Identifiable Commonwealth Expenditure on Aboriginal and Torres Strait Islander Affairs
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Social Policy Group
25 May 1998
Acknowledgments

The author would like to thank Geoff Winter for his help producing the paper's table and graph, Sean Brennan for his comments on the text and Angela Nagy for her formatting assistance.

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Contents

Introduction ........................................................................................................................... 1

Expenditure from 1967–68 to 1998–99 ................................................................................ 1

The proposition that the definition of Aboriginality is too loose......................................... 5

The proposition that indigenous Australians are receiving more than their
fair share of Commonwealth money ..................................................................................... 7

The proposition that Commonwealth expenditure would be more
effective if most indigenous services were mainstreamed ................................................... 8

Conclusion ............................................................................................................................. 9

Endnotes .............................................................................................................................. 10
Expenditure on Aboriginal & Torres Strait Islander Affairs

Introduction

This paper offers an overview of identifiable Commonwealth expenditure in the area of indigenous affairs from 1967–68 to 1998–99 and presents arguments for and against three propositions which are often put in debates over this expenditure.


Identifiable Commonwealth expenditure in the area of Aboriginal and Torres Strait Islander (ATSI) Affairs began with the establishment of the Office of Aboriginal Affairs soon after the landmark referendum in 1967. It was relatively low in the first few years (indeed, the figure for the financial year 1967–68 of $13 000 is too small to include in the table) but increased significantly with the creation of the Department of Aboriginal Affairs (DAA) soon after the Whitlam Government came to office in December 1972. It increased again in 1985 when the relevant expenditure by other Commonwealth departments started to be separately identified. In 1990 the DAA was replaced by the Aboriginal and Torres Strait Islander Commission (ATSIC) and at about that same time several other specialist Indigenous agencies started to have their expenditure separately identified. By 1992–93 total identifiable Commonwealth expenditure in the area exceeded $1.4 billion.

In 1993–94 ATSIC expenditure continued to increase but overall Government expenditure in the area fell slightly as a result of lower identifiable expenditure by other Departments. In 1996–97 overall Government expenditure fell slightly, this time primarily as a result of a reduction in ATSIC's budget. Since then, total identifiable Commonwealth expenditure has risen much more than has ATSIC expenditure—the reason being that ATSIC has lost responsibility for several areas which have been attracting increased Commonwealth support. Responsibility for health shifted from ATSIC to the mainstream department in 1995–96. Responsibility for land acquisition and management shifted to the Indigenous Land Corporation between 1995–96 and 1996–97. Responsibility for the Torres Strait shifted to the Torres Strait Regional Authority in 1994–95.

The table and graph overleaf are based on data presented in various DAA and ATSIC Annual reports, and the ministerial statement of 12 May 1998 entitled Addressing Priorities in Indigenous Affairs. It is important to note the following:

- the main agency figures include loans and grants to organisations, payments to State and Territory governments, and running/administration costs
- as the names of departments, agencies and programs have varied over the years only general descriptors of these areas and portfolios are used, and
- some Indigenous specific agencies which appear on the graph in the 1990s had predecessors in the 1980s (expenditure included under 'Other main agency expenditure').
### IDENTIFIABLE COMMONWEALTH EXPENDITURE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS, 1968-69 TO 1998-99

($ millions)

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</table>

**Main ATSI agency (a) --**

- Employment
- Health
- Legal aid
- Housing
- Community infrastructure
- Education
- Native Title and Land Rights
- Other

**Other specific ATSI agencies --**

- ATSICDC
- Aboriginal Hostels
- Aboriginal Benefit Reserve
- AIATSIS
- TRA
- ILC

**Other portfolios --**

- Employment, Education and Training
- Housing
- Social Security
- Health

**Total -- ALL:**

- 10.1
- 8.9
- 20.0
- 24.0
- 44.3
- 78.3
- 124.8
- 138.9
- 121.0
- 124.3
- 132.6
- 140.8
- 159.4
- 168.8
- 198.0
- 242.8
- 281.2
- 295.1
- 332.1
- 377.4
- 450.0
- 508.2
- 604.4
- 609.8
- 796.8
- 888.1
- 941.5
- 965.0
- 948.9
- 973.6
- 960.3

