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**Reshaping governance in Torres
Strait: the Torres Strait Regional
Authority and beyond**

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- identify and analyse the factors affecting Aboriginal and Torres Strait Islander participation in the labour force; and
- assist in the development of government strategies aimed at raising the level of Aboriginal and Torres Strait Islander participation in the labour market.

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ABSTRACT

Getano Lui (Jnr) suggested in his 1993 Boyer Lecture that it was time to 'build a new framework' for Torres Strait and that this might be negotiated in time for the centenary of the Australian Constitution in 2001. This paper examines possibilities for reshaping governance in Torres Strait, particularly the idea of Torres Strait regional government. It does so in the light of the history of settlement and contemporary population characteristics in the Strait and also the history and development of local and regional structures of political representation. It pays particular attention to events leading up to the establishment in July 1994 of the Torres Strait Regional Authority (TSRA) within the Commonwealth Aboriginal and Torres Strait Islander Commission (ATSIC). Under the labels of other authorities, constituency and confederal representation, it also examines some key issues which are likely to arise in attempts to move beyond the present structure towards fuller regional government. Some consequences of one possible and likely approach to the constituency issue are explored and a brief concluding comment is made about the relationship between these developments in Torres Strait and interpretations of Australian federalism.

Acknowledgments

My greatest debt in the development of this paper is to my colleague Bill Arthur. He provoked my interest in the subject and provided useful comments based on first-hand experience of Torres Strait. I also had useful conversations with Mark Kelleher, Queensland Department of Housing, Local Government and Planning, Barry O'Donoghue and Max Barrie, Queensland Department of Family Services and Aboriginal and Islander Affairs and Pedro Stephens, Torres Shire Council. Jeremy Beckett and Jon Altman provided comments on an earlier draft of the paper. Thanks go to Krystyna Szokalski and Linda Roach for editing and layout, and to Hilary Bek, Nicky Lumb and Belinda Lim for proofreading.

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Foreword

In 1994, the Centre for Aboriginal Economic Policy Research (CAEPR) made a concerted effort to focus a significant proportion of its research effort on Torres Strait issues. This decision was influenced by a number of factors. First, a combination of the High Court *Mabo* decision in 1992, the passage of the *Native Title Act 1993* and the formation of the Torres Strait Regional Authority (TSRA) in 1994, have given Torres Strait a special significance in contemporary indigenous affairs policy in Australia. Second, specialist staff resources were available in 1994 to focus on Torres Strait. Bill Arthur visited CAEPR on secondment from the Australian Institute of Aboriginal and Torres Strait Islander Studies for three months (April to July). Richard Davis, a doctoral student in the Department of Archaeology and Anthropology, Faculty of Arts, ANU, who joined CAEPR for a short period, has resided on Saibai Island in Torres Strait where he undertook anthropological fieldwork. Third, CAEPR maintains a commitment to focus a proportion of its research effort on Torres Strait Islander issues.

This paper is one in a set of four CAEPR Discussion Papers, Nos 71-74, being released simultaneously. They focus on: socioeconomic change in Torres Strait between 1986 and 1991 (No. 71); socioeconomic differences between Torres Strait Islanders living elsewhere in Australia and in the Strait (No. 72); the development potential of commercial fisheries in Torres Strait (No. 73); and the new Torres Strait Regional Authority as a political structure and its potential implications for future regional government (No. 74). Richard Davis's discussion paper on the Saibai Island microeconomy and its development potential will be completed and published at a later date. It is anticipated that additional work on Torres Strait issues, some specifically for the TSRA, will be undertaken in 1995.

There is currently no readily available map that indicates the coverage of the TSRA. A number of people assisted us in eventually determining the current boundaries. These people included Benny Mills, Office of Torres Strait Islander Affairs, ATSIC, Canberra; George Menham and John Spottiswoode, TSRA, Thursday Island; David Singh, Gai Popovic and Jo Victoria, ATSIC, Canberra; Graham Glover, Department of Foreign Affairs and Trade (DFAT), Canberra; Alistair McGaffrey, DFAT, Thursday Island; and David Dobson, Australian Land Information Group, Canberra. The resulting map was drawn by Ian Heyward, Department of Human Geography, Research School of Pacific and Asian Studies, ANU. We emphasise that the map is preliminary and presented for research purposes; it is based on best available information at October 1994.

Jon Altman
Series Editor
October 1994

Getano Lui (Jnr) in his 1993 Boyer Lecture suggested that it was time to 'build a new framework for Torres Strait'. What precisely that new framework might look like, Lui could not foretell. However, he hoped that it could perhaps be negotiated over the next few years in time for the centenary of the Australian Constitution in 2001. One possibility which Lui identified, but did not expand upon, was 'a new Australian Constitution big enough to embrace Islander and Aboriginal peoples'. He also looked with interest, and more expansively, to the example of Australia's three existing 'inhabited island territories - Norfolk, Christmas and Cocos-Keeling - each with its own tailor-made local constitution. 'There is no reason', he argued, 'why a Torres Strait regional government cannot be devised' based on some similar 'specific island territory constitution' (Lui 1994: 67-70).

At much the same time as Lui's lecture, the Commonwealth Government was enacting legislation for a new Torres Strait Regional Authority (TSRA) to come into operation from July 1, 1994. This new Authority would exist within the Commonwealth's Aboriginal and Torres Strait Islander Commission (ATSIC) and its jurisdiction would extend to all Torres Strait Islander and Aboriginal people resident on the islands of Torres Strait, except Barn and Crab Islands, and in the communities of Bamaga and Seisia on the tip of Cape York. Although the TSRA would itself be a new framework for Torres Strait, Lui was clearly looking beyond it in his Boyer lecture. He envisaged further significant reshaping of governance structures in Torres Strait over the next few years.

The TSRA is now in existence and Lui is its inaugural chairperson. The 1994-95 Corporate Plan for the Authority suggests that Lui's view of the new body as only a stepping stone to some other arrangement for Torres Strait is also more widely held. The Plan states that:

In recommending the creation of a new Torres Strait Regional Authority, the Aboriginal and Torres Strait Islander Commission saw its creation as a transitional arrangement providing a basis for a progressive negotiated movement towards greater regional autonomy in the delivery of programs and services for the Torres Strait (TSRA 1994a: 13).

