



***EDUCATION AND HEALTH
STANDING COMMITTEE***

**INITIATIVES IN THE REMOTE
INDIGENOUS COMMUNITIES
OF THE TORRES STRAIT
REGION**

**Report No. 12
in the 37th Parliament**

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Initiatives in the Remote Indigenous Communities of the Torres Strait Region

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**INITIATIVES IN THE REMOTE
INDIGENOUS COMMUNITIES OF THE
TORRES STRAIT REGION**

Report No. 12

Presented by:

Hon T.G. Stephens, MLA

Laid on the Table of the Legislative Assembly
on 4 February 2008

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COMMITTEE'S FUNCTIONS AND POWERS

The functions of the Committee are to review and report to the Assembly on:

- (a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- (b) annual reports of government departments laid on the Table of the House;
- (c) the adequacy of legislation and regulations within its jurisdiction; and
- (d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

INQUIRY TERMS OF REFERENCE

That the Committee examine, report and make recommendations on successful initiatives in remote Aboriginal communities. The Committee will pay particular attention to:

1. The costs and benefits of successful initiatives;
2. The model utilised for the development and delivery of successful initiatives; and
3. Where possible, comparing and contrasting the models utilised for the development and delivery of successful initiatives.

The Committee will report its findings and recommendations to the Legislative Assembly by 20 November 2008.

CHAIRMAN'S FOREWORD

This report, the fifth in the series of the Education and Health Standing Committee's Inquiry into Successful Initiatives in Remote Aboriginal Communities, identifies within the Indigenous communities of the Torres Strait evidence of comparatively good and successful, structured response and engagement of governments in that region. These policies, actions, programs and decisions display a relatively positive multi-layered footprint of government institutions from the national, state and local spheres.

As our Committee completed deliberations on this Report, I was also reading a recently released book entitled "Beyond Humbug – Transforming government engagement with Indigenous Australia" (2007) by Michael C. Dillon and Neil D Westbury (published by Seaview Press SA). Both exercises have now fused in my analysis of the situation with which we have been wrestling as we have looked for successful initiatives in the Indigenous communities. However, in this foreword I have drawn heavily on the key theses detailed by Dillon and Westbury in their book; and indeed, at times, on their words.

Our Committee work has identified the great significance of the mechanisms for structured feedback to governments from the people of the communities of the Torres Strait region, which provide legitimacy and authority to the mechanisms of governance. This has been a key to the very high level of comparative success within this region and stands in dramatic contrast to the situation across the landscape of regional and remote Indigenous Australia.

Historical, cultural, social and other political factors have all played some part in delivering this contrast in outcomes. However, successful substantive engagement in the Torres Strait Region has been achieved in a way that has retained effective regional representation, policy and program development and delivery that is elsewhere absent.

Too easily the call for formal regional representative structures to be the basis of a structured response from government has been dismissed by simply pointing to the failure of the previous regional Indigenous representative structures, the Aboriginal and Torres Strait Islander Commission (ATSIC). Ignored by that observation is the continuity of alternative successful and adaptive structures within the Torres Strait.

Also ignored is the fact that when governments transferred to ATSIC considerable responsibility for priority setting and funds allocation to Indigenous Australia, a (hopefully) unintended consequence was that each sphere of government adopted an approach by which they appeared to see themselves as relieved of responsibility and accountability for addressing Indigenous disadvantage.

At a time where Indigenous people and communities are being told to "engage with the real economy" and to secure opportunities through employment, a more detailed response needs to be given to the absence of the full range of economic and social structures needed in regional Australia that can act as the pathways to Indigenous economic engagement and employment.

“Economic engagement” is critical to the future; however, some sections of the chorus singing this refrain across the Australian community simultaneously articulate the view that the argument for representative structures is simply a distraction from what they see as the “main game”. Instead – so this argument goes – the focus should be on Indigenous employment and supporting Indigenous economic enterprises. The proponents of this view do not appear to notice that at least two of the most successful Indigenous economic enterprises with the highest profile (Ngarda and Wunan) emerged out of the priority settings established by ATSIC’s regional decision-making bodies; and since the demise of regional policy settings and program delivery, there has been no comparable program or initiative to support the creation of similar Indigenous companies or economic structures for Indigenous economic development, engagement and employment.

What we have seen in the Torres Strait Region is the maintenance of institutional frameworks that have complemented existing Indigenous structures and institutions, allowing the citizens of the Torres Strait the opportunity to engage on their own terms with the wider Australian community and to hold out a place for themselves within our nation. The social and political networks of regional Australia’s Indigenous communities are indeed critical to mobilising action within the lives of the individuals and families of these areas (Dillon & Westbury 2007). Despite systematic attempts to ignore these networks or break the inter-generational modelling that has persisted to the present, it still remains vitally important that governments support institutional governance structures that provide pattern and shape, respectful and responsive, to the contemporary Indigenous cultural and social world of the regions.

The demographic trends within regional and remote Australia highlight that the presence of a very large and significant Indigenous population is a key feature of the future. The success or failure of the Indigenous community will, therefore, be key to the success or failure of these regional areas in terms of the even spread of economic development and opportunity. This growing reality adds additional urgency to the need to respond to the challenge of Indigenous disadvantage across regional and remote Australia.

Scarce qualified human resources available to the Indigenous communities is increasingly compounding the challenge they face and puts propane under the arguments in favour of regional structures that can, with cost effectiveness, attract and retain key, well-qualified senior personnel able to tackle the complex issues facing the Indigenous communities across regional and remote Australia.

A key part of the Australian Government’s more recent responses has been the move to a series of “Regional Partnership Agreements” with key Indigenous organizations within particular areas, and simultaneously one Federal Department (Department of Employment and Workplace Relations) has adopted a regional approach to its program structures and delivery. These regional initiatives have shown some capacity to better respond to the distinctive characteristics of the Indigenous community between regions. However, largely missing from these new arrangements has been any credible regional representation or any autonomous Indigenous voice – other than in the Torres Strait (Dillon & Westbury 2007).

At the same time the voice of governments has united around a self-perception of being focused on taking practical and urgent steps to tackle disadvantage, while eschewing any suggestion that a restructuring of the response mechanisms of government was necessary. The argument being that the restructuring process would take away the opportunity for urgently needed outcomes in the Indigenous area. The dominant prevailing view is easily caricaturised as government seeing itself as unable to “talk and walk” simultaneously. Missing again from the equation is any sense that “walking the walk” requires effective pathways, stripped of flawed policy and expensive program failure that act as road blocks.

Our opportunity to look at the regional framework for program delivery for the Torres Strait region has supported the view that there is a need for regionally-based program and policy development and delivery across regional Australia, including within Western Australia, supported by regional representative structures that have legitimacy. Such a response from governments will need to be accompanied by features that secure investment, collaboration, capacity building and active government presence throughout regional areas (Dillon & Westbury 2007).

In previous reports of the Education and Health Standing Committee we have flagged our intentions to present this report in reference to the Indigenous communities of the Torres Strait with particular reference to the regional representative authority.

The genesis for this report was the Committee’s resolution of 23 August 2006 to undertake an Inquiry into Successful Initiatives in Remote Aboriginal Communities. Following our visit to Cape York communities in November 2006 (which work led to Reports Numbers 7 and 11), the Committee travelled on into the Torres Strait and this report draws on the work undertaken during that visit and subsequent follow up research.

However, significant work on writing up this report was delayed when the Committee undertook the very time-consuming Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area. During that passage of time the membership of the Committee changed when an additional workload with other committee work necessitated the move of our colleague Mrs D.J Guise, Member for Wanneroo, who was replaced with new Member Mr Paul Papalia, Member for Peel. Neither the Member for Peel, nor the Member for Bassendean (Mr Martin Whitely) - whose other competing parliamentary and electorate commitments made it impossible for him to participate - were able to join the Committee during our visit to the Torres Strait Region.

As a result it would be fair to say that this Report, which for the most part is merely descriptive of what the Committee found during this work in the Torres Strait, reflects the assessment of the other continuous members of the Standing Committee.

Having said that we are still, nonetheless, indebted to the input of each and every member of the Committee and the prodigious effort and extraordinary quality of the work produced by our former Principal Research Officer, Dr Jeannine Purdy, who has recently finished her employment in the Legislative Assembly Committee Office, to take up work at the Western Australian Supreme Court. I know I speak for each member of the Committee when I express profound appreciation for the work of Dr Purdy and wish her well in her new role working directly with the Chief Justice.

It is also necessary to pay tribute to the assistance provided to the Committee by our Research Officers, Ms Nicole Burgess (who is now on maternity leave) and former Research Officer Mr Peter Frantom, while we welcome new Committee Staff member Mr Roy Tester who joins us in our work with this Committee.

This Report has, therefore, been adopted by the Committee against that backdrop, where two of our current Committee members were placed at some disadvantage, for the reasons identified above, and I note that they share no responsibility or blame for any errors or flaws that may have been unwittingly included within this report.

On behalf of the Committee, I would like to thank the people of the Torres Strait Region for their contribution to this Inquiry, and to acknowledge their generous assistance, hospitality and candidness.

Finally, I would like to commend this report to the House. At a time when there is so much emphasis on what is negative and dysfunctional in remote Indigenous communities throughout Australia, the very significant problems highlighted can appear overwhelming and intractable. The regional representative and governance structures of the Torres Strait Region provide us with a very useful model for future government consideration.

HON T.G. STEPHENS, MLA

CHAIRMAN

ABBREVIATIONS AND ACRONYMS

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AIC	Australian Institute of Criminology
ATSI	Aboriginal and Torres Strait Islander
ATSIC	Aboriginal and Torres Strait Islander Commission
AT SIS	Aboriginal and Torres Strait Islander Services
CAEPR	Centre for Aboriginal Economic Policy Research
CDEP	Community Development Employment Projects
CEIS	Community Economic Initiatives Scheme
Cth	Commonwealth
CTP	Community Training Program
DEWR	Department of Employment and Workplace Relations
DIAC	Department of Immigration and Citizenship
DOGIT	Deed of Grant in Trust
FIM	Family Income Management
FJL	Fisheries Jurisdiction Line
HAMS	Housing Asset Management System
IBIS	Islander Board of Industry and Service
ICC	Island Coordinating Committee
ICGP	Indigenous Community Governance Project
IIB	Island Industries Board
JTSHIC	Joint Torres Strait Housing and Infrastructure Committee
KALACC	Kimberley Aboriginal Law and Culture Centre
KRIB	Kullarri Regional Indigenous Body
MIP	Major Infrastructure Program

EDUCATION AND HEALTH STANDING COMMITTEE

MLA	Member of the Legislative Assembly
MP	Member of Parliament
NAHS	National Aboriginal Health Strategy
NPA	Northern Peninsula Area
NT	Northern Territory
OIPC	Office of Indigenous Policy Coordination
PNG	Papua New Guinea
Qld	Queensland
SJL	Seabed Jurisdiction Line
TRAWQ	Tamwoy, Rosehill, Aplin, Waiben and Quarantine
TSIREC	Torres Strait Islanders Regional Education Council
TSIs	Torres Strait Islanders
TSPZ	Torres Strait Protected Zone
TSRA	Torres Strait Regional Authority
TSRA Bill	Torres Strait Regional Authority Bill
WA	Western Australia
WALGA	Western Australian Local Government Association

GLOSSARY

Ailan Kastom

This term means ‘*island custom*’ of Torres Strait Islanders and refers to the social structure and traditional laws that are part of the unique culture of the Torres Strait region. It is recognised under section 36 of the *Acts Interpretation Act 1954* (Qld) as:

*the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.*¹

Community Development Employment Projects (CDEP)

A Commonwealth initiative, known colloquially as a ‘*work for the dole*’ program, for Indigenous people. Previously, the program was described by the Commonwealth as follows:

Community Development Employment Projects are the Commonwealth’s largest Indigenous program. They began in 1977 at the request of several remote Communities as an alternative to receiving unemployment benefits (‘the dole’). Participation in the CDEP scheme is voluntary.

*CDEP accounts for around one quarter of Indigenous employment and has grown to encompass over 32,000 participants across Australia in Urban, Rural and Remote areas.*²

From 1 July 2007, the former Commonwealth government ceased funding for CDEP in urban and regional centres, closed Indigenous Employment Centres across Australia, and instead funded enhanced mainstream employment brokerage services.³ Originally it was proposed that remote Indigenous communities would continue to receive CDEP funding, but with the Commonwealth’s ‘*Northern Territory Emergency Response*’, it was announced in July 2007 that CDEP in the Northern Territory ‘*will be progressively replaced by real jobs, training and mainstream employment programs*’.⁴ The recent change of government at Commonwealth level, however, has seen the winding back of CDEP in the remote communities of the Northern Territory being reversed.

Notably, none of the changes to the administration of CDEP appear to have been extended to the Torres Strait region, where CDEP remained within the administration of the Torres Strait Regional

¹ Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 5.

² CDEP, Available at: www.cdep.com.au/ Accessed on 24 November 2006.

³ Commonwealth Department of Employment and Workplace Relations, *Indigenous Potential Meets Economic Opportunity: Discussion Paper*, November 2006, p 2.

⁴ Commonwealth Minister for Indigenous Affairs, Media Release, ‘Jobs and training for Indigenous people in the NT’, 23 July 2007.

Authority (TSRA), and with a budget of some \$30 million p.a., also remained the TSRA's single largest program.

Deed of Grant in Trust (DOGIT)

The form of land grant to Indigenous communities in Queensland established in 1984. It is a system of community level land trusts, for the ownership and administration of former Aboriginal reserves and many of the inhabited islands of the Torres Strait, under a special form of title. Incorporated Councils, which elected representatives every three years, managed the community's affairs.⁵ In 2004, changes were made to DOGIT Councils, other than those in the Torres Strait (known as Island Councils). Aboriginal community Councils were brought under the mainstream *Local Government Act 1993* (Qld), although special provisions also recognised the particular needs and circumstances of these councils and communities.⁶

Changes were being implemented in the Torres Strait region to consolidate the Island Councils into two Regional Councils under the *Local Government Act 1993* (Qld) at the time this Report was being written.

Island Coordinating Council (ICC)

The ICC was a statutory body established under the *Community Services (Torres Strait) Act 1984* (Qld). Its members were the 17 chairpersons of the Island Councils and a person elected by the Tamwoy, Rosehill, Aplin, Waiben and Quarantine (TRAWQ) communities that comprise the northern suburbs of Thursday Island at the State's local government elections. The other part of Thursday Island, comprising Port Kennedy on the southern side, had local government representation through the mainstream Torres Shire Council, which was not a member of the ICC.⁷

Island Councils

Under the *Community Services (Torres Strait) Act 1984* (Qld) each Island Council was vested as a trustee of Deed of Grant in Trust (DOGIT) land granted under the *Land Act 1964* (Qld) and ran the domestic affairs of the island. Although in part operating on the basis of mainstream local governments, the Island Councils had significant additional responsibilities. Councillors were elected for a three year term and were also members of the Torres Strait Regional Authority (TSRA) and the Island Coordinating Council (ICC).

Under the arrangements being implemented at the time this Report was being written, 15 Island Councils were becoming Community Boards supporting a Torres Strait Island Regional Council, and two mainland Island Councils (Bamaga and Seisia) were amalgamating with three Aboriginal community Councils to form a regional council in the Northern Peninsula Area (NPA). These regional

⁵ State Library Queensland, 'Footprints before me', Available at: publib.slq.qld.gov.au/footprints/communities/dogit.htm Accessed on 27 March 2007.

⁶ See the *Local Government (Community Government Areas) Act 2004* (Qld) (Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 14). Previously these Councils operated under the *Community Services (Aboriginal) Act 1984* (Qld).

⁷ Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 6.

councils will operate in most respects like mainstream local government councils, but will also ensure that Indigenous customs and practices are respected. Torres Strait Shire will continue to operate separately.⁸

Torres Shire Council

The Torres Shire Council

*comprises all of the State [of Queensland] lying north of latitude 11 degrees south. This includes the northernmost part of Cape York Peninsula, together with the islands of Torres Strait ... Torres Shire Council's administrative control, since the Torres Strait Islanders Act 1939, does not extend over the whole of the Shire Area and excludes those Islands and mainland areas ... relinquished to specific Islander and Aboriginal Councils.*⁹

'Torres Strait model'

The term used for the purposes of this Report to refer to the unique representative and governance structures in place for the Indigenous people of the Torres Strait region.

Torres Strait Protected Zone (TSPZ)

The TSPZ recognises traditional cross-border movement by Torres Strait Islanders and Papuans in the Torres Strait, in accordance with the livelihood and way of life of the traditional inhabitants of the region.¹⁰

Torres Strait Regional Authority (TSRA)

The TSRA was established in 1994 under the Commonwealth's *Aboriginal and Torres Strait Islander Commission Act 1989* to represent resident Indigenous people of the Torres Strait region. It has been described as having '*similar powers to those of ATSIC [the now defunct Aboriginal and Torres Strait Islander Commission] itself*'.¹¹ Since 2005, and the abolition of ATSIC elsewhere in Australia, it has operated under the Commonwealth's *Aboriginal and Torres Strait Islander Act 2005*.

⁸ *Community Government in the Torres Strait - The Way Forward*, April 2007; Email from Local Government Enquiries, Department of Local Government, Planning, Sport and Recreation, 21 December 2007.

⁹ Torres Strait Shire, 'About the Shire', Available at: www.torres.qld.gov.au/council/index.shtml Accessed on 19 December 2007.

¹⁰ McFarlane, J, *Australian Institute of Criminology trends and issues in crime and criminal justice*, 'Torres Strait: Policing the Open Border' No. 92, Australian Institute of Criminology (AIC), ACT, July 1998, p 2.

¹¹ Arthur, W S, *What's new? The 1997 Parliamentary Inquiry into Indigenous Business*, Discussion Paper No. 177/1999, CAEPR: Canberra, p 10.

Torres Strait Treaty

The Torres Strait Treaty defined questions of sovereignty and jurisdiction with PNG, following that country's independence. It established a Seabed Jurisdiction Line (SJL). Australia has rights to all things on or below the seabed south of the line and PNG has the same rights north of the line. The SJL also effectively marked the boundary as regards sovereignty, although PNG recognises Australian sovereignty over 15 islands and cays north of the line, including Boigu, Saibai and Dauan Islands. It also established a Fisheries Jurisdiction Line (FJL) and designates the Torres Strait Protected Zone (TSPZ).¹²

¹² McFarlane, J, *Australian Institute of Criminology trends and issues in crime and criminal justice*, 'Torres Strait: Policing the Open Border' No. 92, AIC, ACT, July 1998, p 2.

EXECUTIVE SUMMARY

This is the fifth report in the series on the Education and Health Standing Committee's *Inquiry into Successful Initiatives in Remote Aboriginal Communities*. It concerns initiatives in the remote Indigenous communities of the Torres Strait region, with a particular focus on the continuing role of the Indigenous regional representative authority, the Torres Strait Regional Authority (TSRA), despite the abolition of that model for Indigenous administration in the remainder of Australia with the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2005. The Report also examines other initiatives in the region, specifically on Badu Island. The Report largely draws upon briefings and informal discussions which took place during the Committee's travel to the Torres Strait region in November 2006, when the Committee had the opportunity to briefly visit the two largest Torres Strait communities, Badu and Thursday Island (*Waiben*).

Before addressing the Torres Strait model of representation and governance and various initiatives on Badu Island, the Report outlines background information on the Torres Strait region in Chapter 2. The chapter provides a brief background on the communities of the Torres Strait, including their history, economic base and strategic significance. In relation to strategic significance, the Torres Strait region is uniquely placed in Australia, in that it shares a territorial border with another country, Papua New Guinea (PNG). In addition, that border has been described as '*unlike almost all other international borders*'¹³ because of what is effectively an open border arrangement with PNG which was established as part of the Torres Strait Treaty. The Committee considers that the strategic significance of the Torres Strait communities forms a backdrop to the distinctive government policies and level of resourcing which have been applied to the remote Indigenous communities of that region.

The complex representative and governance structures of the Torres Strait region, referred to as the '*Torres Strait model*' for the purposes of this Report, are outlined in Chapter 3. Problems associated with this unique model are also detailed in this chapter and were summarised by one stakeholder during discussions with the Committee in November 2006 as resulting in '*too much government in the Torres Strait*'. The chapter also includes reference to a number of reforms relating to these representation and governance arrangements, some implemented and others abandoned.

Chapter 4 examines the strengths and weaknesses of '*Indigenous representation*' under the former Commonwealth government agenda and under the '*Torres Strait model*'. The Committee acknowledges that there are lessons to be learned as a result of the former Commonwealth government's agenda. However, the Committee also believes that the '*Torres Strait model*', acknowledged broadly as transitional rather than definitive and with the capacity to incorporate change in response to lessons learned, provides a model for consideration and adaptation in Western Australia. The strength of the '*Torres Strait model*' is that it has integrated local and regional representation, so that representatives remain accountable to their local communities, and

¹³ McFarlane, J, *Australian Institute of Criminology trends and issues in crime and criminal justice*, 'Torres Strait: Policing the Open Border', No. 92, AIC, ACT, July 1998, p 1.

although significantly enhanced through recognition by the Commonwealth, the model is not necessarily reliant upon it.

Chapter 5 examines the underlying context of the apparent success of the remote Indigenous communities in the Torres Strait region. The chapter also documents various initiatives in the Torres Strait region, specifically those on Badu Island. The Committee did not have the opportunity to examine these initiatives in detail, but recounts the information provided as Badu appeared to the Committee to exemplify a remote Indigenous community that was successfully tackling the many challenges confronting it. The Committee concludes its examination of initiatives on Badu by taking the opportunity to reflect on those elements which appeared to contribute to the success of these initiatives, and the associated costs, in accordance with the Committee's terms of reference for this Inquiry.

The Report concludes with Chapter 6, highlighting the connection between the successes of initiatives and communities in the Torres Strait region and the representative structures that are in place for the Indigenous people of that region. The Committee believe that community consultation was an essential ingredient to the success of both the remote Indigenous communities and of the initiatives in the Torres Strait region as it also found in relation to the successful Family Income Management initiative of Cape York.¹⁴

There is a critical need for structures capable of producing representatives who are obliged to consult their communities; who have a legal capacity to represent those interests, in particular, to non-Indigenous agencies; and moreover whose claims of representative status and legitimacy derive from those they represent. The Committee believes that this has been achieved to a significant degree for, and by, the communities of the Torres Strait region. The *'Torres Strait model'* has a demonstrated capacity to deliver direct local representation at regional level; is independently constituted and legally recognised; has status under both State and Commonwealth law and the capacity and flexibility to operate in accordance with communities' distinct cultural requirements and interests; and provides accountability to those communities.

The Committee recommends the *'Torres Strait model'* for consideration and adaptation by the remote Aboriginal communities of Western Australia.

¹⁴ Examined in the Committee's Report No. 11, *A Successful initiative - Family Income Management*, (2007).

FINDINGS

CHAPTER 2 THE TORRES STRAIT REGION

2.2 The strategic significance of the Torres Strait

Page 8

Finding 1

The strategic significance of the Torres Strait communities forms a backdrop to the distinctive government policies and level of resourcing which have been applied to the remote Indigenous communities of that region.

2.3 The Torres Strait communities

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Finding 2

In the Torres Strait region, the Commonwealth funded Community Development Employment Projects (CDEP) continued to be administered by the Torres Strait Regional Authority (TSRA), rather than the Commonwealth Department of Employment and Workplace Relations (DEWR) as occurred as a result of 'mainstreaming' of Indigenous services elsewhere in Australia.

In the absence of any of the other reforms to the CDEP scheme implemented elsewhere in Australia, in the Torres Strait region it also continued to be a mainstay of the economy, with approximately half of the Indigenous workforce of the region employed under CDEP.

CHAPTER 3 GOVERNMENT IN THE TORRES STRAIT REGION

3.1 Overview

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Finding 3

In addition to the Commonwealth and Queensland governments, the representative and governance structures of the Torres Straits region, referred to as the '*Torres Strait model*', consisted of:

- the Torres Shire Council, operating as a mainstream local government under State

(Queensland) legislation, which represented the region including Thursday Island (*Waiben*), Horn and Prince of Wales Islands but excluding the 15 island communities, the two mainland Islander communities, and three mainland Aboriginal communities in the Northern Peninsula Area (NPA), all of which were Deed of Grant in Trust (DOGIT) communities;

- the Island Councils which individually represented 15 island communities and two mainland communities of Torres Strait Islanders under the *Community Services (Torres Strait) Act 1984* (Qld);
- the Island Coordinating Council (ICC), also established under the *Community Services (Torres Strait) Act 1984* (Qld), which represented the 17 Islander communities and certain districts of Thursday Island; and
- the Torres Strait Regional Authority (TSRA), established under Commonwealth legislation, which consisted of the 18 members of the ICC and two members representing the Indigenous people in the remainder of Thursday Island not represented on the ICC.