**Total -- all:**

- 32.6
- 76.7
- 76.5
- 78.4
- 85.7
- 126.7
- 125.5
- 144.3
- 157.7

**NOTE:** Figures for 1997-98 and 1998-99 are estimates only.

**Source:** Annual Report of the main ATSI agency, various years; *Addressing Priorities in Indigenous Affairs*, Statement by the Minister for Aboriginal and Torres Strait Islander Affairs, 12 May 1998.
Identifiable Commonwealth Expenditure on Aboriginal and Torres Strait Islander Affairs, 1968-69 to 1998-99

- Main agency employment
- Main agency health
- Main agency legal aid
- Main agency housing
- Main agency community infrastr.
- Main agency education
- Main agency Nat.Tit.,Land Rights
- Other main agency expenditure
- ATSI Commercial Devel. Corp.
- Aboriginal Hostels
- Aboriginal Benefit Reserve
- Aust. Institute for ATSI Studies
- Torres Strait Regional Authority
- Indigenous Land Corporation
- Employ., Educ., Training portfolio
- Housing portfolio
- Social Security portfolio
- Health portfolio
- Other portfolios

Grand Total at 1997 prices

$ millions
The proposition that the definition of Aboriginality is too loose

Since identifiable expenditure on Aboriginal-specific programs started to increase rapidly a decade ago, there have been many suggestions that the Federal Government's administrative definition of Aboriginality was too loose. Arguments in favour of this proposition include:

- The increase in identifiable expenditure followed, albeit by five years, the introduction in 1980 of the following administrative definition: 'An Aboriginal or Torres Strait Islander person is a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he (she) lives.' This three-part definition soon started to enter legislation (e.g. Aboriginal Land Claims Act 1983, s. 2) and was accepted by the High Court (Mr Justice Deane in Commonwealth v. Tasmania 1983) as giving meaning to the expression 'Aboriginal race' within s. 51 (xxvi) of the Constitution.

- The proportion of the population which can identify as Aboriginal has been continuing to increase well in excess of natural increase (in the 1996 Census 352,970 people identified as indigenous, 33 per cent more than in the 1991 Census) and this will always be the case (given a present level of preparedness to identify as indigenous and present rate of intermarriage) so long as a child only needs to have one parent who identifies as indigenous in order for them to identify also as indigenous.

- There are alternatives. For more than sixty years the Commonwealth used a narrow definition of Aboriginal. As early as 29 August 1901 Attorney-General Alfred Deakin advised that 'half-castes' are not 'aboriginal natives' within the meaning of s. 127 of the Constitution. The opinion was endorsed by Attorney-General Isaac Isaacs in October 1905 and repeated in each Census Report form 1911 to 1966.

- The Federal Government's three-part administrative definition of Aboriginality is out of step with the genealogical definition used in many pieces of Federal legislation: 'Aboriginal' means a person who is a member of the Aboriginal race of Australia.

- The Federal Court has been flexible in its interpretation of the Government definition of Aboriginality. In Attorney-General (Cth) v. State of Queensland (July 1990) the full Court found that Aboriginal descent was sufficient grounds for the Royal Commission into Aboriginal Deaths in Custody to inquire into the death of Darren Wouters, even though the community did not identify him as Aboriginal nor did he identify himself as Aboriginal. Conversely, in Edwina Shaw & Anor v Charles Wolf & Ors (1998) Justice Merkel found that descent did not need to be proved 'according to any strict legal standard' and that 'descent is a technical rather than a real criterion for identity, which after all in this day and age, is accepted as a social, rather than a genetic, construct.'

Arguments against the above proposition include:

- There is no blood test or physical examination which can establish Aboriginality. Scientists long ago recognised 'race' to be a social construct with no biological basis, that
genetic and morphological variation within the human species is far too small to sub-divide the species, and that it is much more useful to conceive of the species in terms of 'populations' suggested by region, culture, caste, religion, kinship and frequency, not exclusiveness, of genetic traits.³

• The definitions based on degrees of Aboriginal or non-Aboriginal blood which were used for decades in State legislation produced capricious and inconsistent results based, in practice, on nothing more than an observation of skin colour. Drawing on documented sources, the historian Peter Read has offered the following conflation:

  In 1935 a fair-skinned Australian of part-indigenous descent was ejected from a hotel for being an Aboriginal. He returned to his home on the mission station to find himself refused entry because he was not an Aboriginal. He tried to remove his children but was told he could not because they were Aboriginal. He walked to the next town where he was arrested for being an Aboriginal vagrant and placed on the local reserve. During the Second World War he tried to enlist but was told he could not because he was Aboriginal. He went interstate and joined up as a non-Aboriginal. After the war he could not acquire a passport without permission because he was Aboriginal. He received exemption from the Aborigines Protection Act - and was told that he could no longer visit his relations on the reserve because he was not an Aboriginal. He was denied permission to enter the Returned Servicemen's Club because he was.⁴

• The three-part definition helps protect individuals from the prejudice of contemporary society. One of the main findings of a recent study was that 'mainstream Australians' are very ready to use labels such as 'half-caste' and '1/16th black', to consider 'real' indigenous people as living somewhere else and to see the 'white' indigenous person as manipulating the system.⁵

• In countries such as Canada where the Federal Government was involved in indigenous affairs from an early date, 19th and early 20th century categorisations of indigenous people have become entrenched and present enormous problems for individuals and families.

• The inclusion in the present definition of self-identification fits well with such definitions as that considered by the UN Working Group on Indigenous Populations in 1986:

  Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies..., consider themselves distinct from other sectors of the societies now prevailing in those territories.... They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.⁶

• The three-part nature of the present administrative definition produces a tighter definition than that which would result from one based only on descent and indeed, when the Government introduced its ATSIC Bill in 1988, it was criticised by the Coalition and the
Democrat spokespeople on Aboriginal Affairs for using the broader, and arguably circular, definition of an Aboriginal person as 'a person of the Aboriginal race of Australia'.

The proposition that indigenous Australians are receiving more than their fair share of Commonwealth money

Arguments for the proposition include:

• With only 2.1 per cent of the total Australian population identifying as indigenous, per capita Commonwealth expenditure on Aboriginal and Torres Strait Islander people is high and contributing to the spread of welfare dependency among indigenous people.

• Some Indigenous specific entitlements appear to have more generous conditions than do their mainstream equivalents (eg. the parental means test for Abstudy's living allowance and the eligibility criteria for Abstudy's school/hostel directed boarding allowance).

Arguments against the above proposition include:

• By any socio-economic indicator Indigenous Australians are far worse off than non-indigenous Australians. Numerous reports identify massive unmet need, especially in the area of housing and infrastructure for remote Aboriginal communities, and, as high as present expenditure is, it is following decades of neglect and legal discrimination.

• Less than 10 per cent of Commonwealth's assistance to Indigenous people is in the form of payments to individuals—most funding goes to organisations addressing chronic needs.

• Nearly a third of Commonwealth wide indigenous specific expenditure substitutes to a large measure for expenditure on mainstream assistance programs (eg. Abstudy for Austudy, Community Employment for Newstart, Community Housing for housing under the Commonwealth-State Housing agreement, Aboriginal Legal Aid for general legal aid, Aboriginal Medical Services for Medicare supported services).

• An estimated 10 per cent of identifiable Commonwealth expenditure on Indigenous Affairs is for services which are arguably the responsibility of other levels of government. Indeed, the latter often appear content to leave the provision of Indigenous services to the Commonwealth, in particular ATSIC, even when well positioned to deliver them.

• The aged, the disabled, the young, people in the arts, veterans, farmers and many other groups within Australian society are entitled to special government assistance—with, for example, the Diesel Fuel Rebate Scheme costing as much as all of ATSIC's activities.

• Indigenous Australians utilise mainstream services and benefits such as Pharmaceutical Benefits and Aged Care at a lower rate than other Australians. In fact, in 1993–94 the sum of mainstream and specific health expenditure on Indigenous people (then 1.6 per cent of the population) was only 1.26 per cent of total Commonwealth health expenditure.
Most Aboriginal-specific programs are not generous in their entitlements (e.g. the Community Development Employment Projects, nearly one third of ATSIC’s budget, offer working participants no more than a Newstart allowance, without (prior to the 1998 Budget) associated Social Security concessions and supplements.

The proposition that Commonwealth expenditure would be more effective if most indigenous services were mainstreamed

Arguments in favour of the proposition include:

- ATSIC’s role as a representative political body could be separated from its role as a service provider.