The Plan also states that the Authority 'will develop proposals to achieve self-determination in stages' for Torres Strait and that these will be agreed on by 'the people of the Torres Strait' and the 'Commonwealth and Queensland Governments' (TSRA 1994a: 13).

In the normal course of Australian politics, such proposals for major reshaping of the governance structures of a single small region within an existing large state might be easily dismissed as wishful thinking. The more than 100 islands of Torres Strait have, after all, been part of Queensland since the 1870s and, in comparison with the self-governing island territories, are much closer to the Australian mainland and to an

important international border for Australia. This would all seem to count against the possibility of greater regional autonomy for Torres Strait.

However, at present, through a conjunction of circumstances, there is a reasonable possibility that some major reshaping of governance structures in Torres Strait will occur. Since 1987/8, those living in the Strait have successfully mobilised ideas about cultural difference and physical discreteness in a strong push for greater regional autonomy. The TSRA is, itself, evidence of the success of this push, but the reshaping of regional governance in Torres Strait may yet proceed significantly further.

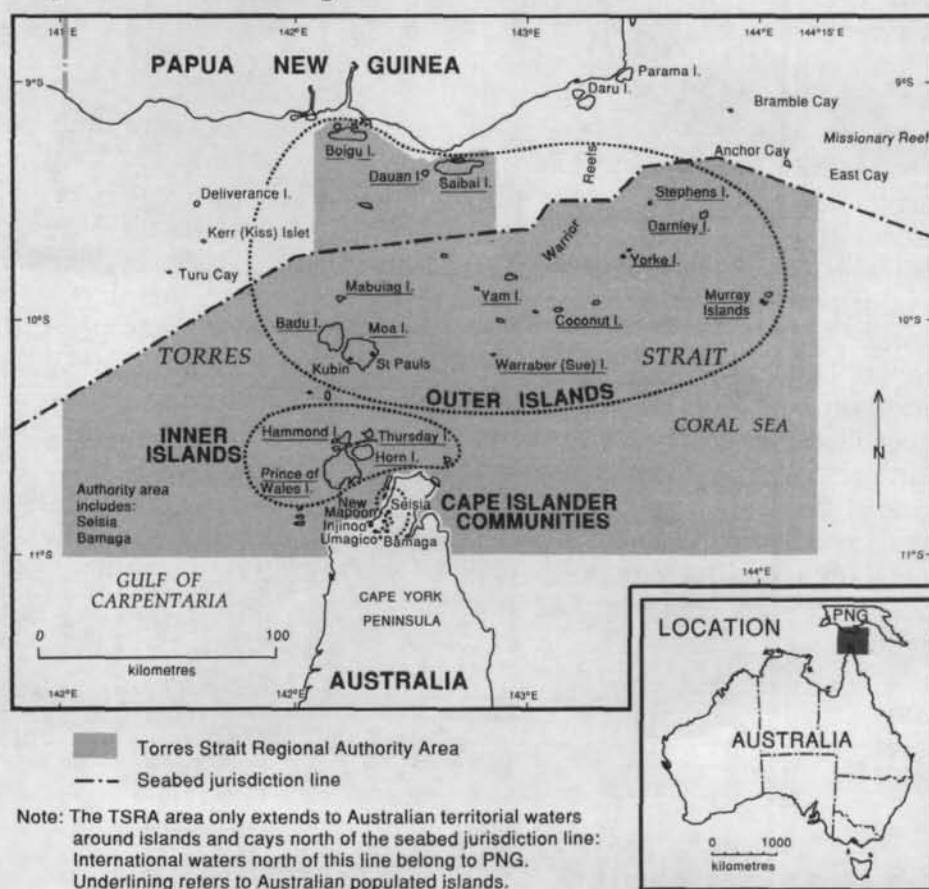
The aim of this paper is in part to explore the circumstances which have brought about this possibility of reshaping governance in Torres Strait and in part to raise some issues which will, in all likelihood, be central to future negotiations. The paper begins with a brief overview of the history of settlement in Torres Strait and contemporary population characteristics. It then adds an organisational dimension to this history, by examining the development of structures of local and regional political representation in Torres Strait. The TSRA, it will emerge, is only one of two regional representative structures and is, quite clearly, the latecomer in a long history of both local and regional representation. The third section of the paper identifies more clearly the opportunity for reshaping governance structures in Torres Strait. What also emerges from these early sections are some of the likely constraints on this reshaping process, arising from both the current array of representative structures and the current population. Some key issues for future negotiations, referred to as other authorities, constituency and confederal representation, are discussed in the fourth section. Some consequences of one possible and likely approach to the issue of constituency are explored in the fifth section. The paper concludes with a brief note about the relationship between this reshaping of governance in Torres Strait and an emerging strand of thinking in debates about Australian federalism.

The people of Torres Strait: historical patterns of settlement and contemporary population characteristics

Prior to British colonisation of Australia, there were probably four to five thousand Islanders living in Torres Strait in some twenty island communities (Beckett 1987: 26).¹ During the latter half of the 19th century, these Islanders were gradually joined by others; pearlers and missionaries from Europe and Asia and, after the annexation of the islands to Queensland in the 1870s, government officials from Brisbane. Thursday Island, near the tip of Cape York, rapidly became the commercial and administrative centre of Torres Strait. It attracted most of the non-indigenous population and probably an increased proportion of the indigenous population as well. However, in the early years of the 20th