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Finding 4

Notably, despite the significant changes implemented by the former Commonwealth government to Indigenous policy throughout Australia, the Commonwealth arrangements in the Torres Strait region do not appear to have been substantially altered in recent years. The distinctiveness of these arrangements resides in particular in the continuing existence of an Indigenous representative regional authority which allows '*Torres Strait Islanders to manage their own affairs according to their own ailan kastom* [island custom]'

3.5 Torres Strait Regional Authority (TSRA)

Page 28

Finding 5

There was a division between the elected and administrative arm of the Torres Strait Regional Authority (TSRA), with the TSRA elected board being responsible for policy development and the TSRA administration making funding decisions and allocating funding to the communities.

However, the TSRA was not divided into separate agencies as occurred elsewhere in Australia in 2003 with the creation of the Aboriginal and Torres Strait Islander Services (ATSIS) as the administrative arm for the Aboriginal and Torres Strait Islander Commission (ATSIC).

Page 29

Finding 6

The Torres Strait Regional Authority (TSRA), as a regional Indigenous representative structure, is significantly enhanced as a result of its linking of State and Commonwealth institutional arrangements for the representation of Indigenous communities.

Page 29

Finding 7

Significantly, the Torres Strait Regional Authority (TSRA) did not just combine State and Commonwealth institutional arrangements but directly placed local community representatives in the role of regional representative as members of the TSRA. This link was made through the joint function of the vast majority of TSRA members, who were also the Chairpersons of Deed of Grant in Trust (DOGIT) Indigenous communities.

Page 30

Finding 8

The Committee notes that by incorporating representative arrangements for both Deed of Grant in Trust (DOGIT) communities and for Indigenous communities such as those in the more populated and ethnically diverse islands of the Torres Strait region, the Torres Strait Regional Authority (TSRA) has the flexibility to accommodate the variety of circumstances in which contemporary Indigenous communities exist.

Page 32

Finding 9

In pursuing greater autonomy for the Torres Strait communities, in 2003 the Commonwealth government circulated a *'Torres Strait Island Authority Bill'* (TSRA Bill) to:

- establish the TSRA under its *'own legislation'*;
- reduce the number of members on the TSRA from 20 community representatives to six divisional representatives and a Chairperson; and
- establish a separate election process for representatives on the TSRA.

The TSRA Bill would also have resulted in the TSRA becoming a *'more broadly based political forum and process ... rather than an agency ... responsible for Indigenous specific representation'*.

Page 32

Finding 10

The proposed *'Torres Strait Island Authority Bill'* (TSRA Bill) did not eventuate when there was no consensus amongst Torres Strait communities about the proposed changes, in particular the proposal to replace the 20 local community representatives on the TSRA with six divisional representatives.

Page 33

Finding 11

In 2003, as part of the review of the Aboriginal and Torres Strait Islander Commission (ATSIC) the Torres Strait Regional Authority (TSRA) sought additional powers. These included the provision of an annual report on the programs and outcomes of all Commonwealth and Queensland agencies which provide services/programs to Torres Strait Islanders and Aboriginal persons living in the Torres Strait.

The TSRA stated that this would enable it to *'know what money is being spent in the Torres Strait, what it is being spent for and what it has achieved'*.

Page 33

Finding 12

In a submission in response to the review of the Aboriginal and Torres Strait Islander Commission (ATSIC), the Torres Strait Regional Authority (TSRA) stated that it believed the:

arrangements operating in the Torres Strait, while specific to the Torres Strait in their origins, embody principles and opportunities which may be more generally relevant to the situation of Aboriginal and Torres Strait Islander people, not as a precedent but as a model.

Page 34

Finding 13

Subsequent to the finalisation of the *Report of the Review of the Aboriginal and Torres Strait Islander Commission, In the Hands of the Regions - A new ATSIC*, in November 2003, and contrary to its recommendations, the Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished.

The proposals put to that review by the Torres Strait Regional Authority (TSRA), which allowed for it to be granted additional powers and for arrangements operating in the Torres Strait to be used as a model for other Australian Indigenous people, were not pursued (refer to Findings 11 and 12).

Page 35

Finding 14

The retention of the Torres Strait Regional Authority (TSRA) as an administering body for Commonwealth programs has enabled it, according to its representatives, to integrate Commonwealth and State programs in the Torres Strait region in a way which did not occur elsewhere.

3.7 More recent events

Page 38

Finding 15

It appears unlikely that the recent reforms to local government arrangements in the Torres Strait region will reduce the multiple layers of government in that region.

CHAPTER 4 A MODEL FOR ELSEWHERE?

4.1 Indigenous leadership under the former Commonwealth government agenda

Page 43

Finding 16

There have been problems associated with the ‘*representation*’ of Indigenous communities since the removal of the formal Aboriginal and Torres Strait Islander Commission (ATSIC) structures. In some instances, the recognition of a community ‘*spokesperson*’ may be more a function of recognition by Commonwealth or State governments, rather than necessarily a matter for the Indigenous communities concerned. In other instances, such as the Northern Territory intervention and the Commonwealth/Western Australian *Bilateral Agreement for the provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia November 2005 - June 2008*, these have been implemented in the absence of any formal consultation with the Indigenous communities affected.

Page 44

Finding 17

After two years fieldwork in a range of Indigenous communities, but excluding the Torres Strait Region, the research findings of the Indigenous Community Governance Project (ICGP) included the following:

Legitimate Indigenous governance arrangements win support of members and external stakeholders, and produce outcomes. Achieving legitimacy appears to be especially reliant on having genuine decision-making authority and powers, and on the quality of leadership.

The 2005 and 2006 ICGP research findings seriously question whether conditions currently exist in Australia to enable Indigenous community leadership and decision-making authority to be adequately exercised. When power inequalities are as great as they currently are, Indigenous groups often feel they have little choice about how they do things.

4.2 Support for Indigenous regional representation

Page 44

Finding 18

Research conducted in 2005 indicated that the 'Torres Strait model' and in particular the Torres Strait Regional Authority (TSRA) was perceived by Aboriginal people as highly desirable as it was seen as having a high degree of autonomy, a legislative foundation, and as administering a considerable amount of government funding.

Page 46

Finding 19

There is significant support amongst Aboriginal people in Western Australia for the establishment of regional representative structures.

4.3 Which model?

Page 47

Finding 20

While the complexity and anomalies within the *'Torres Strait model'* and its shifting constitution are not ideal, it also appears to be the case that these features are related to:

- changing demographic distribution in the Torres Strait region;
- ongoing efforts to be accountable according to both Indigenous community expectations and non-Indigenous financial and administrative requirements; and
- striving to accommodate the interests of traditional Island communities as well as the more ethnically diverse population of Thursday Island.

Page 48

Finding 21

While the *'Torres Strait model'* may not be a *'perfect'* model, it appears to have met Torres Strait Islander demands, at least to some degree, for autonomy, the integration of local with regional representation while ensuring accountability to local communities, and the recognition of their distinct and varied traditional cultures.

4.4 Commonwealth and State recognition

Page 49

Finding 22

The *'Torres Strait model'* is significantly enhanced as a result of its integration of Commonwealth as well as State legislative and administrative functions through the Torres Strait Regional Authority (TSRA). However, the Committee believes that the key aspect of the model, the integration of local and regional representation, is not necessarily reliant upon a Commonwealth legislative basis nor upon recognition of its representative capability by Commonwealth government.

Page 49

Finding 23

The recognition of the Torres Strait Regional Authority at Commonwealth level and its capacity to administer both Commonwealth and State Indigenous funding have significantly enhanced the effectiveness of this model of Indigenous regional representation. The Committee believes that a partnership between the State and Commonwealth in developing Indigenous regional representative structures would greatly improve the efficiency of such structures.

4.5 Lessons learned

Page 52

Finding 24

There is potential under the *‘Torres Strait model’* to give legislative recognition to Indigenous representative arrangements that are *‘community-driven (rather than government imposed)’*, such as those of the *‘self-identifying’* and *‘self-organising’* structure of the Kullarri Regional Indigenous Body, upon the determination by the relevant Minister that such arrangements are *‘the best method of representing’* the Indigenous persons of a region.

Page 53

Finding 25

It is essential that the establishment of any Indigenous representative structures not act as a:

façade [allowing] the Commonwealth and other Governments to effectively avoid direct responsibility for poor economic and social outcomes amongst Indigenous Australians.

Page 54

Finding 26

The Torres Strait Regional Authority (TSRA) proposed some years ago that it be granted additional powers, including the provision of an annual report on the programs and outcomes of all Commonwealth and State agencies which provide services/programs to Torres Strait Islanders and Aboriginal persons living in the Torres Strait region, so that it would *‘know what money is being spent in the Torres Strait, what it is being spent for and what it has achieved’* (refer to Finding 11).

This appears to the Committee to be an important measure with the potential to establish ongoing monitoring and evaluation of *‘the governance effectiveness of governments themselves’*, although given recent changes to service provision arrangements in Western Australia, the Committee notes that reference to local government should also be included.

CHAPTER 5 OTHER INITIATIVES

5.1 Successful communities?

Page 57

Finding 27

The Committee believes that the underlying context of the apparent success of the remote Indigenous communities of the Torres Strait region includes:

- the geographic isolation of the region;
- the continuing occupation of traditional lands by many Torres Strait Islander people and their retention of their homeland islands;
- the distinctive agricultural-based cultures of Torres Strait Islander communities, making these cultures '*easier to coordinate*' with Western cultures;
- the apparent exemption of Torres Strait Islanders from the policies of child removal that so afflicted Aboriginal communities elsewhere in Australia; and
- the resultant strength and continuity of Torres Strait Islander culture which was such that it was the first Indigenous culture in Australia to satisfy the legal system that native title continued to exist in Australia.

Page 58

Finding 28

The extreme stresses placed on the services and capacities of Torres Strait communities as a result of the '*open border*' arrangements with Papua New Guinea (PNG) should not be understated.

However, it is also true that these communities have benefited from their strategic significance. In particular this appears to have led to the services and institutions of government, '*the architecture of the State*', maintaining a visible and strong presence in the remote communities of the Torres Strait region, as opposed to what has occurred in other Indigenous communities throughout Australia.

5.3 Factors leading to success

Page 70

Finding 29

The key factors which contributed to the success of initiatives on Badu were:

- the recognition of people's capacity and aspiration to exercise autonomy;
- the modification of initiatives in response to the community's concerns; and
- the implementation of initiatives by people who were known and trusted by the community.

5.4 Costs

Page 70

Finding 30

It appears likely from the nature of the processes implemented in the Torres Strait region in relation to the development and implementation of successful initiatives, including extensive community consultation and rigorous accountability, that such initiatives are likely to be costly.

Page 71

Finding 31

The costs associated with initiatives in the Torres Strait region are, in any event, likely to be relatively high as a result of factors which generally affect remote Indigenous communities, including the poor economic and infrastructure base and the high costs associated with the provision of goods and services.

The cost of resourcing the remote communities of the Torres Strait is also uniquely compounded by the requirement to include provision for the many thousands of visitors that are reported to come from Papua New Guinea each year, under the terms of the Torres Strait Treaty.

Page 73

Finding 32

Apart from other factors, including those identified in Finding 31, successful remote Indigenous communities and initiatives are likely to be costly because, to be successful, there needs to be extensive community consultation and ongoing accountability to communities to meet changing circumstances and expectations.

RECOMMENDATIONS

CHAPTER 4 A MODEL FOR ELSEWHERE?

4.3 Which model?

Page 48

Recommendation 1

The Committee recommends that the State government, in consultation with Indigenous communities in Western Australia, give consideration to the *'Torres Strait model'* for adaptation as a regional representative structure for Indigenous communities throughout Western Australia.

4.4 Commonwealth and State recognition

Page 49

Recommendation 2

The Committee recommends that the State explore the possibility of working in collaboration with the Commonwealth government in developing Indigenous regional representative structures based on the *'Torres Strait model'*.

4.5 Lessons learned

Page 54

Recommendation 3

The Committee recommends that, should Indigenous regional representative structures be established in Western Australia, consideration be given to granting those representatives additional powers, including the provision of an annual report on the programs and outcomes of all Commonwealth, State and Local government agencies which provide services/programs to Indigenous persons living in the relevant region, so that these representatives can *'know what money is being spent ... what it is being spent for and what it has achieved'*.

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Education and Health Standing Committee directs that the Premier, as Minister for Federal-State Relations, the Minister for Indigenous Affairs and the Minister for Local Government report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Background

This is the fifth report in the series on the Education and Health Standing Committee's *Inquiry into Successful Initiatives in Remote Aboriginal Communities*. It concerns initiatives in the remote Indigenous communities of the Torres Strait region, with a particular focus on the role of the Indigenous regional representative authority, the Torres Strait Regional Authority (TSRA). Despite the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2005, the TSRA appears uniquely placed in that it continues to be recognised and funded by the Commonwealth to represent the Indigenous people of the Torres Strait and to administer Indigenous programs in that region.

The Report largely draws upon briefings and informal discussions which took place during travel to the Torres Strait region in November 2006 by the Committee Chairman, Hon Tom Stephens, MLA, Member for Central Kimberly-Pilbara, the Committee Deputy Chairman, Hon Kim Hames, MLA, Member for Dawesville and Committee members Mrs Dianne Guise, MLA, Member for Wanneroo and Mr Terry Waldron, MLA, Member for Wagin. Committee members Mr Paul Papalia, MLA, Member for Peel and Mr Martin Whitely, MLA, Member for Bassendean did not take part in that Committee trip.

During its travel to the Torres Strait region, the Committee had the opportunity to briefly visit the two largest Torres Strait communities, Badu and Thursday Islands (*Waiben*). Despite the limited time available to the Committee, the formal presentations and informal discussions with a number of key agency representatives greatly assisted the Committee in its efforts to understand the complex and unique governance arrangements applicable in that region. These presentations and discussions also assisted the Committee to appreciate the nature of the successful initiatives in the communities of the Torres Strait region.

The Committee would particularly like to acknowledge the generous assistance and hospitality of the following:

- Mr Richard Bowie (Deputy Chairman, Badu Island Council);
- Ms Kaye Ahmat (Deputy Principal, Badu Island State School);
- Mr Toshie Kris (Chairman, TSRA), Mr Wayne See Kee (General Manager, TSRA), Mr Damien Miley (Manager, Land and Sea Management Unit, TSRA), Mr Bob Welsh (Policy Officer, Housing and Infrastructure, TSRA), and Mr David Curtis (Manager, Special Projects, TSRA); and
- Mr Pedro Stephen (Mayor, Torres Shire Council), Mr Ned David (Councillor, Torres Shire Council) and Mr Roydon Robertson (Chief Executive Officer, Torres Shire Council).

1.2 This Inquiry

The Education and Health Standing Committee resolved to undertake an *Inquiry into Successful Initiatives in Remote Aboriginal Communities* on 23 August 2006. As indicated in the Committee's previous reports on this Inquiry, the intention was to highlight those initiatives which are bringing positive outcomes to remote Aboriginal communities. It was hoped that this not only would provide models for consideration and adaptation by remote communities in Western Australia, but also would highlight successes at a time when there is much focus on the negative and dysfunctional aspects of some communities.

In order to appreciate the measure for successful initiatives in remote Aboriginal communities, the Committee wanted to first gain an understanding of the broader context in which such communities operate. The Committee initially sought background on the current arrangements relating to potable and waste water services, power supplies, housing, and on the broader issue of funding, for remote Aboriginal communities. Briefings and meetings with various government agencies contributed to the Committee's understanding of the context in which remote Aboriginal communities operate in Western Australia today and the Committee's preliminary understanding was reflected in its first report on this Inquiry, Report No. 6 *Where from? Where to? A Discussion Paper on Remote Aboriginal Communities*, tabled on 5 April 2007. That Discussion Paper outlined the background of government arrangements which contributed to the emergence of remote Aboriginal communities, and the circumstances of remote Aboriginal communities in Western Australia today. Public submissions were invited on the Discussion Paper and on particular future policy directions in relation to remote Aboriginal communities. A final report, incorporating the public submissions received, will be published later.

In the preliminary stages of this Inquiry, in November 2006, Committee members also travelled to meet with Mr Noel Pearson and to visit a number of the Cape York communities. The Committee hoped to gain an insight, first-hand, into what was occurring there, given the remarkable influence of Mr Pearson and the '*Cape York Agenda*' over public policy on Indigenous issues in Australia in recent years, in particular in relation to remote Aboriginal communities. The Committee also took the opportunity while in far north Queensland to visit the Torres Strait region. The Committee intended to produce a number of reports drawing from these travels during 2007.

The referral of the *Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area* to this Committee by the Legislative Assembly on 4 April 2007 interrupted the Committee's plans. Nevertheless, the Committee was in a position to publish its Report No. 7, *Initiatives in the Remote Indigenous Communities of Cape York*, on 21 June 2007. That report was essentially descriptive, and was intended to provide an account of the '*Cape York Agenda*', its various initiatives, the complex array of organisations associated with its implementation, the critical debates surrounding its influence, and the considerable financial commitment of governments and others that has been marshalled to implement Mr Pearson's vision for the Cape.

Other reports the Committee intended to publish on its *Inquiry into Successful Initiatives in Remote Aboriginal Communities* were deferred until after the completion of the Committee's *Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area*.

With the tabling of the Committee's findings and recommendation on its *Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area* on 6 September 2007, the Committee was able to return its focus to its original Inquiry. The third report in this series, Report No. 10, *An Examination of Indigenous Employment by the State*, again concerned preliminary work that the Committee had undertaken to assess the efforts of the State, as the leading employer in Western Australia, to provide Indigenous people with opportunities for economic participation and accessible and appropriate services. The Committee established that overall State agency employment of Indigenous people approximated the Indigenous workforce participation rate in Western Australia. However, many State agencies had few, if any, Indigenous employees and the profile of the State agency workforce was not reflective of the broader community, including its growing Indigenous population. In particular the Committee felt that, given the current situation in remote communities, the State could better utilise the opportunity provided to stimulate employment for its Indigenous citizens in a meaningful and sustainable way.

The fourth report in this series, Report No. 11, *A Successful Initiative - Family Income Management*, concerned the Cape York Family Income Management (FIM) program. The Committee decided that FIM should be documented as a '*successful initiative*' in its own right because, when the Committee travelled to Cape York in November 2006, the FIM initiative appeared to have been particularly successful in assisting Indigenous people to manage their income and to access banking services. FIM has been described as a money management system specifically designed to meet the goals of Indigenous people in the remote communities of Cape York. By documenting the FIM initiative, the Committee hoped to provide a model for consideration and adaptation by remote communities in Western Australia, and to also indicate that the very significant problems of such communities are not intractable, provided initiatives are developed in an appropriate way.

1.3 This Report

As indicated, a particular focus of this Report is on the continuing role of the Indigenous regional representative authority, the TSRA, despite the abolition of that model for Indigenous administration in the remainder of Australia with the abolition of ATSIC in 2005. The Report also examines other initiatives in the region, specifically Badu Island. It is based substantially on the Committee's travel to the Torres Strait region in November 2006.

Unfortunately, the referral of the *Inquiry into the Cause and Extent of Lead Pollution in the Esperance Area* to this Committee by the Legislative Assembly on 4 April 2007 has considerably delayed the publication of this Report.

Publicly available materials relating to the Torres Strait region indicate that since the Committee's travel in late 2006 mooted changes to the local government arrangements in the region had taken effect (Chapters 3.3, 3.4 and 3.7). Other than changed local government arrangements, however, there do not appear to have been significant changes to the policies and structures in place in the Torres Strait region and it appears that the Committee's observations and discussions remain relevant. This is fortunate with reference to the continuing potential value in documenting those observations and discussions for dissemination to the wider community through the publication of

this Report, but the relative stability of the governance structures is also remarkable given the changes at Commonwealth level that have been effected in relation to the other remote Indigenous communities throughout Australia over the past year. This appears to be a further testament to the particular status and importance of the Torres Strait communities in contemporary politics.

CHAPTER 2 THE TORRES STRAIT REGION

2.1 History

Radio Australia published a brief history of the Torres Strait Islands in 2005, as follows:

The first inhabitants of the Torres Strait are believed to have migrated from the Indonesian archipelago 70,000 years ago at a time when New Guinea was still attached to the Australian continent. They were followed by new waves of migration.

The original inhabitants lived in small communities relying on fishing, hunting and the growing of crops for their subsistence. Trade in artefacts made of pearl shell, turtle shell, feathers, canoes and tools was very important in the life of Torres Strait Islanders.

Although it is likely that Chinese, Malay and Indonesian traders had explored the islands before him, the first navigator credited with coming across the islands is the Spaniard Luis Vaez de Torres who sailed through the strait in 1606.

The discovery of pearl shell in the 1860s led to an influx of people from all over the region (Japanese, Malays, Filipinos, Micronesians and Europeans) especially on Thursday Island (Wyben) which became the main settlement. By 1877, 16 firms were established on Thursday Island employing 700 people and more than a hundred pearl luggers. Although the pearl trade stopped after World War II, cultured pearl farms still operate in the Torres Strait today.

Queensland officially annexed the islands in 1879. The Torres Strait islanders became citizens of Queensland in 1967 with full access to health and social services and freedom to travel and work in Australia. Many thousands of Islanders live in Queensland today, where they form a strong community.

In June 1992, the High Court of Australia recognised the native title rights over Murray Island (Mer). The High Court overturned the previous concept of terra nullius which stated that in legal terms Australia was empty of inhabitants when it was first settled by Europeans. Since the Mabo decision, several communities (Saibai Islanders and Mualgal people from Moa Island) have secured legal recognition of their native title rights over their islands. Several other cases are also in progress.

The 1996 census indicated that there were over 6 800 Torres Strait Islanders living in the Torres Strait region and another 42 000 outside the region, mainly in the coastal towns of north Queensland, particularly in Townsville and Cairns.¹⁵

¹⁵ ABC Radio Australia, 'Charting the Pacific - Places - Torres Strait Islands', Available at: www.abc.net.au/ra/pacific/places/country/torres_strait_islands.htm Accessed on 4 December 2007.

2.2 The strategic significance of the Torres Strait

The communities of the Torres Strait are the most northerly in Australia, and uniquely in Australia, share a territorial border with another country, Papua New Guinea (PNG).¹⁶ The Torres Strait border is also unique in that it has been described as '*unlike almost all other international borders*' with:

*no clearly marked frontier, few signs of border policing or customs control and free movement ... by 'traditional visitors', with no more formal documentation than a scribbled note from a village elder to confirm that the bearer has 'traditional rights' to visit the area.*¹⁷

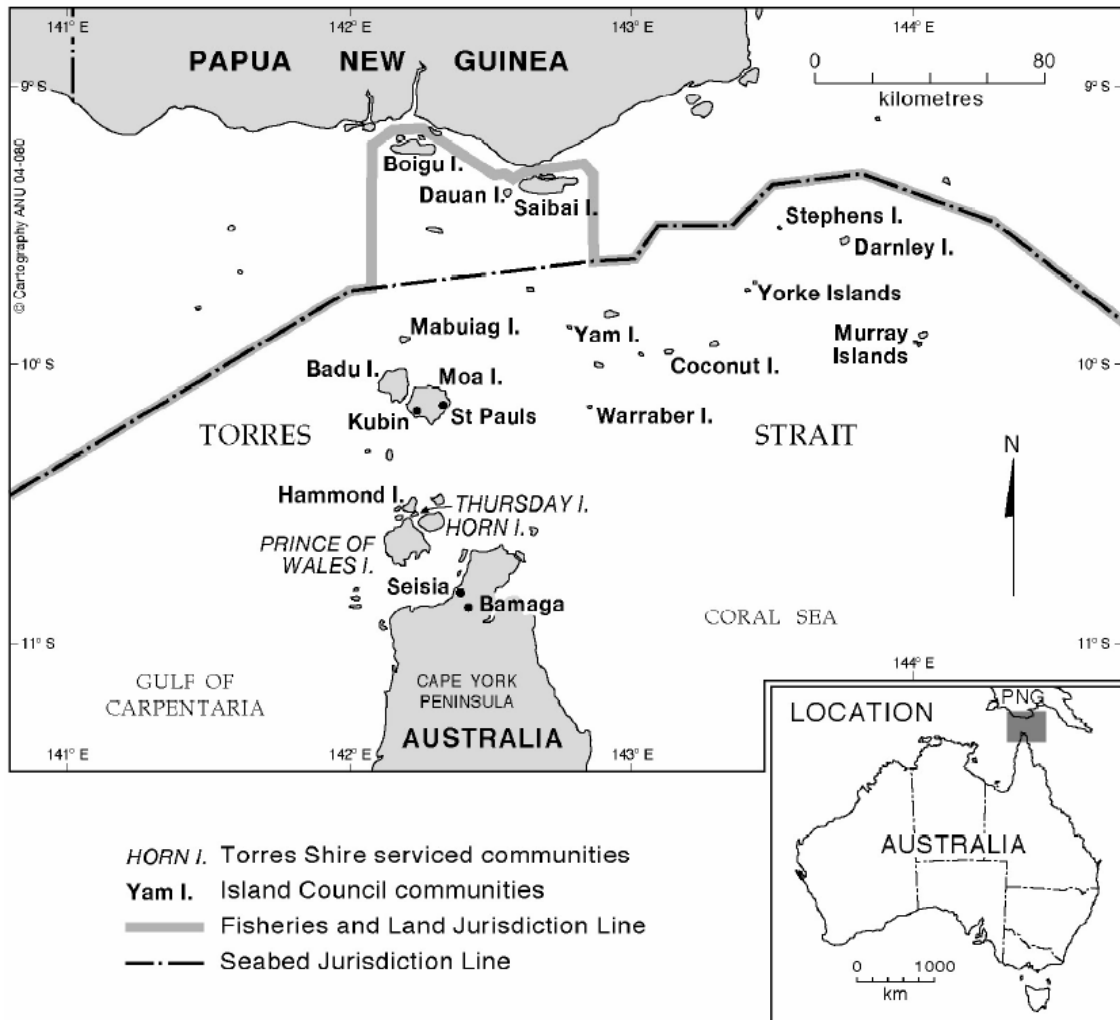
The open border arrangement with PNG was established as part of the Torres Strait Treaty, entered into by Australia and PNG in 1985. The Torres Strait Treaty defines questions of sovereignty and jurisdiction with PNG, following that country's independence. It established a Seabed Jurisdiction Line (SJL). Australia has rights to all things on or below the seabed south of the line and PNG has the same rights north of the line. The SJL also effectively marked the boundary as regards sovereignty, although PNG recognises Australian sovereignty over 15 islands and cays north of the SJL, including Boigu, Saibai and Dauan Islands.¹⁸

¹⁶ Australia also shares a maritime border with Indonesia, and boundaries treaties with Timor, Indonesia, Solomon Islands and France (New Caledonia and Kerguelen) (Geoscience Australia, Australian Maritime Zones, 2002)

¹⁷ McFarlane, J, *Australian Institute of Criminology trends and issues in crime and criminal justice*, 'Torres Strait: Policing the Open Border', No. 92, Australian Institute of Criminology (AIC), ACT, July 1998, p 1.

