and text of the Barunga Statement and the painting (as featured on the Issues Paper on the cover) are reproduced courtesy of the Central Land Council, Northern Land Council, and the Buku Larrngay Mulka Art Centre. Australian Parliament House, where the Barunga Statement currently resides, provided a copy of the image for use.

Establishing a sustainable National Indigenous Representative Body

A National Indigenous Representative Body should do more that simply provide a 'consultative mechanism' for government. It should have a clear vision for a positive future for all Indigenous Australians, inspiring partnerships and action for change.

What are the key issues?

The Issues Paper I presented to the government is not intended to raise every possible issue that needs to be considered in establishing such a body. Instead it simply aims to start the discussion among Indigenous people and with government.

Therefore, the list of key issues set out here should not be seen as prescriptive or limiting.

Key issue 1: Guiding principles

Indigenous peoples' vision of what they want from a National Indigenous Representative Body, and the principles to guide its operation, will have a fundamental impact on what the eventual body will look like.

Some useful sources of information to identify strong foundational principles for a National Indigenous Representative Body include:

- the Themes and Ambitions from the Indigenous Stream of the 2020 Summit
- the Hannaford Review of ATSIC
- the objects of the *Aboriginal and Torres Strait Islander Act 2005* (Cth)

Some foundational principles to consider include:

- having legitimacy and credibility with both governments and Indigenous peoples
- 'two-way' accountability - to government and to Indigenous peoples and communities
- transparency in its operations, membership and determining membership or election, and policy making and financial processes
- being truly representative of the diverse range of Indigenous peoples
- having a consistent and 'connected' structure that has clear links between the national body, Indigenous peak bodies and Indigenous organisations at the state, territory and regional levels
- providing independent and robust advocacy and analysis.

To achieve its goals, a National Indigenous Representative Body could also be expected to:

- play a leading role in making a new partnership between governments and Indigenous people
- ensure Indigenous people contribute to and lead policy development on Indigenous issues
- provide an Indigenous perspective on broader government issues, such as climate change or homelessness
- be a strong and consistent advocate for the rights of Indigenous peoples
- ensure proper mechanisms are in place to monitor the performance of governments on Indigenous issues
- ensure government commitments, such as 'closing the gap' on health inequality etc, are supported by comprehensive, long-term and evidenced-based action plans.

Key issue 2: Roles and functions

Some of the possible functions of a new National Indigenous Representative Body might include: delivery of government programs, advocacy, policy formulation and critique, contributing to legal reform, review and evaluation of government programs, being a clearing house, research, facilitation and mediation and contributing at the international level.

Experiences of past representative bodies, however, have highlighted the advantages, disadvantages and challenges of carrying out some functions and the tensions that result from undertaking multiple roles and functions.

Government program delivery

The role of program delivery can be actioned through directly engaging in service delivery or through exercising influence over program delivery. Should the role of directly providing services be properly left to the province of the government, a National Indigenous Representative Body could still play a significant and important role in program delivery by setting priorities for program delivery, contributing to planning processes and monitoring government service delivery.

Advocacy

To be an effective advocate, a new National Indigenous Representative Body needs legitimacy, sound research, professional presentation, adequate resourcing and a relationship of trust with government, the public service and media. It also needs to be professional and to have adequate resources. Another crucial factor is whether the body sits within or outside of government.

Policy development

No previous representative body has had a predominant role in setting Indigenous policy goals, implementation and evaluation. Rather, they have generally been seen as one element in a consultative process. A human rights based approach, and respect for the principle of free, prior and informed consent, requires a more open and collaborative approach to policy development by government.

Law reform

Although past Indigenous representative bodies have supported law reform, their role in initiating legal reforms has not been strong. A National Indigenous Representative Body could be active in initiating law reform and cooperating with legal organisations and movements in other ways, such as through test cases.

Review and evaluation

Scrutiny of government performance at both the state/ territory and national level is an important role a National Indigenous Representative Body could perform. It could work with existing monitoring processes, as well as receive independent 'field reports' from regional members or bodies. To perform this role effectively, it would need some investigative authority.

'Clearing house' for information

A new national body could coordinate the sharing of information between Indigenous representative organisations and service delivery organisations and also provide advice to the public and private sectors.

International engagement

The participation of Indigenous Australians internationally has made an important contribution to the development of human rights standards, as well as providing an opportunity to learn 'best practice' approaches from others to inform policy development in Australia. A new national body could coordinate international engagement to ensure strategic and well-targeted participation.

Research

Good research is essential to effective advocacy and developing good policy and advocacy. A new body could have its own research coordination arm, commission community-based research or coordinate with existing Indigenous research centres. It could also build links between Indigenous researchers, policy developers and service providers to share skills and knowledge.

Facilitation and mediation

There is a large, unmet need for mediation services between Indigenous people and non-Indigenous interests when one impacts on the other. A national body could support mediation training and possibly accredit professionals in this area. As an independent body, it could also provide negotiation, mediation and facilitation expertise on a fee-for-service basis.