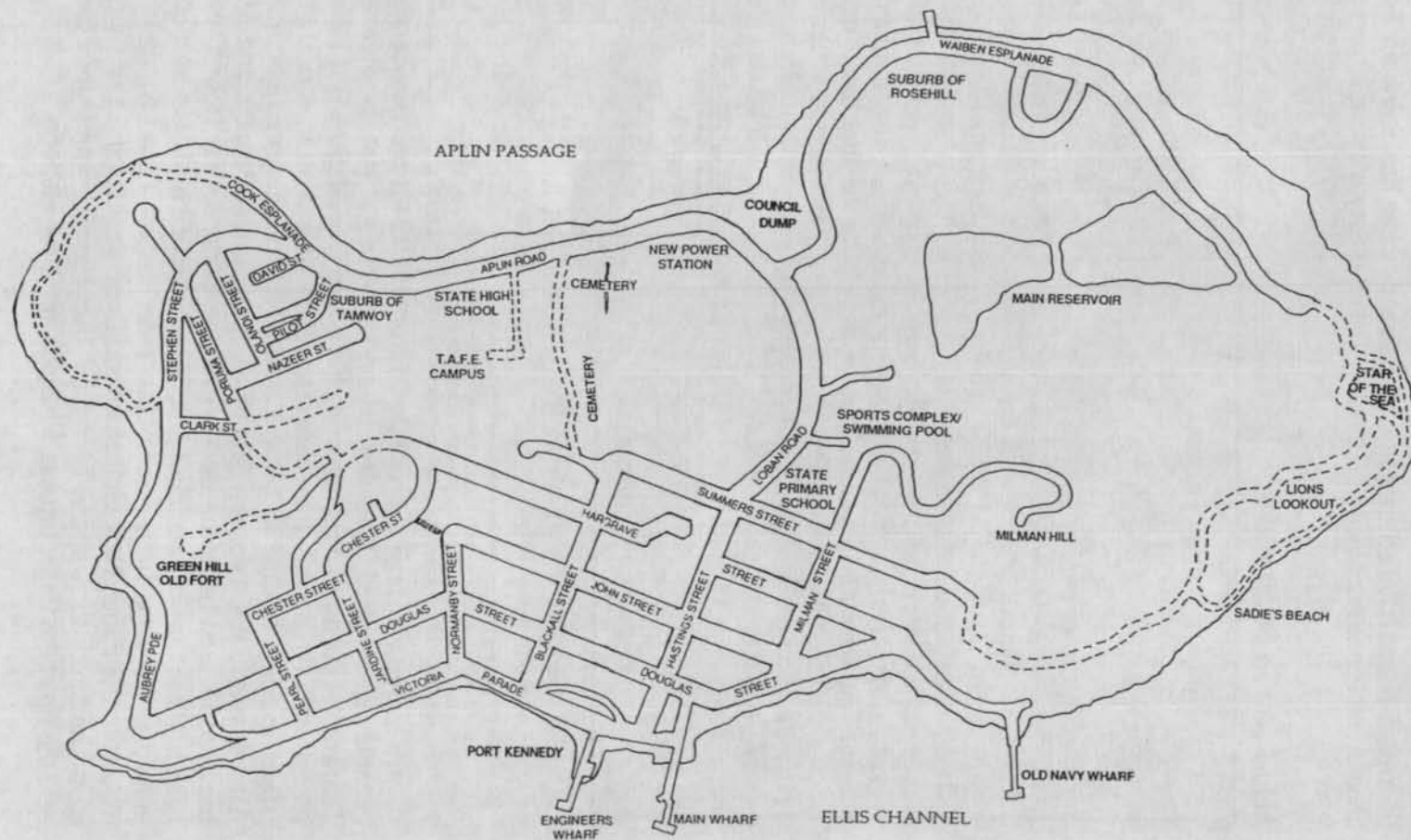
century, under a government policy of 'protection', Islanders were specifically debarred from Thursday Island, except during daylight hours. They were, for the most part, confined to 'reserve' lands on other islands, some of which were nearby and others quite far away (see Map 1). Those of mixed Islander and European or Asian descent had some ability to choose and hence remained on Thursday Island if they wished.

Map 1. Torres Strait region.



As this 'protection' regime broke down from the 1940s on, Islanders again became residents of Thursday Island. A 'reserve' was proclaimed at Tamwoy on the north west corner of the Island (see Map 2). But Islanders increasingly lived away from this reserve, as well as on it, and Thursday Island returned in time to being a virtually non-segregated community. Also in the 1940s, two new Islander communities, Bamaga and Seisia, began to be established on the tip of Cape York, not far from Thursday Island. These new communities tended to be settled by Islanders who had moved to the Cape from some of the more distant Torres Strait Islands closest to the Papua New Guinea coast. These new communities were in close proximity to two, and later three, Aboriginal communities located near the tip of the Cape; Injinoo, Umagico and New Mapoon.

Map 2. Thursday Island



Another important post-war development was large scale migration of Islanders away from Torres Strait to other parts of Australia. This they did in search of work, following a significant downturn in the pearling industry, and also in search of a less restricted and supervised lifestyle (Beckett 1987: 67-73). Although large scale net outmigration from Torres Strait has now slowed, this history of migration has led to a situation in which there are now many more Torres Strait Islanders in the rest of Australia than in Torres Strait (Taylor and Arthur 1992). The 1991 Census enumerated 26,000 self-identifying Torres Strait Islanders Australia-wide, some 20,000 of whom lived outside the immediate vicinity of the Strait.²

This history of settlement and migration has resulted in Torres Strait having a very mixed population and some rather indeterminate boundaries. The area likely to be identified for future regional government is that currently falling within the jurisdiction of the TSRA: the islands of Torres Strait, excepting Barn and Crab Islands, and the Cape communities of Bamaga and Seisia. According to the 1991 Census this area had a resident population of some 5,400 Islanders, 200 Aborigines and 1,600 'other' residents who did not identify as of either Aboriginal or Islander descent. In proportional terms these figures represent 74 per cent, 3 per cent and 23 per cent respectively (see Table 1). The 1991 Census also enumerated almost another 300 Islanders who were living in the three nearby 'Aboriginal' communities on the tip of Cape York (see Table 1). Although a significant and growing number, Islanders in these communities are still a minority and it is highly unlikely that the communities will be included in future negotiations relating to Torres Strait regional government.

Within the area likely to be designated for future Torres Strait regional government, population characteristics are far from equal in the various sub-regional parts. Although Aborigines form a fairly small and constant 2-4 per cent of the population across the whole area, relative numbers of Islanders and 'others' enumerated in the 1991 Census vary quite significantly. On the Inner Islands around Thursday Island, where almost half the regional population resides, only 58 per cent identified as of Islander descent and 39 per cent fell into the other non-identifying category. On the Outer Islands, which were all former 'reserves' and where just over another two-fifths of the regional population resides, some 92 per cent of the population identified as of Islander descent and only 6 per cent fell in the 'other' non-identifying category. The two Cape Islander communities represented something of a mid-point between these extremes. The proportions of their residents identifying as Islander (78 per cent) and other (18 per cent) in the 1991 Census fell somewhat nearer the total regional average (see Table 1).

This current mix and distribution of population in Torres Strait is of considerable importance in any approach to future regional government and will be returned to in later discussion.

Table 1. Self-identified population of Torres Strait region, 1991 Census.