¹⁸ It also establishes a Fisheries Jurisdiction Line (FJL) and designates the Torres Strait Protected Zone (TSPZ) which recognises traditional cross-border movement, in accordance with the livelihood and way of life of the traditional inhabitants of the region (*ibid.*, p 2).

Figure 2.1 Map of the Torres Strait communities¹⁹



In 1998, the then Minister for Justice described the region as ‘one of the most exposed parts of Australia’; a region which was:

*of growing importance from the law enforcement perspective, not only in relation to cross border crime, but also the regulation of our immigration, quarantine, fisheries and other high priority national interests.*²⁰

In the ensuing decade the strategic significance of the Torres Strait ‘open border’ has become more acute, with heightened concerns about border control, quarantine and terrorism. During

¹⁹ Sanders, W, *Torres Strait Elections, 2000 and 2004: Changes in Political Leadership and Style?* Discussion Paper No. 268/2004, Centre for Aboriginal Economic Policy Research (CAEPR), Canberra, p 11.

²⁰ McFarlane, J, *Australian Institute of Criminology trends and issues in crime and criminal justice*, ‘Torres Strait: Policing the Open Border’ No. 92, AIC, ACT, July 1998, p 1.

meetings and discussions with the Committee in November 2006, various stakeholders made reference to a range of issues relating to the border including:

- the dramatically disparate access to food, facilities and services in PNG compared to the Torres Strait communities;
- concerns about the affect of global warming and rising sea levels on large coastal populations in PNG;
- the prevalence of AIDS and other diseases amongst the PNG population;
- preservation of marine species; and
- unlawful immigrants.

The Committee considers that the strategic significance of the Torres Strait communities forms a backdrop to the distinctive government policies and level of resourcing which have been applied to the remote Indigenous communities of that region.

Finding 1

The strategic significance of the Torres Strait communities forms a backdrop to the distinctive government policies and level of resourcing which have been applied to the remote Indigenous communities of that region.

2.3 The Torres Strait communities

(a) The Torres Strait communities

There are more than 100 Torres Strait Islands scattered over a geographic area of 48,000 square kilometres, from the tip of Cape York, north towards the borders of PNG and Indonesia, and two communities of Torres Strait Islanders, in Bamaga and Seisia, on mainland Australia.

The most recent estimate of the population resident in the Torres Strait at the time of the Committee's visit, based on the 2001 Census, was 8,300 people of whom 6,100 were Indigenous.²¹ This population was located in 18 inhabited island communities and the two

²¹ Torres Strait Regional Authority, PowerPoint presentation, 'The Torres Strait Regional Authority', 17 November 2006, p 2. More recent data published by the Australian Bureau of statistics (ABS), from the 2006 Census, indicate that there were over 7,000 Indigenous residents in the Torres Strait Region and a total population of approximately 8,500. The ABS reported that:

mainland communities of Torres Strait Islanders, Seisia and Bamaga, in the Northern Peninsula Area (NPA) on the tip of Cape York. Many thousands of other Torres Strait Islanders, the vast majority, resided elsewhere on mainland Australia.

The inhabited islands of the Torres Strait are traditionally clustered into five groupings:

Top Western Islands

Boigu

Dauan

Saibai

Western Islands

Badu

Mabuaig

Moa - Kubin and St Pauls communities

Central Islands

Iama (Yam Island)

Masig (Yorke Island)

Poruma (Coconut Island)

Warraber (Sue Island)

Eastern Islands

Mer (Murray island)

Ugar (Stephen Island)²²

Erub (Darnley island)

The largest count of Torres Strait Islander people was on Thursday Island (935 people in Tamoi, Rose Hill, Applin, Wyborn and Quarantine (TRAWQ) and 844 in Port Kennedy), followed by Badu Island (706) and Bamaga (681). Overall, 81% of people counted in the Torres Strait Indigenous Region were of Torres Strait Islander origin (ABS, 2006 Population Distribution, Aboriginal and Torres Strait Islander Australians, Cat. No. 4705.0, 2007, pp 8, 21).

²² 'Stephen Island' is the non-indigenous name for the Island employed by the TSRA and a number of government agencies. However, the Queensland Department of Natural Resources and Water notes that the Island was named 'Stephens Island' by Captain William Bligh on 7 September 1792, after Sir Philip Stephens, Secretary of the Admiralty (Queensland Department of Natural Resources and Water, Available at: www.nrw.qld.gov.au/property/placenames/index.php Accessed on 18 January 2008).

Inner Islands*Hammond Island**Muralug (Prince of Wales Island)**Ngurupai (Horn Island)**Thursday Island - TRAWQ [Tamwoy, Rosehill, Aplin, Waiben and Quarantine] and Port Kennedy.²³*

Thursday Island (*Waiben*) is the administrative centre and business hub of the Torres Strait:

Thursday Island is the main administrative centre of the Torres Strait. Government offices based on Thursday Island include, the Australian Customs Service, Australian Federal Police, Australian Fisheries Management Authority, Australian Quarantine Inspection Service, Centrelink, Australian Departments of Defence (Army & Navy), Foreign Affairs and Trade, and Immigration and Citizenship plus the Queensland Departments of Aboriginal and Torres Strait Islander Partnerships, Education, Health, Aboriginal and Torres Strait Islander Housing and Q Build.

Thursday Island is also the business hub of the region, containing various local enterprises ranging from art, pearl, souvenir and clothing retailers, a newsagency, bakery, pharmacy, supermarket, restaurants, hotels/motels, freight carriers and seafood outlets.²⁴

According to the 2001 Census (see Table 2.1), in many respects the demographic indicators for Torres Strait Islanders and other Indigenous people resident in the Torres Strait region²⁵ were relatively poor compared to Indigenous people outside the region, including Torres Strait Islanders and other Indigenous people residing elsewhere in Australia. (Employment data is considered next, in Chapters 2.3(b) and (c).)

²³ Torres Strait Regional Authority, 'Community profiles', Available at: www.tsra.gov.au/the-torres-strait/community-profiles.aspx Accessed on 4 December 2007.

²⁴ *ibid.*

²⁵ This distinction is based on the categories used in Bill Arthur's work, and the 'Torres Strait Islander' category includes those who identified as Torres Strait Islander as well as those who identified as Torres Strait Islander and Aboriginal (Arthur, W S, *Torres Strait Islanders in the 2001 Census*, Discussion Paper No. 255/2003, CAEPR: Canberra, p 1).

Table 2.1**Demographic comparisons based on 2001 Census data²⁶**

	TSIs (Torres Strait)	Other Indigenous (Torres Strait)	TSIs (Australia)	Other Indigenous (Australia)	Non- Indigenous (Australia)
Median weekly income	\$251	\$194	\$295	\$245	\$419
Proportion of dwellings owned or being purchased	7.0%	11.8%	16.4%	35.5%	70.7%
Proportion with a graduate degree	1.1%	1.1%	2.3%	2.1%	10.2%
Proportion attending university etc.	1.1%	0.0%	2.9%	2.9%	5.1%
Proportion attending TAFE	4.3%	5.1%	4.9%	5.0%	3.4%
Proportion completed Yr 12	28.0%	20.0%	23.0%	16.1%	39.5%
Proportion using a computer	4.5%	3.2%	17.3%	18.0%	44.1%

(b) Economic base

The Torres Strait communities have a limited economic base, described in the following terms:

Most of the islands' economy is based around traditional activities such as fishing and private gardens. The pearl culture industry which started in the 1960s collapsed in 1970 after a disease attacked the shells. Tourism is limited by a lack of facilities. Fishing is the main economic activity, particularly fishing for prawns, rock lobsters and Spanish mackerel.²⁷

²⁶ Arthur, W S, *Torres Strait Islanders in the 2001 Census*, Discussion Paper No. 255/2003, CAEPR: Canberra.

²⁷ ABC Radio Australia, 'Charting the Pacific - Places - Torres Strait Islands', Available at: www.abc.net.au/ra/pacific/places/country/torres_strait_islands.htm Accessed on 4 December 2007.

For the outer islands, the economic base was particularly restricted:

*The communities located on the outer islands of the Torres Strait, have access to government services such as Health, Quarantine, Customs, Police and Immigration. Most outer island communities have a grocery store and limited accommodation facilities. Resorts and guest houses are usually operated by local community Councils and all communities except for Dauan and Ugar (Stephen) Islands, are accessible by sealed all-weather airstrips.*²⁸

In this context, public sector employment in the region has traditionally been significant, and in 1991 it was reported that:

*There is a high level of public sector employment in the Strait. Much of this is focussed on Thursday Island than the Cape where government offices, hospitals and secondary schools are located. However, there is also some full-time public sector employment on the outer islands, for example, in primary schools, medical posts, with the Island police, and in community management and maintenance.*²⁹

In more recent times, Commonwealth public sector employment associated with the region's strategic significance has been important and for example in 2007 the Department of Immigration and Citizenship (DIAC) employed six full-time officers based on Thursday Island (*Waiben*) and 27 Movement Monitoring Officers who were based on 14 inhabited islands. These Movement Monitoring Officers '*work closely with island chairpersons and their community to manage the traditional flow of people [under the Torres Strait Treaty] and of any other movement in the region*'.³⁰

²⁸ Torres Strait Regional Authority, 'Community profiles', Available at: www.tsra.gov.au/the-torres-strait/community-profiles.aspx Accessed on 4 December 2007.

²⁹ Arthur, W S, *Indigenous economic development in the Torres Strait: possibilities and limitations*, Discussion Paper No. 4/1991, CAEPR: Canberra, p 5.

³⁰ DIAC, 'Australian Immigration Fact Sheet 72, Commonwealth Presence in the Torres Strait', 2007.

(c) The economic role of the TSRA

The Torres Strait Regional Authority (TSRA), operating under the Commonwealth *Aboriginal and Torres Strait Islander Act 2005* since 2005 when ATSIC was disbanded, was originally established in 1994 to represent Torres Strait Islanders resident in that area. It has been described as having ‘*similar powers to those of ATSIC itself*’,³¹ and has played a critical role in the economy of the Torres Strait region:

*Since its creation in 1994, the TSRA has provided financial assistance to many local businesses in the Torres Strait Region.*³²

When Committee members met with representatives of the TSRA in November 2006, they advised that the largest source of funding for Torres Strait communities was the Commonwealth, with the Commonwealth’s Community Development Employment Projects (CDEP) scheme being of most significance.³³ It is of note that as long ago as 1991, it was reported that:

*The majority of the outer island communities (and those on the Cape) are ... involved in part-time employment in the public sector as part of the Commonwealth’s Community Development Employment Projects (CDEP) scheme.*³⁴

At the time of the Committee’s travel to the Torres Strait, CDEP continued to provide substantial employment opportunities in the region, with an annual budget of almost \$30 million expended on CDEP projects.³⁵ The Committee was also advised that despite the transfer of CDEP to administration by the Commonwealth Department of Employment and Workplace Relations (DEWR) elsewhere in Australia, the TSRA continued to administer CDEP in the Torres Strait region.

Census data on employment from 2001 gives an impression of how significant this form of employment was for the Torres Strait region. The Torres Strait Islanders and other Indigenous people of the region had relatively high rates of employment and workforce participation. However, only 9.6 per cent of the Torres Strait Islander workforce and 9.5 per cent of the other

³¹ Arthur, W S, *What’s new? The 1997 Parliamentary Inquiry into Indigenous Business*, Discussion Paper No. 177/1999, CAEPR: Canberra, p 10.

³² ABC Radio Australia, ‘Charting the Pacific - Places - Torres Strait Islands’, Available at: www.abc.net.au/ra/pacific/places/country/torres_strait_islands.htm Accessed on 4 December 2007.

³³ A Commonwealth initiative, known colloquially as a ‘*work for the dole*’ program, for Indigenous people. Over the last few years there have been significant changes to CDEP throughout Australia, but these changes have not been implemented in the Torres Strait region.

For information on the significance of CDEP in the Torres Strait Region see Arthur, W S, *Indigenous economic development in the Torres Strait: possibilities and limitations*, Discussion Paper No. 4/1991, CAEPR: Canberra, p 5; and Arthur, W S, *Torres Strait Islanders in the 2001 Census*, Discussion Paper No. 255/2003, CAEPR: Canberra, p 12.

³⁴ Arthur, W S, *Indigenous economic development in the Torres Strait: possibilities and limitations*, Discussion Paper No. 4/1991, CAEPR: Canberra, p 5.

³⁵ TSRA, *Annual Report 2004-2005*, p 49.

Indigenous workforce of that region were employed in the Private Sector (refer to Table 2.2).³⁶ This compares to most recent data available through the Productivity Commission which indicated that, at least until 2004/05 and therefore prior to recent changes to CDEP in other parts of Australia,³⁷ some 20 per cent of Indigenous employees in remote communities across Australia were employed by the Private Sector.³⁸

Table 2.2

Employment comparisons based on 2001 Census data³⁹

	TSIs (Torres Strait)	Other Indigenous (Torres Strait)	TSIs (Australia)	Other Indigenous (Australia)	Non- Indigenous (Australia)
Rate of employment	58.0%	53.5%	45.4%	39.7%	58.1%
Proportion in workforce	61.2%	59.3%	55.4%	49.8%	62.6%
Proportion of Private Sector employment	9.6%	9.5%	26.3%	21.6%	47.4%

In discussions with the Committee, the TSRA representatives indicated that CDEP was aligned with the TSRA's Community Economic Initiatives Scheme (CEIS) and that 42 loans had been granted under CEIS for the establishment or expansion of commercial income generating ventures. CDEP was used by the TSRA to initially fund positions with the prospect of a long-term employment outcome; it was viewed as '*a tool for development*'. The Committee was also told

³⁶ Private sector employment was defined to exclude employment in CDEP (Arthur, W S, *Torres Strait Islanders in the 2001 Census*, Discussion Paper No. 255/2003, CAEPR: Canberra, p 7).

³⁷ From 1 July 2007 the former Commonwealth government ceased funding for CDEP in urban and regional centres, closed Indigenous Employment Centres across Australia, and instead funded enhanced mainstream employment brokerage services. Originally it was proposed that remote Indigenous communities would continue to receive CDEP funding, but with the Commonwealth's '*Northern Territory Emergency Response*', it was announced in July 2007 that CDEP in the Northern Territory '*will be progressively replaced by real jobs, training and mainstream employment programs*' (Commonwealth Minister for Indigenous Affairs, Media Release, 'Jobs and training for Indigenous people in the NT', 23 July 2007). The recent change of government at Commonwealth level, however, has seen the winding back of CDEP in the Northern Territory being reversed.

Notably none of these changes impacted on CDEP in the Torres Strait region, where it continued to be administered through the TSRA with increasing Commonwealth funding available.

³⁸ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2007 Report*, 2007, Table 11A.1.6. So that this figure is comparable to the figure available for Private Sector employment in the Torres Strait (refer to footnote 36), the figure excludes those employed by the Private Sector but in receipt of CDEP.

³⁹ Arthur, W S, *Torres Strait Islanders in the 2001 Census* Discussion Paper No. 255/2003, CAEPR: Canberra, pp 6, 7.

the TSRA accessed funding from the Queensland Department of Education and Training to 'top-up' CDEP payments until the commercial ventures were fully developed. CDEP was also linked to the TSRA Community Training Program (CTP) which funded community organisations to upgrade skills in administration, financial management, service industries and trade.⁴⁰

According to the TSRA's *Annual Report 2006-2007*, CDEP remained the TSRA's single largest program in 2006/07.⁴¹ There was no indication that the TSRA would be subjected to the same reforms as have been applied to CDEP programs elsewhere.⁴²

However, in 2007 the TSRA did report that:

A major review of TSRA's CDEP Program was undertaken and the final report issued in May 2007 identified areas where the Program is subsidising the responsibilities of the Local, Australian and Queensland governments.

One of the key recommendations from the report was for the TSRA to negotiate with relevant agencies, their acceptance for reform responsibilities within Island communities and appropriately increase resources to transform full CDEP funded jobs into real jobs that remunerate community workers according to appropriate awards. This is being pursued by the Policy Coordination and Development Section [of the TSRA].⁴³

As at 30 June 2007, however, there were a total of 1,958 eligible participants in the 19 CDEP schemes which covered 19 communities in the Torres Strait.⁴⁴ Using the most recent available data, from the 2001 Census, the CDEP scheme employed more than half of the Indigenous workforce in the Torres Strait region.⁴⁵

In the Torres Strait region, the Commonwealth funded CDEP continued to be administered by the TSRA, rather than DEWR as occurred as a result of 'mainstreaming' of Indigenous services elsewhere in Australia. In the absence of any of the reforms to the CDEP scheme implemented elsewhere in Australia, in the Torres Strait region it also continued to be a mainstay of the economy, with approximately half of the Indigenous workforce of the region employed under CDEP.

⁴⁰ Funding in excess of \$1 million p.a. were allocated to CTP.

⁴¹ TSRA, *Annual Report 2006-2007*, p 55.

⁴² TSRA, 'Community Development, Employment & Training', Available at: www.tsra.gov.au/the-tsra/community-development-employment--training.aspx Accessed on 12 December 2007.

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ Arthur, W S, *Torres Strait Islanders in the 2001 Census* Discussion Paper No. 255/2003, CAEPR: Canberra, pp 2, 6.

Finding 2

In the Torres Strait region, the Commonwealth funded Community Development Employment Projects (CDEP) continued to be administered by the Torres Strait Regional Authority (TSRA), rather than the Commonwealth Department of Employment and Workplace Relations (DEWR) as occurred as a result of '*mainstreaming*' of Indigenous services elsewhere in Australia.

In the absence of any of the other reforms to the CDEP scheme implemented elsewhere in Australia, in the Torres Strait region it also continued to be a mainstay of the economy, with approximately half of the Indigenous workforce of the region employed under CDEP.

CHAPTER 3 GOVERNMENT IN THE TORRES STRAIT REGION

3.1 Overview

In 2005, Radio Australia published a brief outline of government arrangements in the Torres Strait:

The Torres Strait Islands are part of the Australian state of Queensland. The administrative centre for the territory is based on Thursday Island where are regrouped 15 Queensland Government and 14 Commonwealth Government Departments.

At the local level, each island community elects its own council which meets monthly to run the domestic affairs of the island. These councils have very wide powers. Councillors are elected for a three year term. The chairperson of each council is a member of the Island Coordinating Council which meets to discuss regional issues.

In 1994, in response to local demands for greater autonomy, the Torres Strait Regional Authority (TSRA) was established to allow Torres Strait Islanders to manage their own affairs according to their own ailan kastom (island custom)⁴⁶ and to develop a stronger economic base for the region. The TSRA is made up of 20 representatives elected by Torres Strait Islanders living in the islands [and two mainland communities]...

The Torres Strait ... Treaty signed by Australia and Papua New Guinea allows for free movement (without passports or visas) between Australia and Papua New Guinea for traditional activities in a limited zone of the Torres Strait.⁴⁷

This outline highlights some of the distinctive features of government in the Torres Strait region, including the arrangements with PNG, referred to previously, which to some extent operate as an 'open border' and contributes to the region's strategic significance. It also highlights aspects of the complex and unique representative and governance structures which were in place for the communities of the Torres Strait at the time of the Committee's travel to that region in late 2006.

The remainder of this chapter examines those representative and governance structures, the 'Torres Strait model', in more detail. As an overview, and in addition to the Commonwealth and Queensland governments, that model consisted of:

⁴⁶ This term refers to the social structure and traditional laws of Torres Strait Islanders that are part of the unique culture of the Torres Strait Region. It is recognised under section 36 of the *Acts Interpretation Act 1954* (Qld) as:

the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships (Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 5).

⁴⁷ ABC Radio Australia, 'Charting the Pacific - Places - Torres Strait Islands', Available at: www.abc.net.au/ra/pacific/places/country/torres_strait_islands.htm Accessed on 4 December 2007.

- the Torres Shire Council, operating as a mainstream local government under State (Queensland) legislation, which represented the region including Thursday Island (*Waiben*), Horn and Prince of Wales Islands but excluding the 15 island communities, the two mainland Islander communities and three mainland Aboriginal communities in the NPA, all of which were Deed of Grant in Trust (DOGIT) communities;⁴⁸.
- the Island Councils which individually represented 15 island communities and two mainland communities of Torres Strait Islanders under the *Community Services (Torres Strait) Act 1984* (Qld);
- the Island Coordinating Council (ICC) also established under the *Community Services (Torres Strait) Act 1984* (Qld), which represented the 17 Islander communities and certain districts of Thursday Island; and
- the Torres Strait Regional Authority (TSRA), established under Commonwealth legislation, which consisted of the 18 members of the ICC and two members representing the Indigenous people in the remainder of Thursday Island not represented on the ICC.

Finding 3

In addition to the Commonwealth and Queensland governments, the representative and governance structures of the Torres Straits region, referred to as the '*Torres Strait model*', consisted of:

- the Torres Shire Council, operating as a mainstream local government under State (Queensland) legislation, which represented the region including Thursday Island (*Waiben*), Horn and Prince of Wales Islands but excluding the 15 island communities, the two mainland Islander communities, and three mainland Aboriginal communities in the Northern Peninsula Area (NPA), all of which were Deed of Grant in Trust (DOGIT) communities;
- the Island Councils which individually represented 15 island communities and two mainland communities of Torres Strait Islanders under the *Community Services (Torres*

⁴⁸

Deed of Grant in Trust (DOGIT) was the form of land grant to Indigenous communities in Queensland established in 1984. It is a system of community level land trusts, for the ownership and administration of former Aboriginal reserves, under a special form of title. Incorporated Councils, which elected representatives every three years, manage the community's affairs (State Library Queensland, 'Footprints before me', Available at: publib.slq.qld.gov.au/footprints/communities/dogit.htm Accessed on 27 March 2007). In 2004, changes were made by the *Local Government (Community Government Areas) Act 2004* (Qld) to DOGIT Councils, other than those in the Torres Strait region, to bring them under the *Local Government Act 1993* (Qld), while special provisions also recognised the particular needs and circumstances of these councils and communities (Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 14). The proposed reform of the Torres Strait Island Councils is discussed later in this chapter.

Strait) Act 1984 (Qld);

- the Island Coordinating Council (ICC), also established under the *Community Services (Torres Strait) Act 1984 (Qld)*, which represented the 17 Islander communities and certain districts of Thursday Island; and
- the Torres Strait Regional Authority (TSRA), established under Commonwealth legislation, which consisted of the 18 members of the ICC and two members representing the Indigenous people in the remainder of Thursday Island not represented on the ICC.

Notably, despite the significant changes implemented by the former Commonwealth government to Indigenous policy throughout Australia, the arrangements in the Torres Strait region do not appear to have been substantially altered in recent years. (Changes relating to the status of Island Councils under Queensland legislation are discussed in Chapters 3.5 and 3.7.) As indicated, the distinctiveness of these arrangements resides in particular in the continuing existence of an Indigenous representative regional authority to ‘*allow Torres Strait Islanders to manage their own affairs according to their own ailan kastom [island custom]*’.⁴⁹

Finding 4

Notably, despite the significant changes implemented by the former Commonwealth government to Indigenous policy throughout Australia, the Commonwealth arrangements in the Torres Strait region do not appear to have been substantially altered in recent years. The distinctiveness of these arrangements resides in particular in the continuing existence of an Indigenous representative regional authority which allows ‘*Torres Strait Islanders to manage their own affairs according to their own ailan kastom [island custom]*’.