Key issue 3: Structure

Two important questions to consider about the structure of a new National Indigenous Representative Body are:

- how will the national leadership keep connected with the broad base of Indigenous people and communities at the local and regional level through to the state/ territory and national level?
- what should the structure of the national body look like?

Representing Indigenous people and communities

Some of the ways in which a new national body could engage with Indigenous people, communities and organisations at the regional and state/ territory level, include:

- formal mechanisms, where the national body draws its members from national, state/ territory or regional representative bodies, holds regular state-wide policy forums or develops other regional-level mechanisms based on boundaries used by the previous ATSIC Regional Councils or based on Indigenous geographic regions

- a range of approaches that engage different sectors of the Indigenous community (such as forums at different levels or through different representation for individuals and organisations)
- informal processes where Indigenous peoples can have their say, for example at a national congress or forums that bring people together around specific issues.

Structure of a national body

There are a number of ways in which a new National Indigenous Representative Body could be constituted, such as:

- delegates who are nominated by regional and state/ territory levels of the body or by direct election
- a membership-based organisation, made up of communities, organisations or individuals who choose to join
- involving Indigenous peak bodies, regional or state/ territory based Indigenous bodies or Indigenous service delivery organisations in its activities and decision-making
- designating positions be allocated to the national body, or specific working groups, to represent particular sectors of the Indigenous community, such as women, Stolen Generation members, traditional owners, young people or Torres Strait Islanders
- a process of merit selection coordinated by a panel of eminent Indigenous peers
- a combination of these approaches.

Consideration needs to be given to ensuring a gender balance in the new national body, along with ensuring the participation of young people.

We also need to make sure there are appropriate opportunities for the broad-based participation of Indigenous people in the body's decision-making process, while also recognising the need for the body to remain focused, effective and capable of swift action.

Key issue 4: Relationship with federal government and Parliament

To effectively represent the interests of Indigenous Australians, a National Indigenous Representative Body must work closely with all levels of government. The new body could be established as a Commonwealth Government entity, such as a statutory authority, or as a non-government organisation.

Operating as a statutory body ensures both independence and privileged access to government. It can work to improve the quality of governance and influence public policy, while at the same time remaining at arm's length from government. It would also report directly to Parliament through its annual report.

Whether the organisation is a governmental statutory authority or a non-government organisation, a National Indigenous Representative Body must build and maintain a closer relationship with government than has previously existed.

This is particularly important for delivering two of its possible functions: policy advice and review of government performance.

Approaches that could help build a positive, constructive relationship with government include:

- having *ex-officio* membership of the Cabinet Committee on Indigenous Affairs and the Secretaries Group on Indigenous Affairs, where major decisions on Indigenous affairs are made at federal government level; alternatively, it could advise these bodies
- participating in discussions of the Council of Australian Governments, as well as its various relevant committees
- having a formal role in the committee systems of Parliament, such as at Budget Estimates hearings or parliamentary committees of review
- establishing an exclusively Indigenous committee, with democratically chosen representatives and the powers of Parliamentarians.

Key issue 5: Funding

How the National Indigenous Representative Body is funded is critical to its ability to take on the roles and functions that are eventually decided.

If a national body is a statutory arm of government, it must be funded by government. While government funds may be useful, they can come at the cost of the independence. For instance, the organisation may be tied to certain functions, have conditions attached to its funding and, as a result, it may be seen as a proxy for government.

If the body is a non-government organisation, funding can still come from government through grants. Other funds may be raised through a dedicated foundation fund or through donations, membership fees and/ or selling products and services.

A further option is establishing an 'Indigenous Future Fund' to be funded through a direct grant from government(s) or through the allocation of a percentage of land tax receipts annually for a fixed period.

Questions for discussion

1. What principles should guide the formation of a new National Indigenous Representative Body?

2. How could the National Indigenous Representative Body have a say in program delivery without delivering services?

Should it:

a) Set priorities for service delivery?

b) Contribute to planning processes?

c) Monitor government service delivery?

3. What should be the roles and functions of a new body?

a) Advocacy?

b) Forming policy and advising government?

c) Law reform?

d) Reviewing government programs?

e) Reviewing government service delivery?

f) Coordination?

g) The international arena?

h) Research?

i) Facilitation and mediation?

j) Other roles?

4. Should the National Indigenous Representative Body be a national-level structure or include state/ territory and/ or regional structures?

5. How might a new body engage with Indigenous peoples at a regional level?

Should it:

a) Include regional representation as a formal part of its structure?

b) Hold regular regional forums?

c) Conduct these itself, or in partnership with governments?

d) Engage through some other process?

6. How should the new body engage with Indigenous peoples at the state/ territory level?

Should it:

a) Draw its membership from regional representative bodies?

b) Link in other ways?