Sub-region/region self-identification	Number	Per cent of sub- regional/regional population	Sub-regional percentage of total regional population
Inner Islands			
Islanders	2,001	58	
Aborigines	123	4	
Others	1,332	39	
Sub-total	3,456	100	48
Outer Islands			
Islanders	2,792	92	
Aborigines	60	2	
Others	168	6	
Sub-total	3,020	100	42
Cape Islander communities			
Islanders	604	78	
Aborigines	34	4	
Others	138	18	
Sub-total	776	100	11
Total Torres Strait region			
Islanders	5,397	74	
Aborigines	217	3	
Others	1,638	23	
Total	7,252	100	100
Cape Aboriginal communities just beyond Torres Strait region			
Islanders	283	29	
Aborigines	440	45	
Others	251	26	
Total	974	100	

Local and regional structures of political representation: history and development

In order to think about possibilities for future regional government in Torres Strait, it is necessary to appreciate not only the historical patterns of settlement and contemporary population characteristics, but also the history and development of existing structures of local and regional political representation. The TSRA is only one of two existing structures for regional political representation. The other is the Island Coordinating Council (ICC) established under Queensland legislation in 1984, but arguably through a predecessor body with roots going back considerably further. The TSRA has largely incorporated and built on this pre-existing ICC. To appreciate how and why this has occurred, it is necessary not only to delve a little into the history of these two regional structures but also to have some appreciation of local level structures of political representation in Torres Strait.

There are 18 organisations in Torres Strait that can claim in some way to be structures of local political representation. The largest and most conventional of these is Torres Shire Council, incorporated under the Queensland Local Government Act. This organisation has been in existence in various forms since 1903. However, from 1952 to 1991, Torres Shire was not a fully-elected local council. During those years the elected council was replaced by a state government administrator advised by an appointed local executive committee. As a fully-elected local representative structure therefore, the current Torres Shire is a fairly recent phenomenon.

The land area of Torres Shire has extended legally to all islands of the Strait and the tip of Cape York down to 11 degrees; an area, ironically, somewhat larger than that covered by the TSRA. However, the Shire has largely restricted the development of its local government service provision role to Thursday Island and, to a limited extent, the adjacent Horn and Prince of Wales Islands. Other localities in the region, including nearby Hammond Island, the Outer Islands and the communities on the tip of Cape York, have generally looked elsewhere for the provision of local government-type services and functions. Since 1984 this division of roles has been reinforced by developments in the representative structures of these other localities.

For virtually the whole of this century, these other communities in Torres Strait have looked primarily to a separate Queensland Government department focusing specifically on Aborigines and Islanders for the provision of local government-type functions and services; indeed for almost all basic services. This department, known in earlier times as Native Affairs and Aboriginal and Islander Advancement, was a separate administrative province within the Queensland Government dedicated to the management of discrete Aboriginal and Islander communities on 'reserve' lands around the state. Shire councils were not responsible for these 'reserve' communities, even though they fell legally within their boundaries.

Within this separate administrative province, discrete Aboriginal and Islander communities have long had their own local representative structures. Some in Torres Strait date back as far as 1899; albeit in a rather weak advisory capacity (Beckett 1987: 45). Even as early as the late 1930s, these structures in the Strait were being significantly reformed in an attempt to give them greater local autonomy and control (Beckett 1987: 54). By the early 1980s, another reform process was under way in Queensland Aboriginal and Islander affairs, under the long-serving National Party Government of Premier Joh Bjelke-Petersen (Brennan 1992). In this latter reform process, the old separate administrative province remained, but was renamed the Department of Community Services; the land tenure of discrete Aboriginal and Islander communities

across Queensland was changed, in most instances, from 'reserves' to 'deeds-of-grant-in-trust'; and the local representative structures in these 'trust areas', as the communities now became officially known, were given a formal local government-type status.³

Under the Queensland *Community Services (Torres Strait) Act 1984*, 17 Island Councils in the former reserve communities of Torres Strait were for the first time given this formal local government-type status. Fourteen of these Island Councils were located on the Outer Islands of the Strait, one on Hammond Island and two at Bamaga and Seisia on the tip of Cape York. The chairpersons of these Island Councils also, under the 1984 Act, became constituted as the new overarching regional body, the ICC. Like its constituent parts, the ICC had a recognisable predecessor body, but was arguably given a significant new status, as well as name, by the 1984 reforms.

Under this 1984 legislation, the ICC was also given an 18th member. This member was a representative of Tamwoy, which was still a 'reserve', on Thursday Island, and held office not as an Island Council chairperson, but as a single, directly-elected representative. The reason for this different arrangement was that being situated on Thursday Island, Tamwoy fell within the area actively serviced by Torres Shire. There was, as the Queensland Government saw it, no need for a formal separate Island Council at Tamwoy, although there was a need for a Tamwoy representative on the ICC.⁴

It should be noted here that representative structures in the three predominantly Aboriginal communities on the tip of Cape York were also for the first time given a formal local government-type status under the *Community Services (Aborigines) Act 1984*. This slightly different form of incorporation reflected the different population bases of these communities and the continuing desire of Islanders to have their local representative structures distinguished from those in Aboriginal communities.⁵ The chairpersons of these Aboriginal Councils became members of an Aboriginal Coordinating Council (ACC) under the 1984 legislation. This body drew two representatives from each of 14 such councils in discrete, former Aboriginal reserve communities across Queensland.

A number of consequences followed from the fact that these Island and Aboriginal Councils were regarded by the Queensland Government in 1984 as being accorded, for the first time, a formal local government-type status. Although they continued to be called Aboriginal and Island Councils and holding office on them was restricted to Aborigines and Islanders who had resided in the area for not less than two years, *all* residents in the council areas who met normal Queensland Local Government Act residential criteria became eligible to vote. Elections came to be held on the same day triennially as elections for the more conventional local governments. Also

residents who enrolled and voted in Aboriginal or Island Council areas could no longer vote for the larger encompassing local governments, such as Torres Shire, established under the Queensland Local Government Act.

Elsewhere in Queensland, this last aspect of the new arrangements became something of an issue. It was interpreted by some as taking away from Aborigines and Islanders a right to vote for local government that they had only recently acquired (Human Rights Commission 1985). However, in the Queensland Government's interpretation, the new acts were giving Aboriginal and Islander communities their own local governments and to have allowed them to vote for the more conventional local governments as well would have been to permit a form of double voting. This Queensland Government view has generally prevailed, though the issue is still somewhat contested.⁶ In Torres Strait, however, the issue was never greatly taken up; perhaps because by 1984 the Torres Shire had not been directly elected for over thirty years.