- The delivery of Government service on grounds of Aboriginality not only generates resentment in the community (which does not assist the people the services are meant to benefit), and may add to welfare dependency.¹²

- Aboriginal and Torres Strait Islander specific programs (other than those concerned specifically with land and culture) could be run either as such by mainstream specialist agencies (just as the Department of Education has administered Aboriginal and Torres Strait Islander student assistance since 1988 and the Department of Health has had responsibility for Aboriginal Medical Services since 1995) or, when they substitute for easily accessible mainstream programs, could be abandoned in favour of the latter.

- In some cases an Aboriginal and Torres Strait Islander specific program (e.g. Community Development Employment Projects) could become a program open to all Australians.

Arguments against the above proposition include:

- Mainstream agencies lack the cultural sensitivity to deliver services successfully to indigenous Australians.

- Indigenous control of these services is essential for the advancement of Aboriginal self-determination and reconciliation.

- The accountability requirements of Aboriginal and Torres Strait Islander organisations are strict compared with those imposed on the States and Territories for their use of Commonwealth money intended for indigenous advancement.

- Many problems may be solved by changing, not ATSIC, but the Aboriginal Councils and Associations Act 1976, so that inappropriate corporate structures are not forced onto small bodies which are supplying essential services.
Conclusion

The above study will hopefully put identifiable Commonwealth expenditure in the area of Aboriginal and Torres Strait Islander Affairs in a useful historical and public policy context. The question for policy makers is not so much whether money should be directed to address indigenous needs (the potential cost of the social problems arising out of not addressing these needs could be higher than the cost of addressing them), but rather how to find a way forward on the service delivery front given the above arguments for and against mainstreaming and given indigenous peoples' wider aspirations in the not unrelated areas of human rights, land rights, constitutional reform and recognition of customary law. It may be that at many points the best way forward lies somewhere between the opposing positions characterised above. It may also be that there are entirely different ways forward.

An alternative to either tightening or loosening the administrative definition of Aboriginality may be to have no definition. Certainly, as Justice Merkel noted in his recent decision on the validity of the 1996 ATSIC Regional Council election in Tasmania, 'some criterion is necessary to define the beneficiary group' of some of the laws which are 'seeking to redress some of the wrongs of the past'. Given, however, as the Justice also observed, that 'Aboriginality as such is not capable of any single or satisfactory definition' and that the number of those identifying as Aboriginal can increase by 33 per cent between two censes and is likely to continue to increase well in excess of natural increase, should Governments be using Aboriginality as a criterion for program eligibility? Could different terms or criteria be used in different situations? Eligibility for election to a political body which is meant to represent and lobby on behalf of people who identify as indigenous and are identified by the community as such would have to be in those terms. Eligibility for a benefit or program could, however, be in terms of descent from a traditional owner, recognition as custodian, health, employment or educational need, language used etc., depending on the particular purpose of the benefit or program. Community housing and infrastructure assistance could depend on infrastructure need (an indisputable need in most communities identifying as Aboriginal).

An alternative to both the ATSIC and mainstream model of service delivery, may be regional bloc funding. Such funding might be an extension of administrative agreements between interested parties, might involve establishing new statutory regional authorities (along the lines of the Torres Strait Regional Authority) or might involve setting up new regional governments (as happened in the Norfolk Island Act 1979). Such authorities or governments could be based on regions (or communities) and not Aboriginality (as is the self-governing, predominantly Inuit region of Nunavut in Canada).
Endnotes


2. e.g. *Aboriginal and Torres Strait (Queensland Discriminatory Laws) Act 1975*, *Aboriginal Land Rights (Northern Territory) Act 1976*, *Aboriginals and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978*, *Aboriginal Development Commission Act 1980*, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.


4. From an as yet unpublished paper presented at the Aboriginal Citizenship conference at the Australian National University in February 1996.


8. For the many harder-to-substantiate but widely held beliefs which help give the above proposition community acceptance, see the report produced by Brian Sweeney and Associates, *A New Beginning: Community Attitudes towards Aboriginal Reconciliation*, Aboriginal Reconciliation Branch, The Department of Prime Minister and Cabinet Study No.9413, January 1996.