When ATSIC was abolished in 2005, Indigenous communities throughout Australia, with the exception of the communities in the Torres Strait region, were limited to the same access to representation as mainstream communities. Only the communities of the Torres Strait region continued to have a regional representative structure with ‘*similar powers to those of ATSIC itself*’,⁵⁰ in addition to representation at local, state and Commonwealth levels.⁵¹

⁴⁹ ABC Radio Australia, ‘Charting the Pacific - Places - Torres Strait Islands’, Available at: www.abc.net.au/ra/pacific/places/country/torres_strait_islands.htm Accessed on 4 December 2007.

⁵⁰ Arthur, W S, *What’s new? The 1997 parliamentary Inquiry into Indigenous Business*, Discussion Paper No. 177/1999, CAEPR: Canberra, p 10.

⁵¹ The 2003 review of ATSIC also noted that:

Prior to 1994 the Torres Strait region was represented within ATSIC in the same way as mainland with its own regional council and a zone commissioner on the ATSIC Board.

3.2 Torres Shire Council

The Torres Shire Council's webpage includes the following overview:

The Shire of Torres is the northernmost Queensland local authority, and it comprises all of the State lying north of latitude 11 degrees south. This includes the northernmost part of Cape York Peninsula, together with the islands of Torres Strait. The Shire's administrative centre is located on Thursday Island, which provides the primary service centre for the region.

Torres Shire is the only Australian local government which abuts an international border (Australia and Papua New Guinea) and is in close proximity to the Indonesian province of Irian Jaya. This alone places the people of the Shire in a unique part of the country.

Torres Shire Council's administrative control, since the Torres Strait Islanders Act 1939, does not extend over the whole of the Shire Area and excludes those Islands and mainland areas ... relinquished to specific Islander and Aboriginal Councils under the provisions of the Community Services (Torres Strait) Act and the Community Services (Aboriginal) Act.

- *Badu Island Council*
- *Bamaga Island Council (Cape York)*
- *Boigu Island Council*
- *Coconut Island Council*
- *Cowal Creek Aboriginal Council (Cape York)*
- *Darnley Island Council*
- *Dauan Island Council*
- *Hammond Island Council*
- *Kubin Island Council and St Paul's Island Council on Moa Island*

In 1994, after relentless representations from the region for its own authority separate from ATSIC, the relationship between the Torres Strait Islands and ATSIC changed significantly. The ATSIC Torres Strait Regional Council was replaced with an autonomous Torres Strait Regional Authority (TSRA) which now has its own budget and provides a similar role to ATSIC for the Torres Strait Islanders living in the defined Torres Strait region (Hannaford, J, Huggins, J, and Collins, B, Report of the Review of the Aboriginal and Torres Strait Islander Commission, In the Hands of the Regions - A new ATSIC, November 2003, pp 43, 44).

The review regarded it as anomalous that:

Despite the achieved autonomy of the operations and budget of the TSRA it continues to be represented on the ATSIC Board by a zone commissioner who has equal standing with all other commissioners (ibid., p 44).

- *Mabuiag Island Council*
- *Murray Island Council*
- *New Mapoon Aboriginal Council (Cape York)*
- *Saibai Island Council*
- *Seisia Island Council (Cape York)*
- *Stephen Island Council*
- *Umagico Aboriginal Council (Cape York)*
- *Warraber Island Council*
- *Yam Island Council*
- *Yorke Island Council*

The remaining land area, which is administered by the Council, is comprised of several islands and portions of Cape York Peninsula. The major islands covered by the Plan include:

- *Albany Island*
- *Dayman Island*
- *Entrance Island*
- *Friday Island*
- *Goods Island*
- *Horn Island*
- *Little Adolphus Island*
- *Mount Adolphus Island*
- *Packe Island*
- *Port Lihou Island*
- *Possession Island*
- *Prince of Wales Island*
- *Thursday Island*

- *Turtlehead Island*
- *Wednesday Island*

After almost 40 years of administration by a State Government Administrator the Torres Shire Council was restored to elected Council status in March 1991 and is now administered by a mainstream local authority Council comprising a Mayor (since 1994) and seven Councillors.

The core business for the Torres Shire Council consists of providing essential services to residents on Thursday Island, Horn Island and Prince of Wales Island and parts of the Torres Strait and Northern Peninsula Area (NPA) region.

The community within the Shire consists mainly of Torres Strait Islanders, as well as residents with Asian, Papua New Guinean, European, and Aboriginal heritage. There are a range of community services within the Shire, with organisations and government departments established to provide help and assistance to families and individuals who are affected by stress, physical & emotional abuse and domestic violence to services offered in the field of law, justice, employment, education & home and community care.⁵²

Both the legislative basis of the Torres Shire Council, being the ‘mainstream’ *Local Government Act 1993* (Qld), and its core business, concerning the representation of, and service delivery to, the ethnically diverse residents of the region, distinguish it from the Island Councils.

This dual system of local councils in the Torres Strait region has been described as having:

its roots in early twentieth century efforts to separate governance of settler and Indigenous people in the Torres Strait. The Torres Shire Council, focussed on Thursday Island, the centre of colonial and now regional settlement on the Strait, was once primarily the domain of settler interests... While Island Councils are still strongly Islander domains, Torres Shire has changed considerably in recent years. The Shire now attracts considerable Islander participation and interest, having an Islander Mayor since 1994 and many Islander councillors since 1991.⁵³

During discussions with representatives of the Shire in November 2006, the Committee was told that the Shire’s boundary covers the whole of the Torres Strait and the top of the mainland, but that its operations were limited by DOGIT island and mainland communities which had their own Councils. In terms of provision of services, too, the Committee was advised that the majority of islands within the Shire’s jurisdiction were uninhabited.

The Shire was funded by rate payers, similar to mainstream local government elsewhere. The Committee was told that the Shire was disadvantaged compared to Councils in DOGIT

⁵² Torres Shire Council, ‘About the Shire’, Available at: www.torres.qld.gov.au/council/index.shtml Accessed on 19 December 2007.

⁵³ Sanders, W, *Torres Strait Elections, 2000 and 2004: Changes in Political Leadership and Style?* Discussion Paper No. 268/2004, CAEPR: Canberra, p 1.

communities, in that these Councils were provided with an environmental health officer, CDEP and Department of Sport and Recreation allocations.

At the time of the Committee's meeting with representatives, the Shire was receiving its funding from Queensland on a per capita basis, excluding the populations in DOGIT communities, but had originally been funded by the Commonwealth.

3.3 Island Councils

(a) History

Elected councils for each of the Torres Strait islands (other than Thursday Island) were instituted in 1899,⁵⁴ in striking contrast to the administration of Aboriginal peoples in mainland Australia or indeed '*colonial South Pacific*'.⁵⁵ The administration of Indigenous people through elected councils at that time was without parallel elsewhere in Australia.

In 1904, however, the Torres Strait Islanders were deemed '*Aborigines*' and therefore came under the controls specified in the *Aboriginal Protection and Restriction on the Sale of Opium Act 1897* (Qld).⁵⁶ In 1912 many of the Islands were declared reserves and subjected to the same restrictions as Aboriginal communities.⁵⁷

Discontent with this arrangement culminated in a strike by Island workers on government boats in 1936. The Queensland government removed the Protector of Islands and handed over day to day running of the communities to the Island Councils, although the Queensland government retained its control over property and persons.⁵⁸

⁵⁴ Davis, R, *Looking beyond the borderline: development performance and prospects for Saibai Island, Torres Strait*, Discussion Paper 80/1995, CAEPR: Canberra, p 4.

⁵⁵ Beckett, J, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press: Cambridge, 1987, p 45.

⁵⁶ Ban, P, 'Would a formal treaty help Torres Strait Islanders achieve legal recognition of their customary adoption practice?', *Indigenous Law Bulletin*, (2006) 33. This occurred upon the death of the Government Resident of the Torres Strait region, the Honourable John Douglas former Premier of Queensland, when control of the region passed to the Chief Protector. The former Premier of Queensland had insisted that Torres Strait Islanders were '*capable of exercising all the rights of British citizens, and ought to be regarded as such*' (Beckett, J, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press: Cambridge, 1987, p 45).

⁵⁷ Department of Local Government Planning, Support and Recreation, *Torres Strait Community Government Review: Green Paper*, October 2005, p 7.

⁵⁸ Beckett, J, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press: Cambridge, 1987, pp 51-55.

(b) Structure

At the time of the Committee's travel to the Torres Strait region, there were 17 Island Councils under the *Community Services (Torres Strait) Act 1984* (Qld):

Top Western Group

Boigu Island Council

Dauan Island Council

Saibai Island Council

Near Western Group

Badu Island Council

Kubin Island Council

Mabuiag Island Council

St Pauls Island Council

Central Island Group

Iama Island Council

Poruma Island Council

Warraber Island Council

Yorke Island Council

Eastern Island Group

Mer Island Council

Ugar Island Council

Erub Island Council

Inner Island Group

Hammond Island Council

Cape York Peninsula

Bamaga Island Council

*Seisia Island Council*⁵⁹

Under that legislation, each Island Council was vested as a trustee of DOGIT land granted under the *Land Act 1964* (Qld). At the local level, each island community elected its own Council which ran the domestic affairs of the island. As referred to previously, the Island Councils were described as being ‘*strongly islander domains*’; as having ‘*few non-Indigenous people, other than transient service providers living in their small outlying communities*’.⁶⁰ This is in contrast to the population of Thursday Island, discussed in Chapters 3.2 and 3.4.

Although in part operating on the basis of mainstream local governments, the Island Councils had significant additional responsibilities:

*The Community Services Act includes not only the framework for local government in the community councils but also provisions on other matters such as Island police, Island courts, community justice groups, control, possession and consumption of alcohol in council areas, the Island Industries Board (IBIS), entry upon areas, and assistance sought by Islanders.*⁶¹

Councillors were elected for a three year term and the Chairpersons were also members of the Island Coordinating Council (ICC) and the TSRA.

The Queensland government issued a Green Paper on the Torres Strait Islander Councils in 2005. It followed changes made to the Aboriginal community Councils operating on DOGIT lands, effected in 2004. These changes brought the Aboriginal community Councils under mainstream local government legislation, although special provisions continued to recognise the particular needs and circumstances of these councils and communities.⁶²

The Green Paper stated:

*The Island councils in general have accepted a range of responsibilities far greater than most other councils in Queensland. For example, housing, employment and community police services are not normally local government functions.*⁶³

⁵⁹ Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 6.

⁶⁰ Sanders, W, *Torres Strait Elections, 2000 and 2004: Changes in Political Leadership and Style?*, Discussion Paper No. 268/2004, CAEPR: Canberra, p 1.

⁶¹ Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 7.

⁶² *ibid.*, p 14.

⁶³ *ibid.*

The Green Paper also referred to numerous past reviews of the Island Councils and concluded that:

the reviews ... produced three major themes:

- *The community councils carry out an extensive range of activities which go beyond what is normally expected of local governments. The local government model was never intended for this broad community government role and is not adequate.*
- *The governing structures and decision-making processes in the legislation do not sufficiently reflect local customs and social structures.*
- *For a number of reasons there are deficiencies in council performance and accountability. It is important to note the consistency of the recommendations from these reviews, together with more recent reviews.⁶⁴*

Subsequent to the Committee's travels, significant changes to the status of Island Councils were implemented as a result of this review. These are outlined in Chapter 3.7.

3.4 Island Coordinating Council (ICC)

The Island Coordinating Council (ICC) has been described as follows:

The ICC is a statutory body established under the Community Services Act 1984. Its members are the chairpersons of the Island councils [see Chapter 3.3] and a person elected by the TRAWQ communities at the State's local government elections. The ICC's role, defined in section 141 of the Community Services Act, is wide-ranging and includes representing the interests of Island councils, providing advice on Island issues, and expending grants or loans on projects for the progress, development and wellbeing of Islanders.⁶⁵

These TRAWQ communities, Tamwoy, Rosehill, Aplin, Waiben and Quarantine, are the northern suburbs of Thursday Island. Thursday Island has been described as consisting of 'two distinct parts', with the balance comprising Port Kennedy on the southern side.⁶⁶ Port Kennedy is not represented on the ICC.

The separate representation of the TRAWQ communities on the ICC had its origins in the setting aside of the Tamwoy, in the mid twentieth century, for Islanders who wished to live on Thursday Island. Until that time Thursday Island had been seen as 'primarily the domain of settler

⁶⁴ Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 8.

⁶⁵ *ibid.*, p 6.

⁶⁶ *ibid.*

interests'.⁶⁷ By the 1980s, however, the number of Islanders on Thursday Island had grown to such an extent that it was decided that they should be represented on the ICC: '*even though it was felt that they did not need an Island Council as the Torres Shire served all Thursday Island*'.⁶⁸

The TSRA was said to complement the ICC⁶⁹ and during the meeting with the Committee the TSRA representatives described the relationship as one in which the TSRA funded the ICC to deliver infrastructure. It also provided funding to equip the Island Councils' management through training programs. Representatives also noted that the ICC was a State body; while the TSRA was Commonwealth (although it also administered some State funding).

3.5 Torres Strait Regional Authority (TSRA)

(a) Structure

The TSRA described its structure as a representative body as follows:

The Torres Strait Regional Authority (TSRA) was established on 1 July 1994, under the Aboriginal and Torres Strait Islander Commission Act 1989, following a review of the Act. There has since been amendments to this Act and it has been renamed the Aboriginal and Torres Strait Islander Act 2005.

Under the Act, the Torres Strait was one of 35 ATSIC regions throughout Australia. The review proposed the creation of a separate Torres Strait authority with the same powers as ATSIC.

Following consultation with the Torres Strait Regional Council and the Council's subsequent historic decision, the Parliament of Australia established the Torres Strait Regional Authority within the framework of the Aboriginal and Torres Strait Islander Commission Act 1989 (ATSIC Act).

The TSRA consists of an elected arm and an administrative arm. The elected arm is comprised of twenty elected representatives who are Torres Strait Islander and Aboriginal people living in the Torres Strait region. Eighteen TSRA Members are Island Council Chairpersons elected under the Queensland Community Services (Torres Strait) Act 1984, and two TSRA Members are elected under Division 5 of the ATSI Act.

⁶⁷ Sanders, W, *Torres Strait Elections, 2000 and 2004: Changes in Political Leadership and Style?*, Discussion Paper No. 268/2004, CAEPR: Canberra, p 1.

⁶⁸ *ibid.*

⁶⁹ Queensland Government Department of Local Government, Planning, Sport and Recreation, *Torres Strait Community Government Review Green Paper*, 2005, p 6.

*Members of the TSRA elect a Chairperson, a Deputy Chairperson and an Alternate Deputy Chairperson. A General Manager is responsible for the TSRA's administration and staffing.*⁷⁰

(i) Division of policy development and administrative/funding functions

The Committee was told by TSRA representatives that the TSRA elected board was responsible for policy development, while the TSRA administration made funding decisions and allocated funding to the communities. The Committee was also advised that this division was based on a directive from the former Commonwealth Minister for Immigration, Multicultural and Indigenous Affairs. It appeared to the Committee that this directive mirrored the division of responsibilities that was instituted with the establishment of the Aboriginal and Torres Strait Islander Services (ATSIS) as a separate agency to ATSIC in 2003.⁷¹ Significantly, however, in the Torres Strait the administrative arm of the TSRA did not operate as a separate agency to the TSRA.

Finding 5

There was a division between the elected and administrative arm of the Torres Strait Regional Authority (TSRA), with the TSRA elected board being responsible for policy development and the TSRA administration making funding decisions and allocating funding to the communities.

However, the TSRA was not divided into separate agencies as occurred elsewhere in Australia in 2003 with the creation of the Aboriginal and Torres Strait Islander Services (ATSIS) as the administrative arm for the Aboriginal and Torres Strait Islander Commission (ATSIC).

(ii) 'Linked up government'

The TSRA has also highlighted the significance of its capacity to combine State and Commonwealth legislated roles:

Fundamental to the operations of the TSRA has been the joining of national and regional objectives and its legislative capacity to enter into agreements between the Commonwealth and State Governments for the pooling of funds and the joint implementation of programs and delivery of services within negotiated frameworks.

⁷⁰ TSRA, 'Agency Description', Available at: www.tsra.gov.au/corporate-information/tsra-online-action-plan.aspx Accessed on 5 December 2007.

⁷¹ The Commonwealth established the Aboriginal and Torres Strait Islander Services (ATSIS) as a separate Commonwealth Agency on 1 July 2003 to make all individual funding decisions concerning programmes delivered by ATSIC. ATSIC Commissioners and Regional Councillors were to continue to determine policies and priorities for expenditure, in line with the original intention behind the establishment of ATSIC (Department of Immigration and Multicultural and Indigenous Affairs, *Fact Sheet Indigenous Affairs Budget: Chronology of Indigenous Policy Achievements*, p 4).

There has been a clear recognition in these arrangements of the shared responsibility between all spheres of government for the delivery of programs and services for Torres Strait Islander and Aboriginal people...

Of particular importance to the structure of the TSRA has been the way it connects with community councils established under Queensland Community Services legislation and the provisions under s.142 S of its enabling legislation for the Minister, by notice in the Gazette, to make a declaration on the best method of representing Torres Strait Islanders and Aboriginal persons in the Torres Strait. Such declaration has had the effect of linking both State and Commonwealth institutional arrangements which has facilitated the implementation of shared goals in the interests of each.⁷²

The Committee notes that the TSRA, as detailed, is significantly enhanced as a result of its linking of State and Commonwealth institutional arrangements for the representation of Indigenous communities.

Finding 6

The Torres Strait Regional Authority (TSRA), as a regional Indigenous representative structure, is significantly enhanced as a result of its linking of State and Commonwealth institutional arrangements for the representation of Indigenous communities.

In discussions with the Committee, the TSRA representatives described the model used for the TSRA as being based on three levels - the community, the local council and the regional levels. Representatives stated that this meant that the TSRA was not operating in opposition to community level programs for Indigenous people in the Torres Strait but was integrated with other sectors. Significantly the TSRA did not just combine State and Commonwealth institutional arrangements but directly placed local community representatives in the role of regional representative as members of the TSRA. This link was made through the joint function of the vast majority of TSRA members, who were also the Chairpersons of DOGIT communities.

Finding 7

Significantly, the Torres Strait Regional Authority (TSRA) did not just combine State and Commonwealth institutional arrangements but directly placed local community representatives in the role of regional representative as members of the TSRA. This link was made through the joint function of the vast majority of TSRA members, who were also the Chairpersons of Deed of Grant in Trust (DOGIT) Indigenous communities.

⁷² Torres Strait Regional Authority, 'A new ATSIC' Response to the ATSIC Review Discussion Paper, August 2003, pp 3, 4.

The non-DOGIT communities of TRAWQ (the northern suburbs of Thursday Island), Port Kennedy (the southern part of Thursday Island) and of Horn and Prince of Wales Islands were also represented by three members on the TSRA. As indicated, the TRAWQ communities' representative was a member of the TSRA as a result of being a member of the ICC elected as part of local government elections, but the other two representatives did not participate in the ICC. The other two members of the TSRA who were not representing DOGIT communities were elected under the Commonwealth's *Aboriginal and Torres Strait Islander Act 2005*.

At a local government level all three areas, TRAWQ, Port Kennedy, and Horn and Prince of Wales Islands, were represented by the Torres Shire Council. The Shire, however, which was run under the '*mainstream*' *Local Government Act 1993* (Qld) legislation, was not represented on the TSRA or the ICC.

It is unclear to the Committee how the Aboriginal DOGIT communities of the NPA, Cowal Creek Aboriginal Council, New Mapoon Aboriginal Council and Umagico Aboriginal Council were represented at either a local government or regional level. These communities were excluded from the Torres Shire Council's jurisdiction and were not specifically represented through the ICC or the TSRA. It may be that recent changes at local government level, discussed in more detail in Chapter 3.7, will address this anomaly.

Putting aside the issue of these three Aboriginal communities in the NPA, the Committee notes that the TSRA structure had the flexibility to accommodate the variety of circumstances in which contemporary Indigenous communities exist. It had a capacity, relying upon State community government legislation and Commonwealth legislation providing for Indigenous elections, to make provision for both DOGIT communities and those Islander communities in the more populated and ethnically diverse islands of the Torres Strait region.

Finding 8

The Committee notes that by incorporating representative arrangements for both Deed of Grant in Trust (DOGIT) communities and for Indigenous communities such as those in the more populated and ethnically diverse islands of the Torres Strait region, the Torres Strait Regional Authority (TSRA) has the flexibility to accommodate the variety of circumstances in which contemporary Indigenous communities exist.

(b) Reform

(i) Proposed TSRA Bill

In a submission on a proposal to improve regional governance in the Torres Strait region in 2003, the TSRA elaborated on a proposal to establish the TSRA under its own legislation and not under the terms of the Commonwealth's then *Aboriginal and Torres Strait Islander Commission Act*

1989.⁷³ The TSRA submitted that the draft *'TSRA Bill'*, which had been circulated previously for comment, be amended to reduce the members of the TSRA from 20 to seven, with six representing a division and a Chairperson. The election of members was to be by voters in each division, and election of the Chairperson by voters throughout the Torres Strait region. This would be accompanied by the establishment of a Torres Strait Islands Forum, consisting of representatives of all Island Councils, the Torres Shire Council and other appropriate organisations, reflecting *'the regional identity of the Torres Strait as a "federation" of self-governing Islands'*.⁷⁴ The TSRA stated that the proposal was based on:

*a growing sentiment that there should be a separation between community and regional governance and a democratic process in relation to each.*⁷⁵

The proposal was designed to break the nexus between the ICC and TSRA, although *'a continuing need for a coordinating body to assist Island councils in their service delivery obligations'* was recognised.⁷⁶

The issue of regional governance appears to have been given *'a particular focus and impetus'* as a result of the House of Representatives report on greater autonomy for the Torres Strait, *Torres Strait Islanders: a new deal*.⁷⁷ That report indicated that the region's capacity to achieve *'effective self-government in the future'* would be hampered unless it had a capacity *'to represent all residents of the region'*.⁷⁸ The proposal would have created a:

*more broadly based political forum and process ... rather than an agency such as the Torres Strait Regional Authority responsible for Indigenous specific representation.*⁷⁹

The TSRA also stated that it recognised the regional aspirations for a form of territorial government in the Torres Strait, but that the new legislation was an opportunity to make incremental adjustments to the existing structures.⁸⁰

⁷³ Torres Strait Regional Authority, *A Proposal to Improve Regional Governance in Torres Strait - Proposed TSRA Bill*, July 2003.

⁷⁴ *ibid.*, p 4.

⁷⁵ *ibid.*, p 5.

⁷⁶ *ibid.*, p 12

⁷⁷ *ibid.*, p 7. The House of Representatives report, by the Standing Committee on Aboriginal and Torres Strait Islander Affairs was published in 1997.

⁷⁸ Quoted *ibid.*, at p 15.

⁷⁹ *ibid.* See too Nettheim, Garth, 'Towards Regional Government in the Torres Strait', *Indigenous Law Bulletin*, [2002] ILB 20.

⁸⁰ Torres Strait Regional Authority, *A Proposal to Improve Regional Governance in Torres Strait - Proposed TSRA Bill*, July 2003, p 8.

Finding 9

In pursuing greater autonomy for the Torres Strait communities, in 2003 the Commonwealth government circulated a *'Torres Strait Island Authority Bill'* (TSRA Bill) to:

- establish the TSRA under its *'own legislation'*;
- reduce the number of members on the TSRA from 20 community representatives to six divisional representatives and a Chairperson; and
- establish a separate election process for representatives on the TSRA.

The TSRA Bill would also have resulted in the TSRA becoming a *'more broadly based political forum and process ... rather than an agency ... responsible for Indigenous specific representation'*.

At the time the Committee met with the TSRA in November 2006, representatives advised that the proposed TSRA Bill had been initiated by the previous Commonwealth Minister of Immigration, Multicultural and Indigenous Affairs and was based on a regional governance model. The Committee was told, however, that after a taskforce was established to liaise with Torres Strait communities, alternative models had been raised and eventually the proposal was dropped *'as no one could agree on the changes'*. A particular issue was the proposal to reduce local community representation on the TSRA by implementing a system based on *'divisions'*. The Committee was told that it was felt that each island needed its own Council and representative for political stability, reflecting the distinct culture and interests of each community, and to manage the border with PNG.

Finding 10

The proposed *'Torres Strait Island Authority Bill'* (TSRA Bill) did not eventuate when there was no consensus amongst Torres Strait communities about the proposed changes, in particular the proposal to replace the 20 local community representatives on the TSRA with six divisional representatives.