The view that Aborigines and Torres Strait Islanders had been disenfranchised at the local government level by Queensland's 1984 Community Services Acts was not without some credence. Although the Island and Aboriginal councils were supposedly for the first time being given local government-type status, this was not being done under the Local Government Act, nor from within the local government portfolio.⁷ The Island and Aboriginal Councils were still much more closely supervised by the Queensland Government, both administratively and financially, than the more conventional local governments and they were also generally much smaller. The land base of the Aboriginal and Island Councils had also not been formally excised from that of the larger, more conventional, local governments. In Torres Strait, this meant that Torres Shire's land area still formally incorporated the land area of 17 Island Councils and three Aboriginal councils. All this suggested that the Aboriginal and Island Councils were still not of equal status to the more conventional Queensland local governments. This remains the case today, despite some recent recommendations for change towards a more equal status and an overhaul of the Queensland Local Government Act in 1993 (Electoral and Administrative Review Commission (EARC) 1991: 359-91; Mackenroth 1993).⁸

These structures of local and regional political representation in Torres Strait based on Queensland legislation have been supplemented in recent years by ones developed under the sponsorship of the Commonwealth. Torres Strait elected a single representative to the Commonwealth's National Aboriginal Consultative Committee (1973-77) and two representatives to its National Aboriginal Conference (NAC) (1977-85). From 1986, as the Commonwealth cast around for a new representative structure for indigenous Australians with which to replace the NAC, it gradually settled on the idea of a national Aboriginal and Torres Strait

Islander Commission, built from elected regional councils. One such council was proposed for Torres Strait.

This proposal from the Commonwealth met with considerable antipathy in Torres Strait. Two calls for Torres Strait independence were made by the ICC in 1987 and 1988. The second of these emerged directly from an attempt by Commonwealth officials to consult over the ATSIC proposal and was made within days of the bicentenary of British colonisation. It called for the 'full recognition' of the 'institutions, culture and territories' of the 'Torres Strait Islander people' and the 'right to control and develop' their own 'resources and economy'. The earlier call had reconfirmed a 'long standing resolution' of the ICC 'to claim sovereignty over the land, sea and air in the Torres Strait' and had called for the ICC to be given power over matters such as revenue-raising, trade, fishing, mining, land, broadcasting and the staff and funds of the Commonwealth Aboriginal affairs portfolio agencies in Torres Strait (see O'Rourke 1988: Attachments A and B, Kehoe-Forutan 1988, Scott 1990). Clearly, Torres Strait Islanders did not want another structure of political representation imposed upon them by the Commonwealth, but rather wanted the one they already had, the ICC, to assume far greater importance and to become a government in its own right.

In response to this pressure, the Commonwealth formed an interdepartmental committee on Torres Strait which recommended, among other things, some significant changes to the ATSIC legislation (O'Rourke 1988). As a result, the ATSIC legislation of 1989 had special provisions relating to Torres Strait. For the most part, there would be no distinct elections for the ATSIC Regional Council in Torres Strait, but rather members of the Queensland Government-created ICC would, by virtue of holding that office, also become members of ATSIC's Torres Strait Regional Council (TSRC).⁹ There was, however, one shortcoming with this arrangement. Aboriginal and Torres Strait Islander people living on Thursday Island outside the Tamwoy area, or on nearby Horn or Prince of Wales Islands, were not represented on the ICC.¹⁰ Because of this, two additional positions were created in the TSRC; one for the Port Kennedy area of Thursday Island and one for Horn and Prince of Wales Islands combined. Separate elections for representatives from these two constituencies would result in the TSRC having 20 members, as opposed to the ICC's 18.¹¹

The regional council elements of the 1989 ATSIC legislation came into effect in Torres Strait after elections held in March 1991, in line with Queensland local government elections. Thereafter, the TSRC was in much the same position as any of the other 59 ATSIC regional councils which had been elected in December 1990. The TSRC did not itself have executive powers or functions, since these were exercised at the national level by ATSIC's 20 Commissioners. The TSRC was, however, unlike

most regional councils, able to elect its own national Commissioner. Most regional councils were, for this purpose, combined into zones, since the ATSIC legislation only provided for 17 elected Commissioners from the 60 regions. Torres Strait was, in effect, both a region and a zone for the purposes of the ATSIC legislation.

The regional councils were in many ways the most innovative part of the Commonwealth's new ATSIC structure. Many early critics were sceptical of their role and importance. However, ATSIC worked hard during the early years of its existence to counter this perception and deliberately sought to build the role of its regional councils. Regional planning, required in the 1989 legislation, was promoted with considerable force and speed. Elements of budgeting also began to be carried out on a regional basis. The proportion of the ATSIC budget allocated on the advice of regional councils rose to 21 per cent by the 1992/93 financial year and 28 per cent by 1993/94 (ATSIC 1994: 4).

ATSIC's attempts to develop the regional council element of its structure were clearly evident in a review of its enabling legislation undertaken in late 1992 and early 1993. That review recommended that the number of ATSIC regional councils be reduced, but that the powers and administrative support given to them be substantially increased (ATSIC 1993b: 25). These recommendations were largely followed in subsequent legislative amendments passed during 1993. The number of ATSIC regions was reduced to 36 and the national Commission was given the ability to delegate some of its powers to its regional councils. Also regional council chairpersons, along with commissioners, became fully-salaried. Interestingly, the boundaries of the Torres Strait region and zone within ATSIC remained unchanged.

The 1992/93 review of the ATSIC legislation also paid direct attention to the provisions of the original legislation linking the TSRC with the Queensland Government's ICC. It endorsed this approach, but went on to suggest that there was a case for greater autonomy being granted to the Torres Strait region than under the general ATSIC regional council structure. Aspirations for a 'form of self government' in the Strait were, it argued, persistent and seemed to require more than the regional council structure could provide. The review recommended the development of a Torres Strait authority which would exist within the framework of the ATSIC legislation but would have a 'single line appropriation' of its own (ATSIC 1993b: 36-8). As indeterminate as this recommendation was, it certainly envisaged a more powerful and autonomous body than the standard ATSIC regional council, even after the number of these had been reduced and their powers increased by the 1993 amendments.

