

**REPORT ON THE OUTCOMES OF THE FIRST PHASE
OF CONSULTATION FOR
A NATIONAL INDIGENOUS REPRESENTATIVE BODY
(NIRB)**

December 2008

National Indigenous Representative Body Unit
FaHCSIA

1. Introduction

The Australian Government is committed to setting up a National Indigenous Representative Body (NIRB) to give Aboriginal and Torres Strait Islander people a voice in national affairs and policy development.

The Government is determined to reset the relationship with Indigenous Australians. To do this, it is involving Indigenous communities in the decisions which affect them to enable a collaborative approach to improving outcomes for Indigenous Australians.

The Government is committed to closing the gap between Indigenous and non-Indigenous life outcomes. The Government has set national targets across six areas, including closing the life expectancy gap within a generation. These challenging targets mean that it is critical that Indigenous Australians are involved in developing policies and programs to improve their lives and that their views are represented to Government through credible mechanisms.

Lessons learnt from past Indigenous representative bodies have shown that there are some aspects of a representative body that do not work well. The Government has communicated some broad principles for this body:

- The Government will not create another ATSIC.
- There should not necessarily be separate elections for the body.
- The body will have urban, regional and remote representation.

Issues Paper

The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma, released an issues paper - *Building a Sustainable National Indigenous Representative Body - Issues for Consideration* - on 12 July 2008. This paper has been a basis for discussion at consultation meetings and has been downloadable through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Australian Human Rights Commission (AHRC) websites.

2. Consultation Process

FaHCSIA undertook the first phase of consultation for the proposed NIRB from July - December 2008. Around eighty meetings and workshops took place during this period. The following consultation activities have occurred:

- *Regional Consultation Meetings*
From July to September 2008, 17 regional consultation meetings were held in all States and the Northern Territory.
- *Indigenous Coordination Centre (ICC) Workshops*
There have been 28 workshops conducted by ICCs in their respective regions.
- *Written Submissions*
Written submissions closed on 19 September 2008 and 106 submissions were received. In instances where permission has been provided, these have been published on the FaHCSIA website.
- *Mail-out to Indigenous Organisations*
Information about the consultation process was mailed to 2300 Indigenous organisations registered with the Office of the Registrar of Indigenous Corporations (ORIC).
- *Meetings with State and Territory Officials*
As agreed through the Ministerial Council for Aboriginal and Torres Strait Islander Affairs, meetings with State and Territory Governments about the NIRB will be held through the Standing Committee on Aboriginal and Torres Strait Islander Affairs (SCATSIA). An initial meeting with SCATSIA was held on 12 December. Further meetings have been scheduled for early 2009.
- *Meetings with peak bodies and other stakeholders*
FaHCSIA has met with a number of peak bodies to brief them on the consultation process and to encourage their participation. FaHCSIA staff have also attended and presented information on the NIRB at other programs and events, such as the Men and Women's Leadership Programs.

An analysis of the key themes emerging from all of the consultation activities to date is detailed in part 3 of this report.

Next Phase

In response to feedback received in consultations for an extended consultation period, Minister Macklin has agreed to a second phase that will be led by an independent steering committee of Indigenous leaders, convened by the Aboriginal and Torres Strait Islander Social Justice Commissioner (SJC). This phase will include a roundtable of Indigenous leaders and further consultation meetings, with the Steering Committee presenting a preferred model to Government by July 2009.

3. Feedback from the Consultations

Following is a summary of some of the key findings and feedback received as part of the first phase of consultation.

In general, there has been a high level of positive and productive feedback and there has been strong agreement that there is a need for a National Indigenous Representative Body.

Key findings

Consultation Process

- **The consultation process should be extended.**

There has been significant concern about the length of time allowed for the consultations and the limited locations visited. Strong support was given to extending the consultation period or (at minimum) conducting a further round of face to face consultations after the roundtable to gain feedback on any proposed model. A second phase of consultations has been agreed to by Minister Macklin, in response to this feedback.

General issues

- **Constitutional recognition of Aboriginal and Torres Strait Islander peoples.**

Constitutional recognition has been consistently raised as a priority and one that the NIRB could progress once established.

- **The UN Declaration on the Rights of Indigenous Peoples.**

Endorsing the UN Declaration has been particularly supported within the regional consultations and written submissions. The Rudd Government has expressed its support for the principles in the Declaration and has been consulting on an appropriate public statement to reflect this.

- **The terms 'Aboriginal and Torres Strait Islander' and 'Indigenous'.**

Across all of the consultation activities, many people have expressed that they are unhappy with the use of the term 'Indigenous' and that they would prefer the terms 'Aboriginal' or 'Torres Strait Islander'.

Role and Functions

- **The NIRB should have an advocacy role.**

Across all consultation activities, the primary role supported for the NIRB is to advocate and be the 'voice' for Aboriginal and Torres Strait Islander peoples. There was strong support for the body to advance and protect the human rights of Aboriginal and Torres Strait Islander people, and garner support for constitutional recognition. In addition, for the body to positively shape and promote Aboriginal and Torres Strait Islander aspirations at the national level and to the broader public.

"The Rep Body will be a 'voice' for Aboriginal and Torres Strait Islander people. This Body will voice our priorities, be able to negotiate, mediate and strategically debate our vision." (Public Submission 9)

- **The NIRB should be able to monitor and evaluate Government service delivery and expenditure for Indigenous Affairs.**

There has been very strong support for a monitoring and evaluation role of government policies and services. Having a productive relationship with the Council of Australian Governments, other senior government forums and Senate Committees was also raised as key to the body's credibility.