(ii) ATSIIC review

In another submission, in August 2003, the TSRA responded to the then ATSIIC review, utilising the opportunity to seek additional powers. These included the provision of an annual report on the programs and outcomes of all Commonwealth and Queensland agencies which provide services/programs to Torres Strait Islanders and Aboriginal persons living in the Torres Strait.

The TSRA stated that this would enable it to ‘*know what money is being spent in the Torres Strait, what it is being spent for and what it has achieved*’.⁸¹

Finding 11

In 2003, as part of the review of the Aboriginal and Torres Strait Islander Commission (ATSIC) the Torres Strait Regional Authority (TSRA) sought additional powers. These included the provision of an annual report on the programs and outcomes of all Commonwealth and Queensland agencies which provide services/programs to Torres Strait Islanders and Aboriginal persons living in the Torres Strait.

The TSRA stated that this would enable it to ‘*know what money is being spent in the Torres Strait, what it is being spent for and what it has achieved*’.

The TSRA also stated that it believed the:

*arrangements operating in the Torres Strait, while specific to the Torres Strait in their origins, embody principles and opportunities which may be more generally relevant to the situation of Aboriginal and Torres Strait Islander people, not as a precedent but as a model.*⁸²

Finding 12

In a submission in response to the review of the Aboriginal and Torres Strait Islander Commission (ATSIC), the Torres Strait Regional Authority (TSRA) stated that it believed the:

arrangements operating in the Torres Strait, while specific to the Torres Strait in their origins, embody principles and opportunities which may be more generally relevant to the situation of Aboriginal and Torres Strait Islander people, not as a precedent but as a model.

Shortly after the report on the ATSIC review was finalised, and contrary to its recommendations, ATSIC was abolished.⁸³ It appears that the TSRA’s proposals were not pursued.

⁸¹ Torres Strait Regional Authority, ‘A new ATSIC’ Response to the ATSIC Review Discussion Paper, August 2003, p 11.

⁸² *ibid.*, p 3.

⁸³ Hannaford, J, Huggins, J, and Collins, B, *Report of the Review of the Aboriginal and Torres Strait Islander Commission, In the Hands of the Regions - A new ATSIC*, November 2003.

Finding 13

Subsequent to the finalisation of the *Report of the Review of the Aboriginal and Torres Strait Islander Commission, In the Hands of the Regions - A new ATSIC*, in November 2003, and contrary to its recommendations, the Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished.

The proposals put to that review by the Torres Strait Regional Authority (TSRA), which allowed for it to be granted additional powers and for arrangements operating in the Torres Strait to be used as a model for other Australian Indigenous people, were not pursued (refer to Findings 11 and 12).

(c) Role

The TSRA described its current role as follows:

The TSRA aims to improve the lifestyle and well-being of Torres Strait Islander and Aboriginal people living in the region through the implementation of programs that address their poor socio-economic and health status.

The vision of the TSRA is to empower the Torres Strait Islander and Aboriginal people living in the region to determine their own affairs based on the unique 'Ailan Kastom bilong Torres Strait' from which they draw unity and strength.

To achieve the vision, the TSRA is working towards the following goals:

- 1. gain recognition of our rights, customs and identity as indigenous peoples;*
- 2. achieve a better quality of life for all people living in Torres Strait;*
- 3. develop a sustainable economic base;*
- 4. provide better health and community services;*
- 5. ensure protection of our environment; and*
- 6. assert our Native Title to the lands and waters of the Torres Strait region.⁸⁴*

It is of note that the TSRA continued to have a unique role in Australia, particularly in the context of the 'mainstreaming' of Commonwealth Indigenous programs elsewhere.

As indicated, the Committee was advised that despite the changes elsewhere, including the transfer of CDEP to administration by the Commonwealth Department of Employment and

⁸⁴ TSRA, 'Agency Description', Available at: www.tsra.gov.au/corporate-information/tsra-online-action-plan.aspx Accessed on 5 December 2007.

Workplace Relations (DEWR), in the Torres Strait, the TSRA continued to administer CDEP, and it continued to be the TSRA's single largest program.⁸⁵ In addition to CDEP, the TSRA also ran programs that were administered by the Office of Indigenous Coordination (OIPC) for Indigenous people elsewhere in Australia. According to the TSRA representatives this meant State and Commonwealth programs were integrated through the TSRA in the Torres Strait region in a way which did not occur elsewhere.

Finding 14

The retention of the Torres Strait Regional Authority (TSRA) as an administering body for Commonwealth programs has enabled it, according to its representatives, to integrate Commonwealth and State programs in the Torres Strait region in a way which did not occur elsewhere.

3.6 Stakeholder assessment of government in the Torres Strait region

At the time of the Committee's travel, aspects of the Torres Strait governance structures were once more under review, in particular aspects relating to the *Community Services (Torres Strait) Act 1984* and the status of the Island Councils (Chapter 3.3(b)).

As indicated the Committee was told that one of the difficulties identified in relation to earlier proposals to create a separate legislative basis for the TSRA, utilising a regional governance model (discussed in Chapter 3.5(b)(i)), was the proposed reduction in the number of Island representatives at regional level. However, difficulties associated with existing governance arrangements were also noted, in particular the virtual duplication of membership on the Commonwealth TSRA and the State ICC, which were the same bar two members.

Some stakeholders saw the solution in the consolidation of Island Councils, and the strengthening of their administrative and financial capacities. It was felt that these capacities may be improved by transferring the Island Councils to the *Local Government Act 1993* (Qld), although there was a general consensus that the roles and responsibilities of Island Councils, in particular relating to issues arising as a result of the Torres Strait Treaty, were much broader than other local governments.

Others highlighted the significant difficulties for Island Councils to operate as mainstream local governments in the absence of alternative initiatives or subsidies, as the services provided could not be funded by rates given the diverse sizes of the communities. The Committee was told that, for example, island communities varied in population from approximately 1,000 to 47 residents. An additional problem was that the consumers of local government services in the Torres Strait

⁸⁵ TSRA, *Annual Report 2004-2005*, p 49.

region were frequently not local, and that 58,000 people visited from PNG every year, affecting most islands.⁸⁶

Others expressed the view that whatever Torres Strait Islanders thought of the proposed review *'the outcome was always set'* and Island Councils would be brought under the *'mainstream' Local Government Act 1993* (Qld) just as occurred in relation to the Aboriginal community Councils. This was seen as not in the interests of Torres Strait Islanders as it was felt that the ICC should have the dominant role in governing the Torres Strait region. While the ICC was recognised as having a lack of administrative capacity, the TSRA was seen as being run by *'government bureaucrats who know how to run things but not our problems'*. Arrangements in place at that time, with the same representatives on the TSRA and ICC, were seen as a solution to this predicament, as the ICC representatives of Island Councils were regarded as *'people who know what it is about'*. Although the arrangement was working well at the time, the issues about *'everyone blaming one another'* continued to be a problem.

Still other stakeholders regarded the duplication of the ICC and TSRA as unnecessary and suggested that there was no need for the two bodies. The Committee was told that the concept for the TSRA was based on community governance, and structured on the basis of local and regional representation. However, the local and regional representation were based on different pieces of legislation, and in the end there were three layers of governance, with the TSRA, Island Councils, and an intermediary tier consisting of the ICC and Torres Shire. The result was that the Torres Strait was being over governed with the ICC and the TSRA *'consisting of the same people, working as different entities to do the same thing'*.

Given that the Torres Strait communities are also subject to the jurisdiction of both the Commonwealth and Queensland governments, the Committee had some sympathy for one stakeholder who declared: *'As a final comment, there is just too much government in the Torres Strait - this is ridiculous!'*

3.7 More recent events

Subsequent to the Committee's travel to the Torres Strait region, the Queensland government concluded its consultation process in relation to the reform of the Island Councils (refer to Chapters 3.3 and 3.6). As part of the transition to the new local government arrangements a report, *Community Government in the Torres Strait: The Way Forward*, was published in April 2007. It identified the *'central reform proposed'* as a result of the consultation process as being:

the establishment of a new governance model involving the establishment of a single regional local government to replace the existing 17 Island Councils and the creation of 17 Community Boards.

The regional local government [called the Torres Strait Regional Island Council] will administer most of the outer islands in the region, while the Torres Shire Council, based at

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See, for example, ABC News, 'Fears PNG nationals taking toll on Torres Strait resources', 30 November 2007, Available at: www.abc.net.au/news/stories/2007/11/30/2106009.htm Accessed on 30 November 2007.

Thursday Island, will continue to administer the inner islands. The regional local government will be supported by a Community Board in each island community, with functions and powers relating to community and service delivery planning and management of cultural matters.

...

The Regional Council will comprise 17 councillors, one from each community currently served by an Island council. Each community will therefore be a ward of the Regional Council.⁸⁷

The Queensland Department of Local Government, Planning, Sport and Recreation advised that subsequent to the publication of that report, and as at 21 December 2007:

the Local Government Reform Commission's recommendations have been accepted by the Old State Government in September 2007, which for the Torres Strait councils has resulted in 15 councils amalgamating into 1 regional council and 2 mainland Island councils amalgamating with 3 Aboriginal councils into 1 regional council in the Northern Peninsula Area.⁸⁸

Amongst other things, it appears that these reforms will result in the abolition of the ICC, and its replacement by two regional local governments. However, the retention of Community Boards for each DOGIT community, with a particular function of dealing with cultural issues, would appear to recognise the continuing significance of the distinct Island cultures and identities for Torres Strait Islanders. These reforms also address the previous apparent lack of representation at local government level of the three Aboriginal DOGIT communities of the NPA (refer to Chapter 3.5(a)(ii)).

At the time of writing, the significance of these reforms for the TSRA, the majority of members of which were the Chairs of the now defunct Island Councils, remains unconfirmed. The Committee understands, however, that the Commonwealth Minister for Indigenous Affairs is expected to publish a Notice in the Commonwealth Government Gazette in accordance with section 142 S of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) recognising the new arrangements under the Queensland local government legislation for the purposes of membership of the TSRA. It is expected that this Notice will recognise the elected representatives of the 15 Island communities and the two Torres Strait Islander communities of the NPA as members of the TSRA.⁸⁹ It is also expected that the representatives of Port Kennedy (the southern part of Thursday Island) and of Horn and Prince of Wales Islands will continue to be elected under the Commonwealth's

⁸⁷ *Community Government in the Torres Strait: The Way Forward*, April 2007, pp 6, 9, 12.

⁸⁸ Email from Local Government Enquiries, Department of Local Government, Planning, Sport and Recreation, 21 December 2007.

⁸⁹ The Committee also understands that only Indigenous people are eligible for election to represent the Island communities and that although non-Indigenous people are eligible to represent the NPA communities, provision is available through the 'community forums' under the relevant legislation for communities to nominate an Indigenous representative, if required, to represent them on the TSRA. The Aboriginal communities of the NPA had been invited to participate in the TSRA, but apparently did not wish to do so.

Aboriginal and Torres Strait Islander Act 2005. Because the TRAWQ communities' representative was a member of the TSRA as a result of being a member of the ICC, and the ICC will no longer exist, it is expected that the TWAQ communities' representative on the TSRA will now also be elected under the Commonwealth's *Aboriginal and Torres Strait Islander Act 2005*.

With reference to the multiple layers of government in the Torres Strait region, it appears that new regional councils will simply take the place of the ICC. As a result it appears unlikely that this reform will go towards reducing the multiple layers of government in the Torres Strait region.

Finding 15

It appears unlikely that the recent reforms to local government arrangements in the Torres Strait region will reduce the multiple layers of government in that region.

CHAPTER 4 A MODEL FOR ELSEWHERE?

4.1 Indigenous leadership under the former Commonwealth government agenda

As already indicated, in August 2003 the TSRA responded to the then review of ATSIC, stating that it believed that the:

*arrangements operating in the Torres Strait, while specific to the Torres Strait in their origins, embody principles and opportunities which may be more generally relevant to the situation of Aboriginal and Torres Strait Islander people, not as a precedent but as a model.*⁹⁰

The current significance of the arrangements operating in the Torres Strait, the ‘*Torres Strait model*’, for Aboriginal communities arises in part because of the former Commonwealth government agenda on Indigenous affairs, outlined in this Committee’s Report No. 7, *Initiatives in the Remote Communities of Cape York*.

That report referred to the work of Ms Kerry Arabena, a visiting Research Fellow at the Australian Institute of Aboriginal and Torres Strait Islander Studies and a descendant of the Merriam people of the Torres Strait. Writing in 2005, Ms Arabena critiqued the then current Commonwealth direction in Indigenous affairs, arguing that a number of contentions put forward by Mr Noel Pearson in *The Right to Take Responsibility* had been adopted by the Commonwealth government to implement this agenda.⁹¹ Of particular relevance to the issue of Indigenous representation was the contention that leadership was something that ‘*everyone must do*’, so that Indigenous people assert leadership within their families, and that no representative ‘*intermediaries*’ such as ATSIC are required.⁹²

The limited support for the full range of representative models on the Australian mainland, according to Ms Arabena’s critique of the former Commonwealth government agenda, omitted:

*an independent representative voice that can promote the engagement of Indigenous people with each other, without the involvement of government, on issues of common concern.*⁹³

⁹⁰ Torres Strait Regional Authority, ‘*A new ATSIC*’ *Response to the ATSIC Review Discussion Paper*, August 2003, p 3.

⁹¹ Arabena, K, *Not fit for modern society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous Affairs*, Australian Institute of Aboriginal and Torres Strait Islander Studies (AITSIS), Canberra, 2005.

⁹² *ibid.*, pp 22, 23.

⁹³ *ibid.*, p 39.

In its place, Ms Arabena noted that a ‘*new leadership*’ was emerging which:

*will be used to legitimise the reform agenda and be identified by bureaucrats as “good” ... likely to be people who are self reliant and independent of welfare, those who have completed schooling and those who advocate for Indigenous people to generate better economic returns. ... those who have never been given legitimacy from their community to speak about issues now have platforms to infiltrate public opinion.*⁹⁴

Ms Arabena’s concerns about the processes by which Indigenous people have been able to become ‘*spokespeople*’ for their communities with the demise of ATSIC has, to a degree, been exemplified by Mr Pearson himself. As outlined in this Committee’s Report No. 7, for example, the launch of the Hope Vale welfare reform initiative was marked by reports of ‘*outrage*’ by traditional owners who had not been consulted about the agreement Mr Pearson had negotiated ‘*until the last minute*’.⁹⁵ Elders were reported as stating that, although the agreement was positive, the land earmarked for new homes in the community was a sacred site.⁹⁶ It appears that Mr Pearson was neither an elder, nor did he enjoy the legitimacy he may otherwise have garnered if there were formal processes available by which Cape York communities were given an opportunity to authorise their representatives.⁹⁷

The call for an Indigenous representative structure to replace ATSIC was recently made by the National Aboriginal Community Controlled Health Organisation,⁹⁸ and is underlined by the Aboriginal Medical Service Alliance Northern Territory assessment of the former Commonwealth government’s ‘*Intervention*’ in the Northern Territory:⁹⁹

⁹⁴ Arabena, K, *Not fit for modern society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous Affairs*, Australian Institute of Aboriginal and Torres Strait Islander Studies (AITSIS), Canberra, 2005, p 39.

⁹⁵ Karvelas, P, ‘It’s new deal or despair: Pearson’, *Weekend Australian*, 12-13 May 2007, p7.

⁹⁶ *ibid.* While the Minister apologised, Mr Pearson was reported as stating:

We can’t all be gutless. We can’t all agree that there are these problems, but not have the courage to deal with them.

Why do you think the Government is taking 80 children per month [sic] to the Child Safety Department, across Cape York Peninsula, including from this community? And you think I’m going to sit back? Sorry, I am not yielding to anybody, because this is as much my home as yours. (ABC Online, ‘AM - Pearson hails Hope Vale plan’, 12 May 2007, Available at: www.abc.net.au/am/content/2007/s1921245.htm Accessed on 14 May 2007.)

⁹⁷ While two of the Cape York Indigenous organisations associated with the ‘*Cape York Agenda*’, the Cape York Land Council and Apunipima Health Service are open to Indigenous members with voting rights, the platform organisations on behalf of whom Mr Pearson negotiates with government on behalf of the Cape York communities, Cape York Partnerships and the Cape York Institute of Policy and Leadership, do not.

⁹⁸ ABC News Online, ‘Call for national Indigenous body to replace ATSIC’, Available at www.abc.net.au/news/stories/2007/12/17/2120692.htm Accessed on 17 December 2007.

⁹⁹ In announcing a ‘*National emergency response to protect Aboriginal children in the NT*’ on 21 June 2007, the Commonwealth Minister for Families, Community Services and Indigenous Affairs stated that:

The [modified] health checks¹⁰⁰ and an improved primary health care system are now clear potential benefits of the intervention. Also, the additional police and other services have been needed and are welcome.

Some other aspects of the intervention are less likely to be positive and others are likely to be harmful. In particular, its initial implementation was profoundly disempowering to many Aboriginal people in an environment where disempowerment and loss of identity lie at the root of community dysfunction. The medical profession knows that lack of control of life circumstances can contribute significantly to worse health outcomes. This could be a very damaging effect of the intervention, particularly in light of the already large gap in life expectancy between Aboriginal and Torres Strait Islander peoples and other Australians (17 to 20 years' difference).¹⁰¹

The absence of legislatively recognised Indigenous representative structures also appears to have been relevant to developments in Western Australia. Previously, ATSIC was a party to Commonwealth and State agreements affecting Indigenous people in Western Australia.¹⁰² With the abolition of ATSIC the most recent agreement, the *State/Commonwealth Bilateral Agreement for the provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia November 2005 - June 2008*, which has critical implications for Indigenous

In response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory, the Australian Government today announced immediate, broad ranging measures to stabilise and protect communities in the crisis area.

Measures included the introduction of widespread alcohol restrictions on Northern Territory Aboriginal land; quarantining welfare income; introduction of welfare reforms to stem the flow of cash going toward substance abuse; enforcing school attendance; introducing compulsory health checks for all Aboriginal children; acquiring townships prescribed by the Australian Government through five year leases including payment of just terms compensation; and increasing policing levels in prescribed communities (Commonwealth Minister for Families, Community Services and Indigenous Affairs, Media Release, 'National emergency response to protect Aboriginal children in the NT', 21 June 2007).

Major General David Chalmers, headed the Commonwealth government's intervention task force, and the 'Intervention' included the deployment of the army into Aboriginal communities in the Northern Territory and occurred in the absence of any consultation with affected Indigenous communities.

¹⁰⁰ The Aboriginal Medical Services Alliance Northern Territory considered that the health checks as originally proposed, which would have included 'compulsory forensic examinations of all children to ascertain a level of sexual abuse' would have been 'a form of assault if carried out' (Boffa, John D, Bell, Andrew I, Davies, Tanya E, Paterson, John & Cooper, David E, 'The Aboriginal Medical Services Alliance Northern Territory engaging with the intervention to improve primary health care', *The Medical Journal of Australia*, 2007, 187 (11/12), p 617).

¹⁰¹ *ibid.*, pp 617-618.

¹⁰² For example, The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *Agreement for the Provision of Essential Services to Indigenous Communities in Western Australia*, 2000; and the Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *An Agreement for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia July 2002 - June 2007*, 2002.

communities throughout Western Australia, was concluded without the endorsement of, and in the absence of consultation with, Aboriginal communities.¹⁰³

Some of the concerns about the agreement were highlighted in the Committee's Report No. 6, including the Minister for Housing and Works apprehension about the withdrawal of Commonwealth responsibility and funding for the provision of housing and infrastructure for Indigenous communities.¹⁰⁴ More recently the Western Australian Local Government Association (WALGA) has highlighted its concerns that:

*the Federal and State governments have come to an agreement on delivering those [essential services such as power, water and housing] without consulting with either those affected (Aboriginal communities) or those charged with delivering those services (Local Government).*¹⁰⁵

These examples highlight the problems associated with the 'representation' of Indigenous communities since the removal of the formal ATSIC structures. In instances such as Cape York, the recognition of a community 'spokesperson' may be more a function of recognition by Commonwealth or State governments, rather than necessarily a matter for the Indigenous communities concerned, as Ms Arabena has outlined. In other instances, such as the Northern Territory intervention and the Commonwealth/Western Australian Bilateral, these have been implemented in the absence of any formal consultation with the Indigenous communities affected.

¹⁰³ Mitchell, B, Western Australian Local Government Association (WALGA), 'Failure to consult puts Indigenous services at risk', (Advertisement) *The West Australian*, 18 December 2007, p 4. Under the agreement, Local Governments are responsible for the delivery of services, but also were not consulted.

¹⁰⁴ Letter from the Minister for Housing and Works, 19 September 2007, p2. The Minister expressed concerns that the Bilateral Agreement will result in:

- the attempt to shift responsibility for municipal services solely to the State;
- potential Commonwealth funding gaps for town-based Aboriginal communities;
- potential Commonwealth funding gaps for small communities, especially those with a population of under 50; and
- the possible withdrawal by the Commonwealth from all responsibility for Aboriginal Housing and Infrastructure from 1 July 2008, when the current Bilateral expires.

¹⁰⁵ Mitchell, B, Western Australian Local Government Association (WALGA), 'Failure to consult puts Indigenous services at risk', (Advertisement), *The West Australian*, 18 December 2007, p 4.

Finding 16

There have been problems associated with the ‘*representation*’ of Indigenous communities since the removal of the formal Aboriginal and Torres Strait Islander Commission (ATSIC) structures. In some instances, the recognition of a community ‘*spokesperson*’ may be more a function of recognition by Commonwealth or State governments, rather than necessarily a matter for the Indigenous communities concerned. In other instances, such as the Northern Territory intervention and the Commonwealth/Western Australian *Bilateral Agreement for the provision of Housing, Infrastructure and Essential Services for Indigenous People in Western Australia November 2005 - June 2008*, these have been implemented in the absence of any formal consultation with the Indigenous communities affected.

The research findings of the first two years of the Indigenous Community Governance Project (ICGP) were recently published. Based on extensive fieldwork in a range of Indigenous communities the findings were supplemented by an examination of ‘*the views of the Australian Government’s Secretaries’ Group on Indigenous Affairs [and] the current status of NT and WA Government policy frameworks*’.¹⁰⁶ The research did not include governance in the Torres Strait region, although it did include the ‘*Torres Strait Islander diaspora*’.¹⁰⁷ Amongst a range of other findings and recommendations, the ICGP found that:

Legitimate Indigenous governance arrangements win support of members and external stakeholders, and produce outcomes. Achieving legitimacy appears to be especially reliant on having genuine decision-making authority and powers, and on the quality of leadership.

*The 2005 and 2006 ICGP research findings seriously question whether conditions currently exist in Australia to enable Indigenous community leadership and decision-making authority to be adequately exercised. When power inequalities are as great as they currently are, Indigenous groups often feel they have little choice about how they do things.*¹⁰⁸

¹⁰⁶ Hunt, J and Smith, D E, *Indigenous Community Governance Project: Two Year Research Findings*, CAEPR Working Paper No. 36/2007, CAEPR: Canberra, 2007, p xi.

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*, p xvi.

Finding 17

After two years fieldwork in a range of Indigenous communities, but excluding the Torres Strait Region, the research findings of the Indigenous Community Governance Project (ICGP) included the following:

Legitimate Indigenous governance arrangements win support of members and external stakeholders, and produce outcomes. Achieving legitimacy appears to be especially reliant on having genuine decision-making authority and powers, and on the quality of leadership.

The 2005 and 2006 ICGP research findings seriously question whether conditions currently exist in Australia to enable Indigenous community leadership and decision-making authority to be adequately exercised. When power inequalities are as great as they currently are, Indigenous groups often feel they have little choice about how they do things.

4.2 Support for Indigenous regional representation

On the basis of her research, Ms Arabena's assessment of the 'Torres Strait model' and in particular the TSRA was that it was:

*highly desirable for people in many regions across Australia... When asked about the perceived benefits, Aboriginal people replied that it has a high degree of autonomy, a legislative foundation, and the TSRA administers a considerable amount of government funding.*¹⁰⁹

Finding 18

Research conducted in 2005 indicated that the 'Torres Strait model' and in particular the Torres Strait Regional Authority (TSRA) was perceived by Aboriginal people as highly desirable as it was seen as having a high degree of autonomy, a legislative foundation, and as administering a considerable amount of government funding.

In a detailed submission responding to the Committee's *Where From? Where to? A Discussion Paper on Remote Aboriginal Communities* (Report No. 6),¹¹⁰ the Kimberley Aboriginal Law and

¹⁰⁹ Arabena, K, *Not fit for modern society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous Affairs*, Australian Institute of Aboriginal and Torres Strait Islander Studies (AITSIS), Canberra, 2005, p 37.

¹¹⁰ A final report, incorporating submissions responding to the Discussion Paper, will be tabled by the Committee at a later date.

Culture Centre (KALACC) specifically raised the issue of the establishment of a Regional Authority in the Kimberley:

It is absolutely the aim of the people in the Kimberley to achieve:

- *Greatly improved structures for regional representation and interaction with both State and Commonwealth Governments;*
- *Ensuring the opportunities for social, cultural and economic development arising from resource development opportunities are maximized and that the benefits arising from major resource developments off the Kimberley coast provide benefits to all the Aboriginal people of the Kimberley.*

...