Following from this recommendation for a Torres Strait authority, another series of amendments to the ATSIC legislation were passed during 1993.

These put in place the TSRA which, like the TSRC before it, would have the same members as the Queensland Government sponsored ICC, with two additional members being elected from the Port Kennedy area of Thursday Island and from Horn and Prince of Wales Islands combined. The TSRA would take over ATSIC's staff from the Torres Strait regional office and would formally come into existence on July 1, 1994. Elections for office on the TSRA would be held in line with Queensland local government elections in March 1994 and a transition period would then commence.

Although the TSRA is now in existence, as noted at the outset many both within and outside the new body clearly regard it as simply a 'transitional arrangement' (TSRA 1994a: 13). Momentum appears to have built up for still greater regional autonomy for the Torres Strait, most probably through regional government. It is unlikely therefore that the TSRA will remain in its current form for very long.

Opportunity

The opportunity to reshape governance in Torres Strait which currently exists is the result of the coming together of a number of different factors. It is in large part due to Islander pressure since 1987/8, focused on the Commonwealth Government and its new ATSIC structure. ATSIC's receptiveness to this pressure, in part because of its own attempts to regionalise, has led to the current TSRA and an apparent willingness to take the idea of regional government for Torres Strait considerably further. The opportunity is also in part, however, due to the stance taken in recent years on Aboriginal and Islander issues by the Queensland Labor Government.

When the Goss Labor Government came to office in 1989, it had no particular wish to defend the creations of the previous long-serving Queensland National Party Government in the area of Aboriginal and Islander policy. The new government quickly set about reviewing many aspects of established policy (Brennan 1992: 121-56). The centrepiece of this effort was an attempt to put in place new land rights legislation which would allow Aboriginal and Islander communities in Queensland to acquire inalienable freehold title. However, another important element was an attempt to review the Community Services legislation of 1984. To this end, an Aboriginal and Islander Legislation Review Committee was established in August 1990, comprising four Aborigines and one Torres Strait Islander. This Committee's initial work recommended some amendments to the Community Services legislation, which were quickly put in place. Its final report, published in November 1991, recommended new legislation providing for community government in Aboriginal and Islander communities (Legislation Review Committee 1991). For a number

of reasons, however, this recommendation was not taken up by the Goss Government.

By mid-1991, the Goss Government had had a falling out with Aborigines, if not so much with Torres Strait Islanders, over its land rights legislation. The new legislation was seen by many Aboriginal people as rather weak and conservative. Criticism of the legislation was vigorous and many Aborigines in Queensland felt disappointed. The Labor Government, by contrast, was clearly annoyed that what it saw as realistic reformist legislation was so condemned. Consequently the Goss Government lost interest in further reform of legislation pertaining to Islanders and Aborigines. The Legislation Review Committee's report of November 1991 was destined not to be taken up even before it had been published. Three years later no new legislation for governance structures in Aboriginal and Islander communities in Queensland had been developed and the National Party government's 1984 Community Services legislation, slightly amended, remained in place.

Although this lack of action on the part of the Goss Government might seem to augur badly for the reform of Torres Strait governance structures, it may in an indirect way have contributed to the present opportunity. Since the Goss Government is not greatly responsible for the existing Community Services legislation and the governance structures it has put in place, it is unlikely to feel obliged to strongly defend those structures or legislation, should some alternative for Torres Strait begin to emerge. If, on the other hand, the Goss Government had pushed ahead with new legislation for governance structures in Aboriginal and Islander communities during its early years in office, it may then have felt bound, for some time, to support that new legislation. This may in turn have precluded alternatives. Inaction on the part of the Queensland Labor Government, may have meant that the current situation is more open-ended and the current opportunity for reshaping governance in Torres Strait more substantial.

Some key issues: other authorities, constituency and confederal representation

Even though an opportunity for further reshaping of governance in Torres Strait does appear at present to exist, there are still a number of substantial issues that will need to be addressed in future negotiations. These may act as impediments to that opportunity being realised, but with acknowledgment and debate they may be adequately addressed. This section of the paper raises three key issues under the labels of other authorities, constituency and confederal representation.

One key issue, which is clearly acknowledged in documents now being produced by the TSRA, is the relationship between the TSRA, or any

future Torres Strait regional government, and other government authorities operating in Torres Strait. The TSRA's 1994-95 Corporate Plan suggests that as a 'step in the transition' to a new governance structure, it:

will seek to have devolved to it funding for Torres Strait Islander and Aboriginal people in the Torres Strait area currently administered by other Commonwealth Departments and State Government Departments (TSRA 1994a: 14).

The Authority's recent submission to a taskforce developing the Commonwealth's third stage 'social justice' response to the High Court's *Mabo* decision reinforces and further develops this line of argument. It suggests that 'devolution is an important step in the process' and that 'greater local control and authority over decision making' is being sought. It continues:

We have good relations with those people in the Torres Strait who represent the many Departments and agencies with responsibilities in the region. They know we must work together to recognise the particular circumstances of the Torres Strait and the special cultural values of our people. Often, however, planning and decisions are made outside the Torres Strait and we have no control over them.

The Authority proposes that negotiations be conducted with Commonwealth and Queensland Governments to devolve to the Authority funding currently administered by other Commonwealth and Queensland Government Departments so that we can make the decisions.

A special task force should be established to examine how this can be achieved, recognising the interests and responsibilities of the agencies concerned, and how the programs and policies of all government departments with interests and responsibilities in the Torres Strait can come within the coordinating influence of the Torres Strait Regional Authority (TSRA 1994b: 3).

While clearly seeking some significant devolution of programs and decision making, the TSRA is not attempting to completely take over the roles of all other government authorities operating in Torres Strait. In its submission to the Social Justice Taskforce, and as a preamble to the above, the Authority writes that:

Whatever form of self government is finally determined, the Authority sees the Torres Strait continuing to work in partnership with the Commonwealth and Queensland Governments, taking into account the full range of functions currently exercised by these levels of Government and their continuing responsibility for a range of matters (TSRA 1994b: 2).

Hence the call for devolution is set within a larger framework which includes significant ongoing Commonwealth and State Government involvement.