"The body should be charged with a review and evaluation role and should monitor and report on the performance of state and federal expenditure." (Public Submission 24)

"The body must have the ability to bring consequences for inaction or under-action by mainstream organisations responsible for Indigenous program delivery. I believe this would assist the Government's agenda of mainstreaming." (Public Submission 33)

- **The NIRB should develop or influence policy.**

Indigenous policy development was raised as an important role that the NIRB should either undertake or have a significant influence into.

"A National body needs to make policy recommendations to all levels of government, otherwise it is a waste of time, a talk fest." (Public Submission 57)

"The primary role of a NIRB should be to provide the Indigenous community with a more prominent voice in the formulation, implementation and review of policy..." (Public Submission 65)

- **The NIRB should have an advisory role.**

Strong support has been given to the NIRB providing advice to Government and other stakeholders in the community and business sector on issues that affect Indigenous communities.

"NIRB would also become a peak advisory group providing both Government, Public Sector and Community based organizations, groups and individuals with advice and representation on Indigenous issues on a state and national level." (Public Submission 7)

- **The NIRB should have clear roles and functions**

There was concern about the body being overloaded or there being confusion about its role.. In some instances it was suggested that there should be a memorandum of understanding (MOU) with the Government or a terms of reference to ensure clarity and manage expectations.

- **The NIRB should consult communities.**

In some of the regional and ICC workshops it was recognised that considering the diversity of communities, it would be a difficult task for the NIRB to represent all views and opinions. However feedback has consistently been that the NIRB should be accessible and accountable and have two-way dialogue with grassroots people. This includes distributing information to local communities about its work, and what is happening in Indigenous and broader Australian affairs.

“to be truly representative for the whole of Indigenous Australia as an advocacy and advisory body is an ambitious and risky goal...Rather than ensuring the NIRB is ‘representative’ of all Indigenous Australia in order to remain viable, the NIRB [should] instead be obliged to ensure it remained accessible for all Indigenous Australian people and communities to engage or not engage as they choose.” (Public Submission 12)

- **Other roles and functions that were put forward include:**
 - Creating links with Aboriginal and Torres Strait Islander organisations;
 - Promoting legislative reform;
 - Following up on the recommendations of reports and inquiries;
 - Some research capacity, but not duplicating existing work; and
 - International engagement on the rights of Indigenous people across the world.

Structure

- **The NIRB should have fair and diverse membership.**

Strong support has been given to balanced representation in the NIRB. In particular, the importance of equity in gender, inclusion of youth and representation from urban, regional and remote communities has been consistently raised. There were mixed views about whether representation should reflect traditional law, culture and tribal groupings. The connected idea of a Circle of Elders received some support in the written submissions and consultations.

“The Executive (of the NIRB) should at all times be represented equally by Aboriginal men and women - and there should be mandated equal representation to ensure that women’s voices are heard and women’s access to the realisation of human rights is guaranteed.” (Public Submission 2)

There should be a balance of youth, middle aged and elders from every state, male and female, educated people and people with life experience...” (Public Submission 15)

“We need a balance of young people as representatives on our peak body also. It’s always easy to presume we know best for our kids, but don’t take the time to ask. I would like to see a balance of 50/50 men and women represented.” (Public Submission 16)

- **The NIRB should be independent from Government.**

There has been strong and consistent support for the NIRB to have independence from Government, in order for it to have a meaningful role and voice in decision making without fear of reprisal. In some cases this was qualified with the form that the body should take e.g. a statutory authority or an Aboriginal corporation. However the majority of feedback to date has not specified this level of detail.
- **NIRB representatives should not be handpicked**

There was widespread opposition to a membership that is handpicked by Government but a number of strong views about the best process for choosing representatives. A majority of people consulted wanted to elect the members, proposing a variety of ways to do this. This was also qualified with the condition that

there should be an application or selection criteria process prior to nominations, to ensure that the NIRB has members with the appropriate knowledge and skill sets. Concerns were raised about how to avoid the problems with the ATSIC elections - either that people were elected with a handful of votes, or that the model disadvantaged minority groups, women or people without large family networks. There was also a strong desire for the model to support the development of new leadership rather than reinforcing the powerbase of existing influential leaders.

"Indigenous peoples are entitled to have a say on who represents them – it is a fundamental principle of self-determination... A national board or executive arm that is not elected in some way will not be representative, will lack legitimacy and credibility."
(Public Submission 24)

"The structure of the National Representative Body should be membership based, whereby communities, organizations and individuals can join and then be represented by a National Board or Executive who are selected (by an expert Indigenous panel) on the basis of skills and expertise, especially in the areas of health and healing, education, law reform, community development, native title and social justice." (Public Submission 2)

"We believe the NIRB should give regional grass roots organisations a place at the table to ensure that they can continue to protect the interests of those they represent."
(Public Submission 93)

Funding

- **The NIRB should have sustainable and mixed funding sources**

There was strong support for Government to provide sustainable funding for the NIRB (particularly a main theme within the written submissions). However it was also felt that in order for the NIRB to have an independent voice it should not be reliant on government funding and should have alternative funding sources, for example through membership fees or fee-for-service. .

"The outcomes must be our own and we cannot feel like our funding will be cut if we stand up and speak out against a government policy or program."
(Public Submission 8)

Operations

- **The NIRB needs to be open and transparent**

It was also suggested that the operations and decision making by the NIRB should be open and transparent.

"The representative body should be held accountable for their time, actions and any decisions they make on behalf of the Aboriginal people of our land. For the representative body to be a true voice for Indigenous Australians they need to be able to hear what it is the Aboriginal people want and or need..." (Public Submission 44)