*It is our concern that if the Government does not rapidly consider the issue of the establishment of a Kimberley Regional Authority then an opportunity may be lost to synchronise the issues of resource development and regional representation.*¹¹¹

The reports of the Western Australian Special Adviser on Indigenous Affairs, Lieutenant General (retired) John Sanderson,¹¹² also indicate that there is significant support amongst Indigenous people in Western Australia for regional representative structures.

The Special Adviser noted the *'fundamental importance of Indigenous participation at all levels in the system'* to address issues of the:

*extraordinary levels of Indigenous disadvantage, the widespread lack of confidence in the current system and the foreseeable potential for the situation to rapidly worsen over the next 12 months.*¹¹³

The Special Adviser had previously noted that the National Framework of Principles for Delivering Services to Indigenous Australians attached to the Commonwealth/State Bilateral Agreements *'calls for a commitment to Indigenous participation at all levels and suggests a departure from the past in this regard'*.¹¹⁴

¹¹¹ Submission No. 11(a) responding to the Education and Health Standing Committee's Report No. 6, *Where from? Where to? A discussion paper of remote Aboriginal communities*, from Kimberley Aboriginal Law and Culture Centre, 15 August 2007, p 1.

¹¹² Former Governor of Western Australia.

¹¹³ Sanderson, J, 'Brief to the Minister for Indigenous Affairs in Preparation for a Meeting with Special Adviser on Tuesday 13 February 2007', p 1.

¹¹⁴ Sanderson, J, 'Quarterly Report to the Premier and the Minister for Indigenous Affairs - 1st Quarter: 1 September 2006-30 November 2006', p 2. See also Council of Australian Governments (COAG), 'National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders', 7 December 1992, 4.1 and 4.3.

The Special Adviser went on to state:

It is not possible for me to separate matters of Indigenous participation from the systemic issues of institutional governance, as they are intimately connected and are equally important to achieving the desired outcomes.

...

There is no doubt that the abolition of the Aboriginal and Torres Strait Islander commission (ATSIC) almost three years ago has left a vacuum in Indigenous representation that is yet to be filled.¹¹⁵

The Special Adviser subsequently reported to the Premier that:

The lack of trust and growing alienation are reflected in the figures relating to Indigenous participation in the Justice and Corrective systems, which now absorb approximately half of the total State expenditure on Indigenous Affairs...

Apart from the need to reaffirm the State's commitment to Aboriginal people in order to rebuild trust, there is a clear need to engage with Indigenous issues on a more holistic basis. This can only occur effectively at the regional level ... There is widespread support for this view.¹¹⁶

The Committee concludes that there is significant support amongst Aboriginal people in Western Australia for the establishment of regional representative structures.

Finding 19

There is significant support amongst Aboriginal people in Western Australia for the establishment of regional representative structures.

4.3 Which model?

As outlined in the preceding discussion in Chapter 3, there have been continuing, and at times conflicting, proposals to alter and strengthen the model of representation and governance in the Torres Strait region. It is without doubt that at the time of the Committee's travel, in November 2006, the arrangements were complex, and the Committee's sympathy with the sentiment expressed by some stakeholders that there was *'too much government'* in the Torres Strait region has already been noted.

¹¹⁵ Sanderson, J, 'Quarterly Report to the Premier and the Minister for Indigenous Affairs - 1st Quarter: 1 September 2006-30 November 2006', p 1.

¹¹⁶ Lt General (retired) John Sanderson, Special Adviser on Indigenous Affairs, Letter to the Premier, 19 June 2007.

While the complexity and anomalies within the *'Torres Strait model'* structure and its shifting constitution are not ideal, it also appears to be the case that these features are related to:

- the changing demographic distribution in the Torres Strait region;
- ongoing efforts to be accountable according to both Indigenous community expectations and non-Indigenous financial and administrative requirements; and
- striving to accommodate the interests of traditional Island communities as well as the more ethnically diverse population of Thursday Island.

Finding 20

While the complexity and anomalies within the *'Torres Strait model'* and its shifting constitution are not ideal, it also appears to be the case that these features are related to:

- changing demographic distribution in the Torres Strait region;
- ongoing efforts to be accountable according to both Indigenous community expectations and non-Indigenous financial and administrative requirements; and
- striving to accommodate the interests of traditional Island communities as well as the more ethnically diverse population of Thursday Island.

The Committee notes that the Special Adviser on Indigenous Affairs recommended a different interim structure for Indigenous State-wide representation in Western Australia. The proposal that members be appointed by *'virtue of their membership on other Indigenous-specific statutory or other authoritative bodies'*¹¹⁷ has some parallels with the *'Torres Strait model'* to the extent that it builds on the pre-existing role of members. However, the Committee is of the view that, as a long-term model, it does not reflect the strength of the *'Torres Strait model'* to the degree that this has integrated local and regional representation, so that representatives remain accountable to their local communities.

The *'Torres Strait model'* has been developed after a long process, described as being the result of Torres Strait Islanders maintaining *'a long and slow process of negotiating by increment toward their goal of self-determination'*.¹¹⁸ While the *'Torres Strait model'* may not be a *'perfect'* model, it appears to have met Torres Strait Islander demands, at least to some degree, for autonomy, the

¹¹⁷ Sanderson, J, 'Brief to the Minister for Indigenous Affairs in Preparation for a Meeting with Special Adviser on Tuesday 13 February 2007', p 1.

¹¹⁸ Ban, P, 'Would a formal treaty help Torres Strait Islanders achieve legal recognition of their customary adoption practice?', *Indigenous Law Bulletin*, (2006), 33.

integration of local with regional representation while ensuring accountability to local communities, and the recognition of their distinct and varied traditional cultures.

Finding 21

While the *'Torres Strait model'* may not be a *'perfect'* model, it appears to have met Torres Strait Islander demands, at least to some degree, for autonomy, the integration of local with regional representation while ensuring accountability to local communities, and the recognition of their distinct and varied traditional cultures.

The Committee recommends that the State government, in consultation with Indigenous communities in Western Australia, give consideration to the *'Torres Strait model'* for adaptation as a regional representative structure for Indigenous communities throughout Western Australia.

Recommendation 1

The Committee recommends that the State government, in consultation with Indigenous communities in Western Australia, give consideration to the *'Torres Strait model'* for adaptation as a regional representative structure for Indigenous communities throughout Western Australia.

4.4 Commonwealth and State recognition

As indicated, the Committee is conscious that the *'Torres Strait model'*, as detailed, is significantly enhanced as a result of its integration of both Commonwealth and State legislative and administrative functions through the TSRA. However, the Committee believes that the key aspect of the model, the integration of local and regional representation, is not necessarily reliant upon a Commonwealth legislative basis nor upon recognition of its representative capability by the Commonwealth government.

Finding 22

The '*Torres Strait model*' is significantly enhanced as a result of its integration of Commonwealth as well as State legislative and administrative functions through the Torres Strait Regional Authority (TSRA). However, the Committee believes that the key aspect of the model, the integration of local and regional representation, is not necessarily reliant upon a Commonwealth legislative basis nor upon recognition of its representative capability by Commonwealth government.

Nonetheless, it is clear that the recognition of the TSRA at Commonwealth level and its capacity to administer both Commonwealth and State Indigenous funding have significantly enhanced the effectiveness of this model. The Committee believes that a partnership between the State and Commonwealth in developing Indigenous regional representative structures would greatly improve the efficiency of such structures and it recommends that the State explore the possibility of working in collaboration with the Commonwealth government in the development of this initiative.

Finding 23

The recognition of the Torres Strait Regional Authority at Commonwealth level and its capacity to administer both Commonwealth and State Indigenous funding have significantly enhanced the effectiveness of this model of Indigenous regional representation. The Committee believes that a partnership between the State and Commonwealth in developing Indigenous regional representative structures would greatly improve the efficiency of such structures.

Recommendation 2

The Committee recommends that the State explore the possibility of working in collaboration with the Commonwealth government in developing Indigenous regional representative structures based on the '*Torres Strait model*'.

4.5 Lessons learned

In recommending the *Torres Strait model* as a model for regional representation for Aboriginal communities in Western Australia, the Committee is not suggesting that either the problems that beset ATSIC nor that the benefits of the former Commonwealth government agenda should be dismissed.

(a) Representing Aboriginal people

When the Special Adviser on Indigenous Affairs recommended an interim structure for Indigenous State-wide representation, concerns were expressed by the Premier of Western Australia.¹¹⁹ The Premier stated in Parliament that Lieutenant General Sanderson:

recommended regional governments with a regional representative structure for Aboriginal people not dissimilar - it is not exactly the same - to the one that existed under the Aboriginal and Torres Strait Islander Commission...

*There was always criticism from the Aboriginal communities that ATSIC was in fact not representative and that the ATSIC regional councils did not represent the voice of Aboriginal people... We are dealing with a completely different culture and completely different community expectations about the type of interaction and who should or should not be negotiated with. A simple election process does not resolve that issue in Aboriginal communities.*¹²⁰

The Committee is aware of the broad agreement, even amongst those who supported its continuation, that there were significant problems with the ATSIC bureaucracy and simply re-establishing that structure will not necessarily advance the interests of Indigenous people any more effectively than that Commission did during the 15 years in which it operated.

A key issue was the representative capacity of ATSIC. For example, the *Review of the Aboriginal and Torres Strait Islander Commission*, published in 2003, reported that:

This first comprehensive external review of the Aboriginal and Torres Strait Islander Commission (ATSIC), the principal adviser to government on Aboriginal and Torres Strait Islander affairs, has found the organisation is in urgent need of structural change.

ATSIC needs the ability to evolve, directly shaped by Aboriginal and Torres Strait Islander people at regional level. This was intended when it was established, but has not happened. ATSIC needs positive leadership that generates greater input from the people it is designed to serve. One of its most significant challenges is to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations are met...

¹¹⁹ Sanderson, J, 'Brief to the Minister for Indigenous Affairs in Preparation for a Meeting with Special Adviser on Tuesday 13 February 2007'.

¹²⁰ Hon Alan Carpenter, Premier, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 21 November 2007, p 7528.

*The panel re-emphasise that there is no 'perfect' model. All governance structures are a compromise and this is particularly the case in an organisation which has to straddle such profoundly different Indigenous and Western perspectives.*¹²¹

It is also important to acknowledge that significant developments have occurred elsewhere in Australia in relation to Indigenous representative structures post-ATSIC, in particular in relation to how these claim to represent their communities. Significantly, the Law Reform Commission report on the Recognition of Customary law identified the Kullarri Regional Indigenous Body (KRIB) in the Kimberley as the first regional representative structure to emerge in Western Australia following the demise of ATSIC. It described the KRIB as 'an exemplar' because it was a self-identifying and self-organising structure:

Over a period of many years a number of governance models were considered by the people of the Kullarri region in an effort to improve equality of service delivery to west Kimberley communities. In 2002 the 'four ward model' was selected as a governing structure that best reflected the 'self-identified cultural and local representation at the regional level'. The four ward model is comprised of 'four discrete ethnographic areas' which select representatives to form ward councils. Each ward council then selects three representatives to sit on KRIB, the regional body.

An important aspect of the KRIB model is that the delineation of the four wards was not imposed upon the constituent communities by external authorities; rather, it has emerged as a result of how local Aboriginal people view the region. Each ward has needs and interests that may be quite distinct from the others...

Each ward [also] has the power to determine the appropriate representation for their ward council: KRIB's guiding principles require only that each ward has traditional owner representation. Ward councils will generally include representatives from each of the different communities or outstations making up the ward plus a separate traditional owner or native title group.

Although gender balance is not expressly addressed by requiring equal male-female representation at the ward level, the voices of women are ensured by a non-ward seat on KRIB for the Kullarri Indigenous Women's Aboriginal Corporation.

*As a result of this community-driven (rather than government imposed) representative arrangement, the governance structures in each ward are quite different. In fact, since the South Ward is a single community ward, it has decided not to establish a ward council at this time. Instead, the community and the separate traditional owner group are directly represented on KRIB.*¹²²

¹²¹ Hannaford, J, Huggins, J, and Collins, B, *Report of the Review of the Aboriginal and Torres Strait Islander Commission, In the Hands of the Regions - A new ATSIC*, November 2003, p 5.

¹²² Law Reform Commission of Western Australia, *Aboriginal customary laws: The interaction of WA law with Aboriginal law and culture, Final Report*, September 2006, pp 433, 444.

It is of note, however, that the KRIB structure described in the report did not have a legislative foundation, apparently only formally existing as a result of the agreement with government, nor does it appear to have been a service provider or funding body.

Nonetheless there is potential for such a model to be incorporated into the *'Torres Strait model'* by way of a legislative provision based on section 142 S of the *Aboriginal and Torres Strait Islander Act 2005* (Cth). This provision empowers the relevant Minister, by notice in the Gazette, to make a declaration on the best method of representing Torres Strait Islanders and Aboriginal persons in the Torres Strait. That provision was used in the Torres Strait region to give membership on the TSRA to Island Council Chairpersons elected under Queensland community services legislation. However, there is capacity to adapt such a provision to give legislative recognition to flexible representative arrangements that are *'community-driven (rather than government imposed)'*, such as those of the *'self-identifying'* and *'self-organising'* structure of the Kullarri Regional Indigenous Body, upon the determination by the relevant Minister that such arrangements are *'the best method of representing'* the Indigenous persons of a region.

Finding 24

There is potential under the *'Torres Strait model'* to give legislative recognition to Indigenous representative arrangements that are *'community-driven (rather than government imposed)'*, such as those of the *'self-identifying'* and *'self-organising'* structure of the Kullarri Regional Indigenous Body, upon the determination by the relevant Minister that such arrangements are *'the best method of representing'* the Indigenous persons of a region.

(b) 'Mutual obligations'

As the Committee noted in its Report No. 10, the former Commonwealth government's initiatives were also associated with a dialogue around *'mutual obligations'* which included a focus on the shared responsibilities of government and Indigenous Australians.¹²³

These developments occurred in a context described by Mr Neil Westbury¹²⁴ as follows:

*The abolition of ATSIC in 2004 removed the façade which had allowed the Commonwealth and other Governments to effectively avoid direct responsibility for poor economic and social outcomes amongst Indigenous Australians.*¹²⁵

¹²³ See, for example, Shared Responsibility Agreements (SRAs) between Indigenous communities and governments (Australian Government, Office of Indigenous Coordination, available at: <http://www.oipc.gov.au/> Accessed on 27 November 2006). See also Commonwealth Office of Indigenous Policy Coordination, *Indigenous Affairs Arrangements*, 2006, pp 32, 33.

¹²⁴ Mr Westbury received a Commonwealth Public Service Medal for outstanding public service in the provision of public policy advice in Indigenous Affairs in June 2002 after some 30 years working in Indigenous Affairs.

The abolition of ATSIC and the dialogue of ‘*mutual obligations*’ associated with Commonwealth initiatives have resulted in an examination of how government is meeting its obligations to Indigenous Australians. Pursuing this analysis more recently, Mr Westbury and Mr Michael Dillon noted that:

In its May 2005 report on the governance across 206 countries... the World Bank’s analysis of international development outcomes identified that a major missing factor in the sustained delivery of socioeconomic outcomes for poor populations is the governance effectiveness of governments themselves.

*... do governments themselves have the capacity to sustain the commitment required to see through such an ambitious agenda in what is arguably the most complex and least successful area of public policy in Australia?*¹²⁶

It is essential that the establishment of any Indigenous representative structures not act as a:

*façade [allowing] the Commonwealth and other Governments to effectively avoid direct responsibility for poor economic and social outcomes amongst Indigenous Australians.*¹²⁷

Finding 25

It is essential that the establishment of any Indigenous representative structures not act as a:

façade [allowing] the Commonwealth and other Governments to effectively avoid direct responsibility for poor economic and social outcomes amongst Indigenous Australians.

In this context, it is relevant to reiterate the TSRA proposal, referred to previously at Finding 11, to seek additional powers including the provision of an annual report on the programs and outcomes of all Commonwealth and State agencies which provide services/programs to Torres Strait Islanders and Aboriginal persons living in the Torres Strait. The intention was to enable the TSRA to ‘*know what money is being spent in the Torres Strait, what it is being spent for and what it has achieved*’. This appears to the Committee to be an important measure with the potential to establish ongoing monitoring and evaluation of ‘*the governance effectiveness of governments themselves*’, although given recent changes to service provision arrangements in Western Australia, the Committee notes that reference to local government should also be included.

¹²⁵ Westbury, N, ‘*The governance of governments: Structural reform issues arising from Indigenous demographic trends*’, Key Note address to Newmont Stakeholder Dinner, Perth WA, 4 October 2006, p 10.

¹²⁶ Westbury, N and Dillon, M, ‘*Removing the constraints*’, Australian Policy Online, 19 December 2007, Available at www.apo.org.au/webboard/print-version.chtml?filename_num=187535 Accessed on 20 December 2007.

¹²⁷ Westbury, N, ‘*The governance of governments: Structural reform issues arising from Indigenous demographic trends*’, Key Note address to Newmont Stakeholder Dinner, Perth WA, 4 October 2006, p 10.

Finding 26

The Torres Strait Regional Authority (TSRA) proposed some years ago that it be granted additional powers, including the provision of an annual report on the programs and outcomes of all Commonwealth and State agencies which provide services/programs to Torres Strait Islanders and Aboriginal persons living in the Torres Strait region, so that it would '*know what money is being spent in the Torres Strait, what it is being spent for and what it has achieved*' (refer to Finding 11).

This appears to the Committee to be an important measure with the potential to establish ongoing monitoring and evaluation of '*the governance effectiveness of governments themselves*', although given recent changes to service provision arrangements in Western Australia, the Committee notes that reference to local government should also be included.

Recommendation 3

The Committee recommends that, should Indigenous regional representative structures be established in Western Australia, consideration be given to granting those representatives additional powers, including the provision of an annual report on the programs and outcomes of all Commonwealth, State and Local government agencies which provide services/programs to Indigenous persons living in the relevant region, so that these representatives can '*know what money is being spent ... what it is being spent for and what it has achieved*'.

CHAPTER 5 OTHER INITIATIVES

5.1 Successful communities?

The Torres Strait communities are not viewed as being marred by the problems that currently have come to be seen as characterising significant remote Indigenous communities in Western Australia and elsewhere in Australia. Some cautioned the Committee, however, that Torres Strait Islanders may present their communities in an overly positive light; and for example, although education outcomes might be presented as satisfactory, the outcomes for Indigenous students in the Torres Strait were significantly worse than outcomes for Indigenous students generally, and for ‘All’ students, in Queensland.¹²⁸

Moreover, the significance of the chronic affliction of Torres Strait communities with diabetes, with the Torres Strait region described as ‘*the diabetes capital of Australia*’,¹²⁹ is difficult to overstate. The Committee was told that diabetes is affecting over 30 per cent of the Indigenous population in the Torres Strait region and that it was estimated that of approximately 6,000 Torres Strait Islanders, 1,200 will be affected by this irreversible condition. One stakeholder advised the Committee that:

diabetes is the biggest issue ... With diabetes it is expected women will live to only 47, men to 50. The life expectancy for my son is 30.

Despite this, stakeholder discussions with the Committee in the Torres Strait region were characterised by an optimism and confidence in the capacity of local communities to address the challenges confronting them. The Committee’s observations of the communities and representative agencies on Badu and Thursday Islands revealed that there was good reason for this optimism and confidence.

In seeking to understand the success of initiatives in the Torres Strait region, the Committee was advised that one of the key differences for the Torres Strait communities was that many people had never been taken from their land. It was also suggested that, as an agricultural-based culture, it may have been ‘*easier to coordinate*’ these communities with Western cultures. In this context perhaps it is not simply coincidental that the Indigenous people of the Torres Strait region do not appear to have been subjected to the policies of child removal that so afflicted Aboriginal communities elsewhere in Australia. Perhaps it is also significant that the Torres Strait community of Mer was the first in Australia to make out a case to the satisfaction of the legal system that native title continued to exist in Australia.

¹²⁸ Queensland Department of Education, *Bound for Success: Education Strategy for Torres Strait*, 2005, p 4. Note, however, that as the results for the Indigenous students studying in the Torres Strait relate solely to students in remote communities, who generally score less well than metropolitan students.

¹²⁹ Former Commonwealth Minister for Health, reported by McDonald, A, ‘\$2.3 million to counter Islander diabetes’, *The Australian*, 26 July 2006, p 2.

As also indicated by this Report, the Torres Strait communities have succeeded in securing a degree of autonomy that is unique in Australia, and ‘*highly desirable*’ for Indigenous people in many other regions across Australia.¹³⁰ A recent analysis of the legal recognition of Torres Strait Islander cultural practices highlighted a number of factors contributing to the relative success of Torres Strait Islanders in achieving self-government as follows:

*... Torres Strait Islanders in the Torres Strait are further along the road to self-government than any other Indigenous group, ... they have achieved their current position without creating any controversy or backlash within white Australia. Their cause has been helped by their cultural distinctiveness, geographic isolation and minority numbers. In addition they have remained on their homeland islands, despite the majority of their total population choosing to live on mainland Australia, primarily Queensland.*¹³¹

The Committee believes that the underlying context of the apparent success of the remote Indigenous communities of the Torres Strait region includes:

- the geographic isolation of the region;
- the continuing occupation of traditional lands by many Torres Strait Islander people and their retention of their homeland islands;
- the distinctive agricultural-based cultures of Torres Strait Islander communities making these cultures ‘*easier to coordinate*’ with Western cultures;
- the apparent exemption of Torres Strait Islanders from the policies of child removal that so afflicted Aboriginal communities elsewhere in Australia; and
- the resultant strength and continuity of Torres Strait Islander culture which was such that it was the first Indigenous culture in Australia to satisfy the legal system that native title continued to exist in Australia.

¹³⁰ Arabena, K, *Not fit for modern society: Aboriginal and Torres Strait Islander people and the new arrangements for the administration of Indigenous Affairs*, Australian Institute of Aboriginal and Torres Strait Islander Studies (AITSI), Canberra, 2005, p 37 and see Chapter 4.2.

¹³¹ Ban, P, ‘Would a formal treaty help Torres Strait Islanders achieve legal recognition of their customary adoption practice?’, *Indigenous Law Bulletin*, (2006) 33.

Finding 27

The Committee believes that the underlying context of the apparent success of the remote Indigenous communities of the Torres Strait region includes:

- the geographic isolation of the region;
- the continuing occupation of traditional lands by many Torres Strait Islander people and their retention of their homeland islands;
- the distinctive agricultural-based cultures of Torres Strait Islander communities, making these cultures '*easier to coordinate*' with Western cultures;
- the apparent exemption of Torres Strait Islanders from the policies of child removal that so afflicted Aboriginal communities elsewhere in Australia; and
- the resultant strength and continuity of Torres Strait Islander culture which was such that it was the first Indigenous culture in Australia to satisfy the legal system that native title continued to exist in Australia.

The extreme stresses placed on services and capacity of Torres Strait communities as a result of the '*open border*' arrangements with PNG should not be understated. However, it is also true, as noted in Chapter 2, that these communities have benefited from their strategic significance. In particular this appears to have led to the services and institutions of government, '*the architecture of the State*' as it is referred to by Mr Neil Westbury and Mr Mathew Dillon,¹³² maintaining a visible and strong presence in the remote communities of the Torres Strait region, as opposed to what has occurred in other Indigenous communities throughout Australia.¹³³

¹³² Westbury, N & Dillon, M, 'The Institutional Determinants of Government Failure in Indigenous Affairs', December 2006, p 17.

¹³³ Mr Westbury and Mr Dillon argue that this disengagement has consisted of a decline in service delivery and the removal of:

the framework of rules and opportunities which constrain, guide and empower all Australians. It is that framework which has disappeared in remote communities and probably to a substantial extent in urban Indigenous communities... (ibid., p 17).

Finding 28

The extreme stresses placed on the services and capacities of Torres Strait communities as a result of the 'open border' arrangements with Papua New Guinea (PNG) should not be understated.

However, it is also true that these communities have benefited from their strategic significance. In particular this appears to have led to the services and institutions of government, 'the architecture of the State', maintaining a visible and strong presence in the remote communities of the Torres Strait region, as opposed to what has occurred in other Indigenous communities throughout Australia.

Despite all the other dynamics, the most critical factor identified in ensuring the success of any initiative in remote Indigenous communities, according to those the Committee met with in the Torres Strait region, was community ownership of those initiatives. The examination of factors contributing to Torres Strait Islanders' relative success in relation to achieving self-government, referred to above, also highlighted the emphasis that is placed on extensive community consultation in the Torres Strait. It was noted that:

*... although Islanders are committed to the path of autonomy, they have proceeded slowly in trying to reach agreement about the type of governance structure they want for the Torres Strait ... the slow pace was due to their extensive community consultation undertaken in order to build a model of self-governance from the ground up.*¹³⁴

The Committee had the opportunity to observe this principle of community consultation being put into practice when it visited Badu Island. The Committee had arranged to visit Badu Island¹³⁵ because it had been recommended for the success of various initiatives by both Mr Jason O'Brien, the Local Member of Parliament (MP) for Cook, and the TSRA.