There is undoubtedly considerable potential for the negotiation of new arrangements between the TSRA and the large number of other government authorities presently operating in the Strait; ranging from

health and education authorities, to fisheries, customs and immigration authorities, social security and tax authorities. Negotiating such new arrangements will no doubt occupy a large part of the TSRA's time over the next few years and the understandings reached will be a key part of any framework for regional government. However, these new understandings with other government authorities will not be all that regional government entails, nor need they be finalised for all time before regional government can proceed. If Norfolk Island and Australia's other inhabited island territories are any indication, such agreements can continue to be reviewed and developed over time (see for example House of Representative Standing Committee on Legal and Constitutional Affairs 1991).

A second key issue which will need to be addressed in the negotiation process is the precise constituency to which Torres Strait regional government is to be directed. The ICC's claim for independence back in 1988 spoke of the recognition of the 'institutions, culture and territories' of 'Torres Strait Islander people' (O'Rourke 1988: Attachment A). Since that time, however, there has been something of a shift in the rhetoric towards 'the people of the Torres Strait'. This is clearly the preferred terminology of the new TSRA (see, for example, TSRA 1994a: 13; 1994b: 2). Although this change in terminology may seem inconsequential, it is in fact significant.

When Torres Strait Islanders began negotiating with the Commonwealth over the ATSIC proposal in 1988, it soon became clear that two distinct claims were being made for Islander representation and autonomy. One related to Islanders living in the Strait, the other to Torres Strait Islanders Australia-wide. The ICC's concerns were, primarily, with the former. It wanted greater autonomy for Islanders living in the Strait. While Torres Strait Islanders Australia-wide were still part of Islander culture and tradition, from which the ICC could not afford to be cut off, they were not the ICC's primary concern, nor could they realistically have been.

The solution to this representational conundrum which ATSIC adopted was a cross-cutting of Torres Strait Island and Torres Strait Islander constituencies. As well as the TSRC, which later developed into the TSRA, there has been within ATSIC a Torres Strait Islander Advisory Board (TSIAB). This body is chaired by ATSIC's Torres Strait zone commissioner but draws its other members from Torres Strait Islanders Australia-wide; one from the rest of Queensland, one from New South Wales and the Australian Capital Territory combined, one from Victoria and Tasmania combined, and one each from South Australia, Western Australia and the Northern Territory. ATSIC thus combines representation for Torres Strait Islanders Australia-wide in one structure, with representation for the Torres Strait area in another. The two structures and constituencies are linked through the Torres Strait zone commissioner, but are still quite distinct.

While the TSIAB is a representative structure for all Torres Strait Islanders, the TSRA and the TSRC before it have in fact been regional representative structures for both Islanders *and* Aborigines. Through judicious boundary drawing to exclude the three predominantly Aboriginal communities on the tip of Cape York, the TSRC and TSRA have managed to have only a very small number of Aborigines within their regional boundary. The TSRA is thus, effectively an Islander regional body, while the TSIAB is quite explicitly a national Islander body. There is thus a dual constituency structure within ATSIC for Torres Strait and Torres Strait Islanders.

Having experienced this dual constituency structure within ATSIC over the last few years, Islanders in the Strait are now looking to proceed further. In relation to regional government, they are now realising that the potentially relevant constituency for such a structure is not themselves plus Islanders living elsewhere in Australia, but themselves plus non-Islanders/non-Aborigines living in the Strait. For regional government to be more autonomous and more meaningful than the present TSRA structure, these people may need to be included. These non-Islanders/non-Aborigines are, at present, left outside the regional representative structures of the Strait.¹² They are part of the constituency of Torres Shire and have, in the past, had quite a strong presence in that organisation. But Torres Shire is not represented on either of the present regional bodies, the ICC or the TSRA.

There is some evidence to suggest that in contemplating the possibility of regional government, Islanders are moving to a position in which they may be willing to include these 'others' in the new structure's constituency. Lui, in his 1993 Boyer lecture, argued that:

We are fortunate to have already living in Torres Strait a mixed population who are truly at home, from many parts of the South Pacific, Asia and Europe. Thursday Island is the most multi-racial community in the Australian world. These people bring many skills to add to those traditional to the Torres Strait Islander community. Our destinies are all linked together in our region. The well-being of Islanders can only increase the well-being of others living there. Just as land claims and self-government settlements in other countries have generated a regional mini-boom, we may expect the same sort of effect in Torres Strait. Our concept of the future is one in which resident non-Islanders are every bit as much a part as those whose roots are in our Islands (Lui 1994: 72).

Lui's rhetoric here is notably different from the ICC's 1987 and 1988 demands for Torres Strait Islander independence, to which he also put his name. Indeed the new rhetoric is notable not only for this change, but also for the extent to which it appears to be directed to re-assuring those 'others' in the Strait that they too will gain from regional government. It is almost as if the prior question of whether Islanders are willing to include those others in a regional government structure has already been answered in the affirmative. This may be so in Lui's mind, but no formal process of asking and answering that question has in fact occurred. Thinking on the constituency issue among Islanders in the Strait more generally is probably not yet that clear.

The issue of the precise constituency for a future Torres Strait regional government is a delicate one, which will need to be broached by Islander leaders, such as Lui, with some care. Much emphasis is placed on the TSRA and regional government as ways in which Islander custom and autonomy can be enhanced and this does not always sit easily with the idea of including 'others' in the regional government's constituency. However, there are a number of reasons why a shift in thinking on constituency issues among Islanders may have begun to occur.

One reason for this emerging shift in thinking may be that Islanders in the Strait are feeling increasingly confident that even with a more general regional constituency, they would still be able to have a predominant influence within the new structure. Islanders are a clear majority in the region's population and, with their current young and growing population profile, are likely to remain so (Arthur 1994). Land in the region is already fairly extensively under Islander control and, in the wake of the *Mabo* decision of 1992 and the Commonwealth's Native Title Act of 1993, is likely to become all the more so in the future. Hence Islanders are well placed to maintain their present proportion of the regional population, if not increase it. Through this force of numbers Islanders will probably be able to exert a predominant influence over any regional governance structure in the Torres Strait, whatever its constituency.