7. What should the structure of a National Indigenous Representative Body look like?

Should it:

a) Be based on a *delegate* model, nominated by regional and state/ territory levels of the body?

b) Have a *direct election* model, where Indigenous peoples elect representatives?

c) Involve Indigenous peak bodies and maybe others to nominate representatives?

d) Have Indigenous bodies participate in an advisory capacity?

e) Have positions on the national body for different Indigenous community groups?

f) Have equal numbers of Indigenous men and women?

g) Allow non-Indigenous organisations to participate as advisors?

h) Be chosen by a panel of eminent Indigenous peers?

i) Be structured in another way?

8. Should the National Indigenous Representative Body be established by government (for example as a statutory authority) or be independent of government?

9. How should the National Indigenous Representative Body be structured to ensure a direct relationship with the federal government and the federal Parliament?

10. How should the National Indigenous Representative Body be funded to ensure its ongoing security?

Should it:

a) Receive government funding?

b) Gain charitable status to receive tax-free donations?

c) Have an establishment fund to give the body a capital base?

d) Charge membership fees?

e) Charge for delivery of services and products?

f) Be established as a future fund financed through a percentage of mining tax receipts?

g) Have other ways of funding?

How are Indigenous people currently represented?

There are a range of national, state/ territory and regional Indigenous representative bodies currently operating in Australia. These include:

- National peak Indigenous bodies
- Land Councils and Native Title Representative Bodies
- State/ territory representative and advisory bodies, and the
- Torres Strait Regional Authority.

Each category of organisation highlights different strengths and challenges for effective representation.

However, they all provide a valuable source of ideas in shaping an effective model for a new National Indigenous Representative Body.

These include their structure, functions, membership and the processes used for determining representatives or elections.

Indigenous representation in other countries

Our research examined models of indigenous representation in four other countries: the United States, Canada, Sweden and New Zealand. Each example has a different historical, cultural and legislative basis.

United States: National Congress of American Indians

With a membership of tribe members, this is an independent advocacy group that talks to government on policy development and monitors government policies. It is financially independent.

Canada: Assembly of First Nations

Membership includes all First Nations citizens who elect community representatives to the Assembly. It operates as an independent advocacy body, although it is funded by government.

Sweden: Sami Parliament

A parallel indigenous Parliament, its role is to monitor government rather than providing self-governance. It is both a publicly elected body and a public authority funded by the Swedish Government.

New Zealand: Māori electorates and dedicated government agencies

Māori electorates provide indigenous representation in the national Parliament.

There are also a range of government bodies that represent Māori interests, such as the Ministry of Māori Development, the Māori Office Trust, the Waitangi Treaty Tribunal and the Waitangi Treaty Fisheries Commission.

These bodies have indigenous members, but not necessarily elected members.

These overseas models demonstrate different strengths and weaknesses on issues such as self-governance and the influence they have with government. It is important to note that none of the overseas models performs a service delivery role on behalf of government.

Starting the conversation

There is a solid foundation of experience for us to build on when it comes to creating a new body that gives genuine voice to the rights and concerns of Indigenous Australians.

This Community Guide does not endorse or promote any particular model. Its aim is simply to identify some of the key issues that need to be considered in establishing a new National Indigenous Representative Body: its guiding principles, role and functions, structure, relationship with government and funding arrangements.

It is up to Aboriginal people and Torres Strait Islanders to decide whether there are other issues that need to be addressed in developing the shape and direction of the new body.

The next step is to hear the views and ideas of Indigenous people, communities and organisations. I encourage you to be involved in the upcoming consultations and to have your say.

Find out more

The full Issues Paper – *Building a Sustainable National Indigenous Representative Body* – was released on 12 July 2008.

It is available online at **www.humanrights.gov.au/social_justice/repbody**

You can also order a hard copy by phoning 1800 202 366.

Have your say

On behalf of the Australian Government, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is currently holding community consultations and receiving submissions on the establishment of a National Indigenous Representative Body.

Regional Consultations

From late July and throughout August, FaHCSIA will be conducting consultation meetings across Australia, including some remote locations.

There will be a range of other processes through which Indigenous people can have a say in the coming months. For information about the consultations, and how to register, phone **1800 202 366** or email: **indigenousrepbody@fahcsia.gov.au**

Submissions

Submissions can be made using the online form at: **www.fahcsia.gov.au/internet/facsinternet.nsf/indigenous/repbody.htm**

Written submissions can be sent to:

Email: indigenousrepbody@fahcsia.gov.au

Fax: 02 6264 5069

Post: National Indigenous Representative Body Unit
Department of Families, Housing, Community Services and Indigenous Affairs
PO Box 7576
Canberra Business Centre ACT 2610

Closing date for submissions is 19 September 2008

Please note: For any inquiries regarding the Government's consultation process, please contact FaHCSIA on the above contacts. The Social Justice Commissioner is *not* involved in the running of the consultation process.