Although the Committee has not had the opportunity to examine the range of Badu initiatives in detail, and simply recounts the information provided to it at the time, Badu Island appeared to the Committee to exemplify a remote Indigenous community that was successfully tackling the many challenges confronting it.

¹³⁴ Ban, P, 'Would a formal treaty help Torres Strait Islanders achieve legal recognition of their customary adoption practice?', *Indigenous Law Bulletin*, (2006) 33.

¹³⁵ The Committee would like to acknowledge the assistance of Mrs Lily Ahmat, Council Clerk, Badu Island Council.

5.2 Badu Island

(a) Background

As outlined in Chapter 3.3, there are five traditional island clusters in the Torres Strait, and Badu is within the Near Western Islands group. It is one of the larger islands and is partly covered with mounds of basaltic rocks, lightly vegetated in open areas and fringed with extensive mangrove swamps.¹³⁶

In one of the decisions relating to the recognition of the Badulgal people's native title over Badu in 2004, Justice Cooper found that:

...before the impact of colonialism, the available evidence indicates that the Badulgal society was organised into 'totemic clans' with the basic building blocks of social organisation being patri-clans with membership normally inherited from the father. While tracing the date of the first indigenous inhabitation of Badu Island has not been an easy task for anthropologists, it is well known by the Badulgal themselves in their oral history, as well as in the written historical record, that their ancestors were at Badu long before the assertion of sovereignty by the British Crown in 1872.

The Badulgal were, and continue to be, a maritime people living off the land and waters and engaging in trade with neighbouring island communities. The first European contact with the people of the Torres Strait came in 1606 when Captain Luis Baez de Torres sailed through the strait that now bears his name. Murphy records that after Torres' passage through the Strait, there was very little in the way of European traffic until the establishment of a British colony at Port Jackson in the colony of New South Wales, and the charting of a safe passage through the dangerous waterway by Captain Bligh in 1792, made the Torres Strait a regular route for ships travelling between Asia and the Pacific, and the new colonies in Australia.

As the documentary evidence shows, the Badulgal still maintain a system of traditional land ownership which is continuous with the system as it operated before sovereignty. Relationships within the Badu Island community are expressed in the idiom of kinship and identification with a particular family provides the main avenue by which any individual claims ownership of land. The continuing connection between the Badulgal and the determination area is well recognised.¹³⁷

The State Library of Queensland's 'Footprints Before Me' webpage on the Torres Strait Island Communities provides further information on the Badu Island community:

A west-central Torres Strait Island which, together with near neighbours on Mabuig and Moa, once had a feared reputation as an island of head hunters. Warfare, turtle and dugong hunting were the main occupations of Badu men until the 1870s. Pearlers

¹³⁶ TSRA, 'Torres Strait Community Profile - Badu', Available at: www.tsra.gov.au/www/index.cfm?pageID=9 Accessed on 13 October 2006.

¹³⁷ *Nona on behalf of the Badulgal v Queensland* [2004] FCA 1578 (14 December 2004), pars. 9-11.

*established bases on the island during the 1870s and by the early 1880s the islanders were becoming dependant on wages earned as lugger crew. At the same time the first missionaries [from the London Missionary Society] arrived at people's request. At the peak of the shell industry in the late 1950s, the Badu fleet of 13 boats, employed a workforce of 200 providing work for many men, even for other islands as well. However, once the shell trade declined, many people moved to mainland to work.*¹³⁸

There were approximately 1,000 people on Badu at the time of the Committee's visit in late 2006, and it was the second largest population centre in the Torres Strait region. The two Badu enterprises listed by the TSRA were Badu Hydroponics and Badu Takeaway Restaurant.¹³⁹

(b) Badu initiatives

(i) The Council

Mr Richard Bowie, Deputy Chairman of Badu Island Council, generously took the Committee to visit various initiatives around Badu after providing an explanation of how the Island Council functioned and its priorities.

Mr Bowie indicated that the emphasis of the Island Council was on ensuring that *'things are done properly with the community coming first'*. Consultation was seen as a priority, meetings were called, and the community *'worked on what needs to be done'*.

(ii) Housing & Infrastructure¹⁴⁰

Mr Jason O'Brien, MP for Cook, had recommended Badu to the Committee as an example of the progress that had been made in relation to housing and infrastructure in the Torres Strait region. In its presentation to the Committee, the TSRA had emphasised that:

- *Just over a decade ago, Torres Strait communities lived in substandard conditions.*
- *In 1995 it was identified that approximately \$300 million would be needed to upgrade and install basic infrastructure...*
- *Since commencement [the Major Infrastructure Program (MIP)] has enhanced lives, for example removing pan toilets and installing flushing systems, building sewerage treatment plants and improving supply of clean drinking water.*¹⁴¹

¹³⁸ State Library of Queensland, *'Footprints Before Me: Torres Strait Island Communities'*, Available at publib.slq.qld.gov.au/footprints/communities/torresmap.htm Accessed on 19 January 2007.

¹³⁹ TSRA, 'Torres Strait Community Profile - Badu', Available at: www.tsra.gov.au/www/index.cfm?pageID=9 Accessed on 13 October 2006.

¹⁴⁰ Refer to Appendix 5 for additional background information on housing and infrastructure in the Torres Strait region.

¹⁴¹ Torres Strait Regional Authority, PowerPoint presentation, 'The Torres Strait Regional Authority', 17 November 2006, p 18.

The TSRA advised that \$100 million had been allocated for infrastructure development over ten years to 2007/08, and an additional \$80 million had been allocated to housing capital works over the past five years.¹⁴² The TSRA also cautioned that this very low base needed to be recognised when considering what had been achieved in communities such as Badu.

During its visit to Badu, the Committee was advised that a significant problem in relation to developing housing and infrastructure was the status of land as subject to Native Title. The Committee was told that this was addressed by the Council and Native Title holders '*working side by side*'.

The basic process, as described to the Committee, was that Native Title would determine which group the land belonged to and then the Council would work with that group. If the land was no one's in terms of traditional ownership, then it was clear for development. Otherwise, buildings could be constructed on the traditional land for the Native Title group.

There were some parts of Badu which had been built on before Native Title was recognised, however, and this had '*resulted in mistakes*'. These have been queried with the Council and the traditional owners were instead offered alternative land where the Council offered to build for them. The Committee was told that care needed to be taken because people could be deprived of enjoyment of their Native Title if a house for someone other than the traditional owners was constructed on traditional land by the Council, government or privately (which requires Council permission). However, most people on Badu lived on their traditional land '*when it was known*'.

Housing on Badu was government-owned as a result of the Island being a DOGIT community. The Committee was advised that while land had DOGIT status, buildings might be erected, but the land reverts to Native Title once the DOGIT status is rescinded.

There had been a recent change in housing design on Badu from '*high-rise*' homes (Queensland bungalows on stilts), to single storey bungalows being built out of Besser bricks. The Committee was told that the homes were larger and that upgrades were easier with second storey additions. At the time of the Committee's trip, funding was available for the upgrading of houses and it was far less expensive for more rooms to be added as a second storey, rather than '*extending out*'. Families had input into the design of houses so long as it remained within budget.

Non-locals were in charge of the housing works, however local young people were being apprenticed to work with them. The community also had between \$50-\$60,000 worth of construction equipment which the Council was hoping to contract out to other Islands. There was also a rock crusher on Badu at that time, but it was for use throughout the Torres Strait.

Badu had the capacity to manufacture concrete, and the Badu sands were good for producing blocks, which were sold elsewhere. However, there was a problem with quarantine past Bamaga, and so the industry was confined to servicing the Torres Strait region at the time.

¹⁴² TSRA, 'Issues: Housing and Infrastructure', Available at: www.tsra.gov.au/the-torres-strait/issues/housing--infrastructure.aspx Accessed on 7 January 2008.

Much of the infrastructure on Badu was in place, with the water works recently completed, at the time of the Committee's visit. The Committee was told that solar hot water systems were used on Badu and there was a power plant.

(iii) *Badu enterprises, training and employment*

On Badu, the stores were not owned by the community but by individuals. At the time of the Committee's visit, two stores were operating, the longest established one employing five or six full-time staff. The Committee was told that an IBIS (Islander Board of Industry and Service) store had been opened on Badu previously, but it was opposed and eventually left after doing badly.¹⁴³ The opportunities for young people to establish businesses in the community were limited and there was a concern that opposition retailers, such as an IBIS store, might '*break them*' in their attempts to establish their own store. A young woman ran the second, recently opened, store on Badu.

The major business on Badu, however, was fishing. A significant aspect was the crayfish industry - either fishing or working at the crayfish plant. The plant was one of the biggest employers on Badu when the crayfish were in season, employing six or seven full-time employees. When the crayfish season was open, workers might have one week on CDEP and then earn more in the other week fishing or at the plant: '*this spreads the money around the community*'. The crayfish season was closed from October to November, in December and January it was a three day a week season, and in February fishing could only be done by using a hook in deep waters. Locals could not afford the crayfish, and these were sold for export.

The Council's workforce focus, however, was on encouraging young people into apprenticeships such as cooks, chefs, electricians, painters, carpenters; '*the things that were utilised on the Island*'. This often involved four-year courses on the mainland, but the hope was that eventually local young people with '*the right tickets*' would return to work on the Island so that the money would remain local.

On the day of the Committee's visit to Badu, the Island Council Chairman, Mr Jack Ahmat, was on the mainland attending the graduation of a medical student. The Queensland government had been lobbied and a house was now available for Islander students in Townsville.

Much employment on Badu was CDEP plus '*top up*'. However, Council staff, for example, were on wages. Also on Badu, the private shops did not have CDEP workers; they were either paid wages or on a training scheme.

Dugongs were not harvested commercially, but were harpooned on special occasions such as tombstone openings¹⁴⁴ and weddings. Trochus was harvested commercially, but within a limited size range. The shells were cleaned and the snail meat frozen for sale.

¹⁴³ Refer to Appendix 3 for information on IBIS stores in the Torres Strait region.

¹⁴⁴ A significant cultural practice for Torres Strait communities, it relates to uncovering the tombstones at the end of mourning.

Tourism on Badu was *'not in full swing yet'*. The Council felt that control was important and although tourism generated money, *'it can destroy a community'*. There was some thought being given to building a motel, which could work in conjunction with the Council's dancing group and the high number of Torres Strait Islander artists resident on Badu.

(iv) Management of alcohol

The Council ran the only *'pub'* on the Island, and it was *'the most northern pub in Australia'*. It was open from 10 am until 10 pm. The *'pub'* was viewed as being of benefit to local people, with residents from other islands coming by boat to purchase alcohol and staff making deliveries to the boats.

If someone at the *'pub'* was involved in *'a punch up or something'*, that person would be barred from the *'pub'* for two to four years. If the same person was barred a second time, a penalty up to a life ban might be imposed, or alternatively bans of between eight to 19 years as was recorded on the *'pub's'* notice board at the time of the Committee's visit. The Committee was told that local people *'must have respect for the pub, for the enjoyment of the people in Badu'*. The Committee was also told that there was not a problem with alcoholism on Badu: *'There are the odd ones but they are barred'*.

There was no Alcohol Management Plan on Badu and although government workers had come to develop one; it was felt by the local community that it was not needed on Badu. People were not allowed to take beer outside the *'pub'*, and were only allowed to drink on the premises. The Committee was told that it took a while to educate people that the restrictions were for their own benefit, but that the *'pub'* was working well at the time of the Committee's visit.

(v) Health and related services

The Medical Centre had a permanent residence for a doctor. Unfortunately, at the time of the Committee's visit, the doctor had recently left and the Committee was told that it had been hard to find a replacement. At that time a doctor was visiting the Island once a fortnight. Badu also had qualified nurses there, who worked under the supervision of doctors on Thursday Island. The Committee was told that the arrangement was working well. In cases of serious medial problems a helicopter was called for a medical evacuation.

Sport was seen as a significant health issue on Badu because of the amount of diabetes amongst the Islander population. The Committee was told, however, that sport - *'footy'* (Rugby League) and volleyball - was very popular, from school age upwards. At the time of the Committee's visit the Torres Strait cup there had recently been played at Thursday Island, with the *'All Blacks'* from Townsville included as well as Torres Strait communities. The year before Badu had won the cup.

A health-related initiative was the Council's hydroponics garden. The current non-Indigenous Manager of the plant nursery had been there for four years, and the nursery included hydroponics for herbs and salads that were not able to be grown in the ground because the climate of Badu was too hot. The Committee was told that there was also an emphasis on cultivating local and regional fruits and foods. The hydroponics initiative was not a commercial venture, but was introducing

fresh vegetables into the local diets, *'teaching people to have fruit and vegetables every day'*. The take-away store had both fast and healthy foods, utilising fresh salads from the hydroponics garden.

Figure 5.1 Hydroponics greenhouse in the Badu plant nursery



(vi) Law and order

The Committee was told that the three police officers on Badu were not community police but *'mainstream Queensland police'*. Although not community police they worked with the Council; however, they were not directed by the Council.

When the Committee asked if there were problems with drugs on Badu, it was told that *'there are drug problems everywhere with the young fellas'*. The Council tried to address this by locating jobs for young people and also had put *'tough things in place now and things are steadying down'*. For example, if drugs were used at work (through CDEP) the user would be given a warning and sent home with no pay. This was because of the risk that drugged workers were to their workmates. There was also a second warning, but by the third time, *'they were out of the job'*.

When the Committee asked about more serious law and order problems, it was told that for crimes such as breaking and entering, young people were given a warning that *'next time they will be out of the island for two years and away from their families'*. The Committee was told that a magistrate attends Badu *'once in while'*. However, it was the Council that issued warnings, which were based on policy. The policies were developed at community meetings; which for example would include the CDEP workers, *'and they do the policy themselves'*.

The Committee was also told that the Badu Island State School had developed a successful initiative to address problems with student conduct. Previously, bad behaviour at the school resulted in the students being sent home and barred. However, sending the students home was not a solution; *'it was the wrong penalty'*. Teachers had threatened to leave. After an interagency and community meeting a solution, the *'back to learning room'*, was developed and it had been very successful. The Community was told: *'We bring everyone in and can work on it.'*

Badu Island State School had also been recommended to the Committee by the TSRA as an example of good retention/attendance outcomes being achieved at community level. Badu State School is discussed in more detail next.

(c) Badu Island State School

Figure 5.2 Badu Island State School



(i) How the school operated

The Committee had the opportunity to meet with Ms Kaye Ahmat, Deputy Principal of Badu State School, who had been teaching at the school for 11 years. Ms Ahmat highlighted that the Principal, Mr Steve Foster, a local man, was committed to working with the community, and explained that he insisted that the school, parents and community need to do everything together: *'No-one can come back at you if you work in this way.'*

At the time of the Committee's visit, school attendance at Badu Island State School was 88 per cent but it was felt by the school that *'it could be better'*.

(ii) 'Return to learning room'

Ms Ahmat described the 'return to learning room' initiative as '*nothing fancy but it worked for us*'.

The Committee was told that four years ago it was noted that behaviour at the school was deteriorating. Mr Steve Foster, the Principal, was respected by the students but he was away a lot of the time and the new teachers were being tested. Ms Ahmat advised that the Principal worked very closely with the community and Council, and after being at the school for 16 years had brought a lot of stability to it. When Ms Ahmat, who was in charge at the time due to Mr Foster's absence, noted the problems she went to the Council saying the school needed help.

As the councillors had been hearing about the same misconduct happening out of school, a community meeting was convened. The Committee was told that about 80 people attended, including parents and teachers, and everyone had the same concerns. Further meetings were held and strengths and weaknesses, including the behaviour of the students, were '*brainstormed*'. Twenty-five different ideas were identified; some were involved and others simple, including role models and '*adopt a cop*'. It was decided to try something simple '*to get started*'.

The Committee was told that the community came up with a '*time out room*'. It was decided there should be something positive as well, and the '*Funtastic Friday*' was proposed. The time out room was to be located away from the school and run by community people who were not employed by Queensland Education. That caused problems, however, and in the end it was decided that a room at the school which could be supervised by teachers and aides was most appropriate. Four or five people - men and women - were identified as having authority with the students and were to supervise the '*time out room*'. This was in a classroom that had been blacked out with curtains.

However, the idea of a '*time out room*' was not liked and the initiative changed to a '*back to learning room*'. The behaviour management techniques used in the room were the same as those in the classrooms, and for example, there would be three warnings before the next step was implemented. There were also very strict processes and paperwork. The child was first referred to the Principal '*for a chat*'. The child was then sent with a Community Liaison Officer with a written referral to the parents.

Once a child was put in the room he or she had to earn the right to get back; '*smiley faces*' were awarded for good behaviour and if three were awarded in a session, the child could return to the mainstream class. There was a maximum time of one day in the '*back to learning room*'.

The child was given a paper to take back to the teacher when returning from the room; the paper recorded the time on it of when the requirements met. It worked as '*a re-entry notice*' stating '*you can do it!*' As a result, '*The child knows what they did and how to make it better*'. Students could also get onto a '*deadly level*' in the classes for not going to the room; however, they were contracted for two weeks after getting out before they could re-earn their '*deadly*' status. All of this information was in the note that was sent with the Community Liaison Officer and the child to

the parents. It was seen as crucial that all of this information went back to the student's home, and also that it was taken up with parents later.

More recently it was felt that use of the room '*started to become a bit overdone*' and since then other requirements have been added before the students can be sent to the room. There were 27 students in the room when it started; on the day of the Committee's visit there was one.

The positive part of the initiative was the '*Funtastic Friday*'. This was held on Friday afternoons, and teaching aides, teachers and students including those in the '*back to learning room*' all participated. The focus is on activities that everyone can enjoy.

The Committee was told that flow on from these initiatives went beyond the school and into the community too. As a result this was '*a community strategy - not just for school*'.

There had always been '*time out*' at the school but it was '*higgledy piggledy*'; with no uniform paper work and what there was, was kept in different places. '*Now there is no negotiation*' as there was a clear policy in place. Referrals were less than a quarter of the number there were originally, and the reasons had changed from being for misconduct such as swearing at teachers, throwing chairs and wheelie bins, to tending to be more about a refusal to work.

The Committee was told that because these initiatives were community ideas there had not been one parent '*who bucked the system*'. The involvement of parents was seen as crucial: '*We involve the parents, have the paperwork and send a car to get them straight here.*'

At the time of the Committee's visit, it was told that the room was '*empty most of the time and it is lovely teaching here now*'. Although the students still might '*act up*' this happened less often: '*But you can't start it - it has to be a community thing and that's why this works.*'

(iii) 'You can do it!'

Ms Ahmat told the Committee that a culture was developing amongst Badu State School students as a result of what they did at school. It was based on a program known as '*You can do it!*'. Ms Ahmat advised that this was not a unique program, but that the generic program has been '*localised*'. The program was based on students identifying who they are and being successful. The goals were to:

- get along together;
- be confident;
- be organised;
- be persistent; and
- have emotional resilience.

The contract for students after being in the 'back to learning room' was based on these principles.

Figure 5.3 Badu Island State School 'You can do it!' program

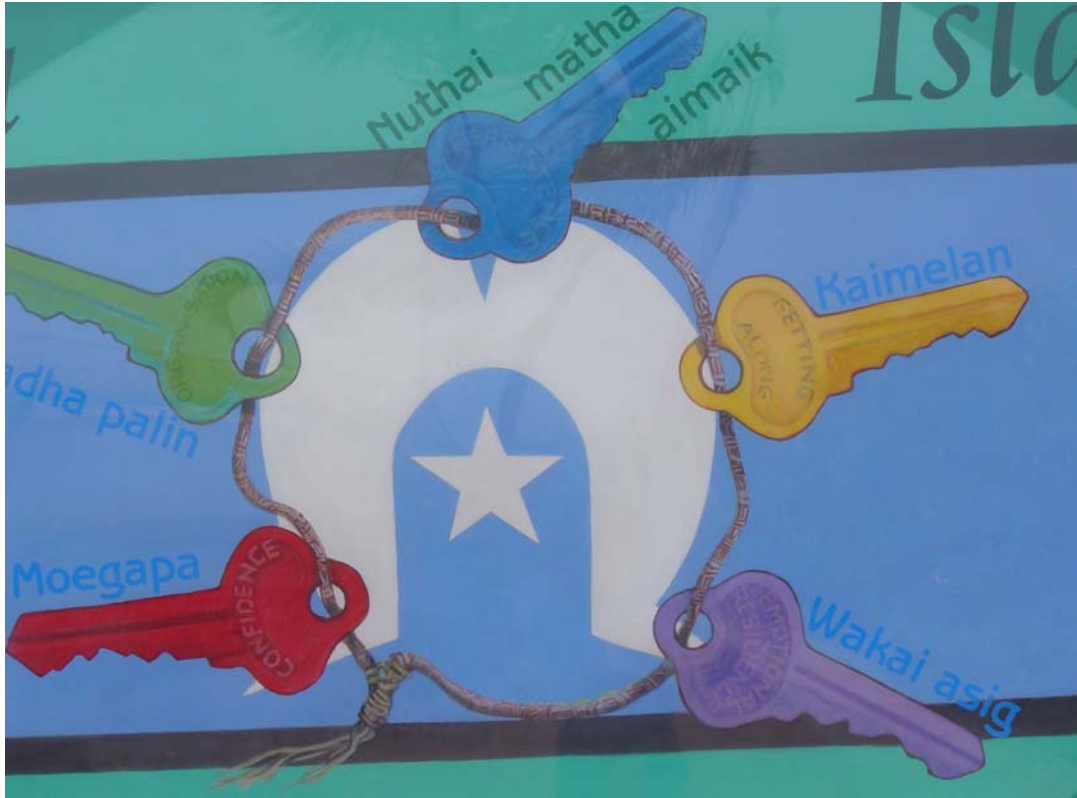


Figure 5.4 Badu Island State School localised version of 'You can do it!' program



(iv) Other issues

The Committee was told that the transition to high school was not working well for Badu students. The problem was that it was much more for students than just going to secondary school; it was going away as well and living in a different context. In particular students found that the rules of a boarding school environment '*made it hard*'. On Badu, young people had a lot of freedom. The result was that many of the young people who should be in high school elsewhere preferred to be on Badu instead.

5.3 Factors leading to success

The broader context of the '*success*' of communities in the Torres Strait region has been briefly outlined in Chapter 5.1.

Against this background, however, there was a persistent and obvious factor which emerged in discussions about the success of various initiatives on Badu, exemplified through the detailed account provided in relation to the development of the '*back to learning room*'. That was a reliance, indeed an insistence, upon community involvement in devising solutions to community problems.

Another factor that appeared integral to success was the implementation of initiatives either by local people or by people who spent a considerable length of time working with the community; in either case, the implementation of the initiatives by those who had established a relationship with the community.

In the Committee's earlier report, Report No. 11, on the Cape York Family Income Management (FIM) initiative, the Committee found that the key factors identified by community members and workers as contributing to the success of that initiative were as follows:

- the modification of the program in response to the communities' concerns;
- the recognition of people's capacity and aspiration to exercise autonomy over their income; and
- the implementation of the initiative by people who were known and trusted by the community.

With slight modification, the same could be said of the key factors which contributed to the successful initiatives on Badu:

- the recognition of people's capacity and aspiration to exercise autonomy;
- the modification of initiatives in response to the communities' concerns; and
- the implementation of initiatives by people who were known and trusted by the community.

Finding 29

The key factors which contributed to the success of initiatives on Badu were:

- the recognition of people's capacity and aspiration to exercise autonomy;
- the modification of initiatives in response to the community's concerns; and
- the implementation of initiatives by people who were known and trusted by the community.

5.4 Costs

The Committee was not in a position to identify the monetary costs associated with specific initiatives on Badu Island, or for that matter, the Torres Strait region more broadly.

Nonetheless, it appears likely from the nature of the processes implemented in the Torres Strait region, including extensive community consultation and involvement, as well as the ongoing adaptation of programs to respond to changing circumstances, that such initiatives are likely to be costly. For example, the development and implementation of the '*back to learning room*' initiative involved lengthy and widespread consultation and rigorous accountability, administratively, to parents and to the community more broadly.

Finding 30

It appears likely from the nature of the processes implemented in the Torres Strait region in relation to the development and implementation of successful initiatives, including extensive community consultation and rigorous accountability, that such initiatives are likely to be costly.

It also appears that, given an approximate population of some 7,000 Indigenous people in the region, the Torres Strait communities have been, at least in more recent times, relatively well funded by government. For example, with a direct annual appropriation of Commonwealth funding alone of over \$55 million p.a. the TSRA's budget is considerable.¹⁴⁵

It is, however, difficult to identify specific allocations given the large number of visitors that are said to come from PNG and who are said to access many of the services provided in the region. It

¹⁴⁵ Torres Strait Regional Authority, PowerPoint presentation, 'The Torres Strait Regional Authority', 17 November 2006, p 2.

is also important to recognise the very poor economic and infrastructure base of the remote Indigenous communities of the Torres Strait, similar to that which is found in many other remote Indigenous communities throughout Australia.¹⁴⁶ The Torres Strait region has been described as follows:

*The region has a history of disadvantage due to its remoteness and size. Its small, sparse population of island communities and low per capita income present major problems creating a viable local economy. Poverty and disadvantage is widespread. Limited employment prospects, high unemployment rates, low post-secondary qualification rates, and low literacy and numeracy skills translate to a generally unskilled workforce. Rates of incarceration are high, as is welfare dependency, illness and mortality.*¹⁴⁷

When considering issues of the costliness of initiatives in such communities, their remoteness of itself will add considerably to the cost of goods and services.

As a result of the additional costs associated with the provision of services and goods in remote communities, and the very poor economic and infrastructure base, the costs associated with initiatives in any remote Indigenous community are likely to be high in comparison to similar initiatives in metropolitan-based communities.

Finding 31

The costs associated with initiatives in the Torres Strait region are, in any event, likely to be relatively high as a result of factors which generally affect remote Indigenous communities, including the poor economic and infrastructure base and the high costs associated with the provision of goods and services.

The cost of resourcing the remote communities of the Torres Strait is also uniquely compounded by the requirement to include provision for the many thousands of visitors that are reported to come from Papua New Guinea each year, under the terms of the Torres Strait Treaty.

The comparison of the allocation for Indigenous Housing and Infrastructure in the Torres Strait region with the allocation in Western Australia is nonetheless revealing. As indicated, the specific allocation for Housing and (Environmental Health) Infrastructure, as reported by the TSRA, included:

- \$100 million over ten years to provide essential infrastructure development (not including housing) through the Major Infrastructure Program; and

¹⁴⁶ See for example, the Committee's Report No. 6, *Where from? Where to?* on remote Aboriginal communities in Western Australia.

¹⁴⁷ Queensland Department of Education, *Bound for Success: Education Strategy for Torres Strait*, 2005, p 4.

- the capital works housing program of \$80 million over the past five years.¹⁴⁸

The total allocation, on an annual basis, averages \$26 million. It is also of note that in relation to both the budget allocations the TSRA identified additional resources as being required - an additional \$250 million and \$32 million respectively.

In Western Australia, there are some ten times the Indigenous population, although it should be noted that only approximately half reside in remote communities with the associated additional cost implications.¹⁴⁹ In 2002, an agreement was entered into between the State, Commonwealth and ATSIC for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander people in Western Australia from July 2002 to June 2007.¹⁵⁰

This agreement provided an indicative breakdown of the funding available for expenditure on Indigenous housing and infrastructure throughout Western Australia in 2002/3. It comprised almost \$100 million from the Commonwealth, with half from the ATSIC administered National Aboriginal Health Strategy (NAHS) program and additional lesser funds for municipal services in remote communities, remote essential services, town planning and Aboriginal rental housing. State Treasury was to contribute \$12.5 million, with additional funding of generally \$4 million p.a. being from the State's Department of Housing and Works utilising untied Commonwealth funding provided under the Commonwealth State Housing Agreement.¹⁵¹ On a per capita basis, the indicated annual allocation in Western Australia was less than half the allocation for residents of the Torres Strait communities.

The Committee does not mean to imply in any way that either the existing level of government resourcing in the Torres Strait region, or indeed the additional resources requested by the TSRA, are not essential. Nor does the Committee mean to imply that expensive initiatives will necessarily solve the problems in remote Indigenous communities. The point is that, apart from the other factors identified, successful remote Indigenous communities and initiatives are likely to be relatively costly because to be successful there needs to be extensive community consultation and ongoing accountability to communities to meet changing circumstances and expectations.

¹⁴⁸ TSRA, 'Issues: Housing and Infrastructure', Available at: www.tsra.gov.au/the-torres-strait/issues/housing--infrastructure.aspx Accessed on 7 January 2008.

¹⁴⁹ ABS, *Population Characteristics, Aboriginal and Torres Strait Islander Australians*, Cat. No. 4713.0, ABS, Canberra, 2001, p 22. According to this data the total Indigenous population of Western Australia was 65,931, almost half of whom (29,751), some five times the Indigenous population of the remote communities of the Torres Strait region, resided in remote or very remote communities.

¹⁵⁰ The Commonwealth of Australia, ATSIC, The Government of the State of Western Australia, *An Agreement for the Provision of Housing and Infrastructure for Aboriginal and Torres Strait Islander People in Western Australia July 2002 - June 2007*, 2002.

¹⁵¹ *ibid.*, p 22.

Finding 32

Apart from other factors, including those identified in Finding 31, successful remote Indigenous communities and initiatives are likely to be costly because, to be successful, there needs to be extensive community consultation and ongoing accountability to communities to meet changing circumstances and expectations.

In Western Australia, in recent times the conditions in remote Indigenous communities have been assessed as follows.

In its *Annual Report 2005-2006*, the Child Death Review Committee stated that:

the environmental circumstances in which many [A]boriginal children died in the north of the state are alarming. These environments lacked service provision, infrastructure and were impoverished and unsafe for children...

*It may be that if circumstance of poverty and neglect underlying the likelihood of death in these communities cannot be managed, and parents are not able to safeguard their children's safety and wellbeing, possible removal has to be given more consideration.*¹⁵²

In early 2007, the Western Australian Special Adviser on Indigenous Affairs described the situation of Indigenous communities in Western Australia in the following terms:

*Disadvantage is reported to be on a par with some of the worst Third World countries. Disengagement by Aboriginal people is at levels not seen since the 1960's.*¹⁵³

¹⁵² Child Death Review Committee Western Australia, *Annual Report 2005-2006*, Child Death Review Committee Western Australia, Perth, 2006, pp 20, 21.

¹⁵³ Sanderson, J, 'Brief to the Minister for Indigenous Affairs in Preparation for a Meeting with Special Adviser on Tuesday 13 February 2007', p 1.

During the current Coronial Inquest into a large number of Indigenous deaths in the Kimberley region, the Coroner was reported as stating that alcohol and drug-related social problems were the result of the '*atrocious conditions these people are living in*'.¹⁵⁴

The benefits of successful communities and initiatives are self evident in this context.

¹⁵⁴ ABC News, 'Coroner accuses Govt of "misdirecting" Indigenous funds', 4 October 2007, Available at: www.abc.net.au/news/stories/2007/10/04/2051303.htm Accessed on 5 October 2007, and see also ABC News, 'Suicide victim's mother pleads for better services', 8 October 2007, Available at: www.abc.net.au/news/stories/2007/10/08/2054099.htm Accessed on 9 October 2007; Strutt, J, 'Forgotten among the squalor', *The West Australian*, 15 October 2007, p 13; and Taylor, P, 'Drink ban town's neighbours have Crossing to bear', *The Australian*, 30 October 2007, p 8.

CHAPTER 6 CONCLUSION

This Report has highlighted two aspects of remote Indigenous communities of the Torres Strait.

The first was the unique representative and governance structures that are in place in the Torres Strait region. Although acknowledging a degree of unnecessary duplication and almost continuous modification, the Committee does not regard these features as altogether negative. These features indicate a capacity to accommodate the changing demographics of the Torres Strait region; the ongoing efforts to be accountable according to both Indigenous community expectations and non-Indigenous financial and administrative requirements; and the interests of both traditional Island communities as well as the more ethnically diverse population of Thursday Island.

Despite the problems associated with the Indigenous representative and governance structures in the Torres Strait region, the Committee believes that the *'Torres Strait model'*, acknowledged broadly as transitional rather than definitive, provides a model for consideration and adaptation in Western Australia.

The second focus of this Report has been on the Badu Island community and the various initiatives implemented in, and by, that community. On the information made available to the Committee about Badu, it appeared to the Committee to exemplify a remote Indigenous community that was successfully tackling the challenges confronting it. The Committee concluded its examination of initiatives on Badu by examining both the model for those initiatives and the costs, in accordance with the Committee's terms of reference for this Inquiry. In the Committee's view a key factor in achieving success was extensive community consultation and ongoing accountability to the community to meet changing circumstances and expectations. The Committee noted that this process of itself is likely to mean that successful initiatives are likely to be costly.

If community consultation is an essential ingredient to the success of remote Indigenous communities and initiatives in the Torres Strait region, there is a critical need for representative structures to be available for other remote Indigenous communities. Such structures must be capable of producing representatives who are obliged to consult their communities, who have a legal capacity to represent those interests, in particular, to non-Indigenous agencies, and moreover whose claims of representative status and legitimacy derive from those they represent.

The Committee believes that this has been achieved to a significant degree for and by the communities of the Torres Strait. The *'Torres Strait model'* has a demonstrated capacity to deliver direct local representation at regional level; is independently constituted and legally recognised; has status under both State and Commonwealth law; has a capacity and flexibility to operate in accordance with communities' distinct cultural requirements and interests; and provides accountability to those communities.

The Committee believes that the representative and governance arrangements in the Torres Strait region have much to commend them and recommends the '*Torres Strait model*' for consideration and adaptation by the remote Aboriginal communities of Western Australia.

APPENDIX ONE

BRIEFINGS HELD

Date	Name	Position	Organisation
13 Nov 2006	Mr Jason O'Brien	Member for Cook	Queensland Parliament
16 Nov 2006	Mr Richard Bowie	Deputy Chairman	Badu Island Council
16 Nov 2006	Ms Kaye Ahmat	Deputy Principal	Badu Island State School
16 Nov 2006	Mr Toshie Kris	Chairman	Torres Strait Regional Authority
	Mr Wayne See Kee	General Manager	Torres Strait Regional Authority
	Mr Damien Miley	Manager, Land and Sea Management Unit	Torres Strait Regional Authority
	Mr Bob Welsh	Policy Officer, Housing and Infrastructure	Torres Strait Regional Authority
	Mr David Curtis	Manager, Special Projects	Torres Strait Regional Authority
17 Nov 2006	Mr Pedro Stephen	Mayor	Torres Shire Council
	Mr Ned David	Councillor	Torres Shire Council
	Mr Roydon Robertson	Chief Executive Officer	Torres Shire Council

APPENDIX TWO

LEGISLATION

Legislation	State (or Country)
<i>Aboriginal Protection and Restriction on the Sale of Opium Act 1897</i>	Queensland
<i>Aboriginal Protection and Restriction of the Sale of Opium Acts Amendment Act 1934</i>	Queensland
<i>Aboriginal and Torres Strait Islander Act 2005</i>	Commonwealth
<i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	Commonwealth
<i>Acts Interpretation Act 1954</i>	Queensland
<i>Community Services (Aboriginal) Act 1984</i>	Queensland
<i>Community Services (Torres Strait) Act 1984</i>	Queensland
<i>Land Act 1964</i>	Queensland
<i>Local Government Act 1993</i>	Queensland
<i>Local Government (Community Government Areas) Act 2004</i>	Queensland
<i>Torres Strait Islanders Act 1939</i>	Queensland

APPENDIX THREE

ISLANDERS BOARD OF INDUSTRY AND SERVICE (IBIS) STORES¹⁵⁵

Background

In 1905 the London Missionaries Society established the Papuan Industries Board to run trading stores in the Torres Strait region. The stores bought produce, mainly pearl and trochus shell, from Torres Strait Islanders and sold consumables. In 1930 the stores were purchased from the Papuan Industries Board and under the *Aboriginals Protection and Restriction of the Sale of Opium Acts Amendment Act 1934* (Qld) what was known as ‘*The Aboriginal Industries Board*’ was formed to run these stores.¹⁵⁶ Under the *Torres Strait Islanders Act 1939* (Qld) that Board was renamed ‘*The Island Industries Board*’ (IIB).¹⁵⁷ The Islanders Board of Industry and Service (IBIS) is the trading name for the retail stores operated in the Torres Strait region by the IIB.

These stores provided trading services until the 1960s, but for the last 40 years or so IBIS has been a business primarily involved in retailing food and other consumables in Torres Strait Islander communities. IBIS stores were expected to provide healthy food to Indigenous communities with the aim ‘*to ensure healthy foods are accessible for residents of these communities, at the best possible price*’¹⁵⁸.

IBIS, although heavily subsidised by the Queensland government both for capital and operational expenses, is now expected to be self sufficient.

The Island Industries Board (IIB)

In 1984 the IIB became a body corporate under section 52(2) of the *Community Services (Torres Strait) Act 1984* (Qld). Under the Act, the board consisted of six members appointed by the Governor-in-Council on the recommendation of the Minister, two of whom were nominated from a panel proposed by the Island Coordinating Council (ICC), a statutory body which consisted of representatives from each Island Council (refer to Chapter 3.4).

¹⁵⁵ The Committee would like to acknowledge the assistance of Mr Francis Baldwin, Project Manager, Operations Program Support, Aboriginal and Torres Strait Islander Partnerships, Department of Communities, Queensland (formerly the Department of Aboriginal and Torres Strait Islander Policy), for the information contained in this Appendix. Unless otherwise indicated, information has been sourced from emails from Mr Baldwin on 18 December 2006 and 16 January 2007.

¹⁵⁶ *Torres Strait Islanders Act 1939* (Qld), section 24. Refer also to Beckett, J, *Torres Strait Islanders: Custom and Colonialism*, Cambridge University Press: Cambridge, 1987, p 55.

¹⁵⁷ *ibid.*

¹⁵⁸ Department of Aboriginal and Torres Strait Islander Policy, *Annual Report 2004-05*, p 34

From 1989 to 2002, the IIB was controlled and run by Torres Strait Islander representatives. The Committee was advised that in the first half of the 1990s the business was profitable. However, over the next seven years there was an:

*increasing trend of poor governance, decision making and operational performance culminating in accumulated operating losses of over \$8 million by 2003.*¹⁵⁹

Because the stores were failing to make a profit or to break even, in 2002 the *Community Services (Torres Strait) Act 1984* (Qld) was changed to enable the appointment of appropriately qualified people (experienced in business and retailing) to the IIB. The objective was to turn the business performance around so that the stores would be profitable. The State government also injected \$5.942 million of recurrent funding *'to get IBIS back on track'*. At a capital cost of \$18.596 million it also recently replaced the outer island stores and two local corner stores on Thursday Island.

The Government agency responsible for the oversight of the IIB, most recently the Queensland Department of Communities, has assessed the new Board as having been successful in turning the business around and advised in early 2007 that *'a profit after depreciation can be reasonably expected in the next two years'*.¹⁶⁰

The Department of Communities advised that significant achievements of the new Board include:

- introducing new systems and procedures which means improved ordering, and a wider variety of goods;
- working with Queensland Health to promote healthy foods, for example, the *'Green is Good'*, *'Mr Vegie Head'* and *'3 and 5'* promotions;
- placing higher margins on *'cokes and smokes'* to subsidise lower prices for fresh fruit, vegetables and milk;
- ensuring best quality freezers, chillers and cold rooms through an intensive asset maintenance and replacement program;
- completing, in 2007, a \$15 million stores replacement program which replaced all 15 stores on the outer islands with modern built-for-purpose stores; and
- keeping prices as low as possible to provide for small profit after depreciation; that is, for the IBIS stores to be self sustaining without future government financial assistance.

¹⁵⁹ Email from Mr Francis Baldwin, Project Manager, Aboriginal and Torres Strait Islander Partnerships, Department of Communities, 18 December 2006, Attachment.

¹⁶⁰ Email from Mr Francis Baldwin, Project Manager, Aboriginal and Torres Strait Islander Partnerships, Department of Communities, 16 January 2007, p 1.

Management of IBIS stores

The IIB met eight or nine times per year and had a number of sub-committees that met between two and six times per year. The Department of Communities was an observer at all Board and Finance and Audit Committee meetings.

In addition to the role of the IIB, the central IBIS office, which was responsible for purchasing, accounting and Human Resources was located in Cairns. The main store on Thursday Island had a non-Indigenous manager while, with the exception of two, all remote stores had Indigenous managers and staff. Support to the local managers was provided by regional managers who reported to a retail manager and then to the Chief Executive Officer. The Committee was advised that IBIS had a strong commitment to training to Certificate 4 level.

Financial performance

IBIS stores annual sales are in the order of \$26 million. Over the last seven years there had also been an injection of significant government funds, referred to previously, for operating costs and capital improvements.

Profit before depreciation in the last three years has been around \$1 million with a post-Depreciation Loss of \$300,000.¹⁶¹ As indicated previously there were significant accumulated operating losses in the late 1990s early 2000s but a profit after depreciation in the next few years is likely.

¹⁶¹ Email from Mr Francis Baldwin, Project Manager, Aboriginal and Torres Strait Islander Partnerships, Queensland Department of Communities, 16 January 2007, p 1.

APPENDIX FOUR

HOUSING AND INFRASTRUCTURE IN THE TORRES STRAIT REGION

The Torres Strait Regional Authority (TSRA) describes its Housing and Infrastructure portfolio as follows:

Housing and basic infrastructure are fundamental requirements for the development, progress and well being of all communities. In the Torres Strait construction standards are being met, but due to the harsh climatic conditions, this is often insufficient. Overcrowding is a major issue and emergency accommodation is required to deal with current inadequacies.

The current joint commitment by the Australian and Queensland Governments under the Torres Strait Major Infrastructure Program (MIP) is \$100 million over ten years (1998-99 to 2007-08). However, it is estimated that an additional \$250 million would be needed to deliver the required environment health infrastructure in the Torres Strait.

The primary objective of MIP is to improve the health and well-being of the Torres Strait Indigenous people by providing essential, appropriate and sustainable environmental health infrastructure. This includes water supplies, reticulated sewerage and treatment plants, serviced housing lots and essential services extensions, roads and stormwater drainage, and solid waste facilities. TSRA has submitted a new policy proposal to the Australian Government for funds to extend MIP until 2015-16. A similar proposal has also been put the Queensland Government.

The commitment of the capital works housing program has been \$80 million over the past five years. While this funding pledge has been welcomed, it is estimated that \$32 million alone is needed to replace dwellings that are earmarked for demolition. Simple one-for-one replacement is not sufficient, as a number of these houses are overcrowded. Homes need to be replaced by at least two structures, depending on the volume of the overcrowding. The Overcrowding Index needs to be applied, rather than assume that overcrowding is acceptable as part of extended family relationships. There is also a need for significant development in Indigenous home ownership options.

The housing needs of the disabled and elderly is another priority for the Torres Strait region, and along with other identified needs, would be better met by ensuring that data obtained through the government Housing Asset Management System (HAMS) process appropriately reflects available community data.

An Integrated Approach

The TSRA is part of the partnership framework operating under the Joint Torres Strait Housing and Infrastructure Agreement. The TSRA, the Island Coordinating Council, the Australian and Queensland Governments signed the Agreement in 1999. The Agreement takes a whole-of-government approach to the provision of housing and related

infrastructure. It provides the strategic aims and objectives for the Joint Torres Strait Housing and Infrastructure Committee (JTSHIC), which has a mandate to develop a strategic housing and infrastructure plan for the region. The TSRA, Department of Housing and Department of Local Government, Planning, Sport and Recreation jointly fund a coordinator's position within the TSRA to manage partnership activities and provide secretariat support to the Partnership.

Substantial progress has been demonstrated in the areas of joint planning and coordination of existing and new housing and infrastructure programs and TSRA plays a significant part in these processes through its added participation on interdepartmental committees. These include the areas of major infrastructure, housing, water related services (operations and maintenance), civil construction and training.

TSRA Approach

TSRA delivers infrastructure strategies via MIP, also administered by TSRA, and offers collaborative input into the coordination and planning of housing and infrastructure under framework agreements. TSRA input into housing and infrastructure is also conveyed via the terms of reference and strategic aims of several interdepartmental committees.

TSRA is working with appropriate government agencies towards developing and implementing a four-year Torres Strait Regional Housing Plan and ensuring that housing and infrastructure needs, outlined in Community Development Plans are given full consideration.

The TSRA will continue to work with partners, community councils, other stakeholders and responsible government agencies, to improve capacity for community councils to ensure ongoing maintenance requirements and cost effective, coordinated and efficient delivery of housing and infrastructure programs and services are being met.

Regional stakeholders will be encouraged to coordinate housing and infrastructure data collection activities and make the data available to each other, while on a community level the TSRA will continue to foster values, ideals and options for increasing home ownership throughout the Torres Strait region.¹⁶²

During its briefing with TSRA representatives in November 2006, the Committee was told that with the largest population of Aboriginal and Torres Strait Islanders in Australia, the TSRA identified housing as the main issue in the Torres Strait.¹⁶³

The Committee was told that since 1996/7 housing and infrastructure has been allocated equal Commonwealth and Queensland funding. Problems which complicated home ownership in the region included the limited opportunity for private purchase given the DOGIT status of land in the islands, other than Thursday Island, Prince of Wales and Horn Islands where there was freehold land. Because freehold extinguished native title it meant land could be purchased in these islands, however, the cost put private housing beyond the reach of the average local person. Elsewhere

¹⁶² Torres Strait Regional Authority, Issues: Housing & Infrastructure, Available at: www.tsra.gov.au/the-torres-strait/issues/housing--infrastructure.aspx Accessed on 7 January 2008.

¹⁶³ Although it was also felt that more needed to be done in relation to health.

native title existed, and the form of tenure as DOGIT lands also limited wealth creation as these could not be used as security for loans. Moreover, the purchase of land could only take place with Council permission.

The TSRA representatives advised that there was a large amount of Department of Housing accommodation on Thursday Island; however, government was the single biggest consumer of housing. Ten years ago there was 70 per cent privately-owned housing, now housing on Thursday Island was nearly all government-owned for use by government employees. The Department of Housing provided some low socio-economic housing as well. But with more government agencies looking at moving to the Torres Strait because of its strategic significance, and the need for a presence on the border, the TSRA representatives were unsure whether the priority would be given to housing government employees rather than low-income local people.

The Committee was told that the TSRA was proposing a Torres Strait Islander home ownership scheme which would allow half the land to be developed and owner-occupied, and the other half to be used as an investment property. However, the Committee was told that the scheme would need to be regulated rather than left to the market, and the TSRA was proposing to trial the scheme with existing freehold land in the next two years provided a model for the transfer of land which was already freehold into the scheme could be developed.

The objective was to provide an opportunity for local people to engage in wealth creation and benefit from the growing demand for land in the region.

APPENDIX FIVE

EDUCATION IN THE TORRES STRAIT REGION

There were approximately 2,500 students in the Torres Strait region, 94 per cent of whom were Indigenous. Twenty schools serviced this population, consisting of:

- 16 State primary schools (from 'Prep Year' to Year 7);
- two State high schools (one from 'Prep Year' to Year 12 and the other for Years 8 to 12); and
- two private primary schools (one for 'Prep Year' to Year 2 and the other for 'Prep Year' to Year 7).¹⁶⁴

The Queensland Department of Education recently published *Bound for Success: Education Strategy for Torres Strait* which identified four key areas of focus:

- *providing high quality education in state schools*
- *supporting student transitions between all schools*
- *building leadership and teaching capacity in state schools*
- *maintaining strong partnerships with the community.*

The implementation of actions across these four elements is designed to improve the attendance, participation, retention and achievement of Indigenous students from the Torres Strait.

As the main provider of education services in the region, the actions around providing a high-quality education and building leadership and teaching capacity apply only to state schools in the Torres Strait. Other actions about supporting student transitions and forming strong partnerships require the support of other parties such as Catholic and independent schools, nongovernment agencies and the Australian Government.

...

For more than 20 years, the Torres Strait Islanders Regional Education Council (TSIREC) has held responsibility for making decisions on education issues in the region, providing advice to education providers and to government on broader policy issues. The Council includes community representatives from each local community and every school in the Torres Strait. As a community based organisation, the Council brings together community members from across the region to set targets for improvement and strategies for

¹⁶⁴ Queensland Department of Education, *Bound for Success: Education Strategy for Torres Strait*, 2005, pp 3, 4.

monitoring progress. A management committee, elected from the Council, meets quarterly to support the Council in its work.

Central to their involvement in education decision making is TSIREC's vision for a 'Yumi' education for Torres Strait Islander children and young people. A 'Yumi' education is one that is culturally and spiritually respectful and appropriate to Torres Strait Islanders. It serves as the basis for building the skills, abilities, attitudes and values that are necessary for each child to develop into a valued, responsible and independent contributor to the society of their choice.

All levels of government recognise TSIREC's role in the region on behalf of Torres Strait Islanders. Since 2000, TSIREC and the Queensland Government have been working together under a framework agreement to improve the educational outcomes of students in the Torres Strait.

...

A key first step to the successful implementation of the strategy will be bringing the community together through the Torres Strait Islanders Regional Education Council. The Council will be involved in progressing the major initiatives of this strategy including the provision of pre-Prep services in the region and supporting student transitions. It will play a key role in monitoring, overseeing and evaluating the implementation of this strategy.¹⁶⁵

¹⁶⁵

Queensland Department of Education, *Bound for Success: Education Strategy for Torres Strait*, 2005, pp 6, 19, 21.