A second and related reason for this emerging shift in thinking may have to do with the nature of the population in the Strait not identifying as Aborigines or Torres Strait Islanders. Some of these 'others' are public servants on tours of duty from elsewhere, who probably will not see their long-term futures in the Strait and hence may take only a limited interest in local and regional representative structures. Other non-identifiers may be long-standing Strait residents of a variety of backgrounds, ranging from Malays, Filipinos and Indonesians to Chinese, Singhalese and Pacific Islanders, as well as Australians of European origin. Many of these have family links with Islanders through marriage and family members who are in part of Islander descent. There is thus no clear dividing line in the Strait between Torres Strait Islanders and others and no clear unified sense of 'otherness' that might be built on as a minority political force. This vagueness of the Islander/other division and lack of unity among 'others' is likely to persist, particularly if these 'others' are accommodated in a regional government constituency. Accommodation may even assist Islander predominance in regional government precisely because it lessens the possibility of any unified sense of otherness ever emerging.

A third reason for this emerging shift in thinking on the constituency issue, may have to do with recent developments in the Torres Shire. In the past this organisation has been viewed by Islanders as primarily the province of non-Islander interests on Thursday Island. Islanders' attitudes have generally ranged from indifference to the organisation, to a more active

hostility. In the last four years, however, with its resurrection as a fully-elected local council, Torres Shire has come under increasing Islander influence. A number of Islander councillors have been elected and become quite influential. One of these, Pedro Stephens, became the Shire's first Islander mayor at the local government elections of March 1994.¹³ Islanders are now seeing that even Torres Shire, the local government structure which covers the area of the Strait where the Islander proportion of the total population falls to its lowest, can be strongly influenced by Islander concerns. If this is possible, then new opportunities for reshaping governance in Torres Strait begin to emerge. If it is necessary, in order to move to fuller regional government, to include the Shire and the non-Islander portion of its constituency in some way, then this too may be becoming more acceptable for Islanders than it was in the past.

A fourth, less publicly acknowledged, part of the reason why Islanders in the Strait may have begun to embrace the idea of including others in the region in a regional government structure may be that it reinforces their position of regional autonomy in relation to Islanders living elsewhere in Australia. Islanders in the Strait have a somewhat ambivalent relationship with those living elsewhere. While they wish to maintain their links with these absent Islanders and to maintain leadership in nationwide Islander affairs, Islanders in the Strait do not want Islanders living elsewhere dictating to them how Torres Strait region should be run. By joining forces with the other residents of Torres Strait in a regional governance structure, Islanders in the Strait may also see a possibility for shielding themselves somewhat from the influence of this larger number of absent Islanders who might also claim some say in Strait affairs.

All this suggests that the future constituency for a Torres Strait regional government may not be just Islanders and Aborigines living in the area, but other established residents as well. Islanders in the Strait appear to be moving towards this position, but not without hesitation. The issue is not as yet a foregone conclusion and even if it is decided in favour of a more general regional constituency, other substantial constituency-related questions will still arise. What, for example, might be the residential criteria for both voting and holding office under a regional government structure? Should these criteria be demanding and restrictive, as in Norfolk Island, or more general and open, as in Queensland local government? Should they be the same for voting and holding office, or in some way different? Should, as at present, all residents of an Island Council area be entitled to vote, but only Islander and Aborigines able to hold office? Should this distinction be retained in the present Island Council areas, but not in the residual Torres Shire area, where it would clearly be unacceptable? Alternatively should some standardisation of such criteria across the whole Torres Strait region be sought? Clearly there are still significant issues about the precise constituency of regional government in Torres Strait that will need to be worked through over the next few years.

It could be noted here that there are other examples from around the world where native peoples who are a majority in an isolated region of a country in which they are overall a tiny minority have taken their chances with a relatively open, general form of regional governance. The example which has been most frequently brought to Torres Strait and other Australian attention of recent years has been Nunavut in Canada's Northwest Territories (Jull 1991; Amagoalik 1994). A new Nunavut territory government is to be established in 1999 open to the participation of the area's adult residents. The territory currently has a total population of some 18,000 people, of whom 80-85 per cent are Inuit.

A third key issue which negotiations over Torres Strait regional government will have to address has to do with its internal confederal representative structure. There is already among the Islanders of the Strait a very high degree of commitment to the existing Island Councils. There is also among Thursday Island residents a considerable commitment to Torres Shire. It is likely, therefore, that within a future regional government, these 18 separate local government entities, or very close descendants of them, will continue to exist. The TSRA's 1994-95 Corporate Plan acknowledges and supports this likelihood when it suggests that it sees proposals for the future being 'built on the existing framework of local government on the islands' (TSRA 1994a: 14). The Authority's submission to the Social Justice Taskforce does likewise when it suggests that the 'framework of Local Government within the Torres Strait provides a basis for empowering our people' (TSRA 1994b: 2). Regional government, therefore, like the ICC, the TSRA and the TSRC before it, is highly likely to be a confederation of local island governments rather than a unitary government structure.

In establishing a new confederal structure for regional government in the Strait, there is the possibility of some debate about relative representation of the constituent parts. As a confederation of Island Councils, supplemented by directly elected Islander or Aboriginal representatives from the Inner Islands of the Torres Strait where no Island Councils exist, the ICC and TSRA have adopted a simple single delegate representation system. Each Island Council has one representative on the regional confederal body, irrespective of the population size of the community being represented. This is despite the fact that the Island Councils represent populations ranging from 40-50 in the case of Stephens Island to almost 800 in the case of Bamaga (see Table 2).

Within the supplementary part of TSRA's representational structure, there is some concession made to greater population size. This has been achieved by identifying three different 'communities' within the area covered by the direct elections: Thursday Island Tamwoy, Thursday Island Port Kennedy and Horn and Prince of Wales Islands. Hence, what is in effect the area

covered by one council, the Torres Shire, which includes almost half the region's population, gains three representatives out of twenty.

If proposals are developed for Torres Shire, or some close descendant of it, to become an 18th constituent local organisation within a Torres Strait regional government confederation, then the issue of the relative representation of the range of populations in the confederation's constituent parts is likely to become a significant issue.¹⁴ Torres Shire has already suggested that it should be represented on the ICC and the TSRA and that, because of its larger population, it should, unlike the Island Councils, have not just one representative, but several; perhaps drawn from wards within the Shire as well as its Mayor ('Mayoral Column' *Torres News* 27 May - 2 June 1994). These positions could, in time, gradually replace the directly elected positions on the TSRA, thereby gradually acknowledging the position of the Torres Shire, or its descendant, as the local constituent organisation for Thursday Island and Horn and Prince of Wales Islands within the new regional government confederation. Such a proposal could, however, also lead to other claims for multiple representation from other large communities such as Bamaga and Badu (see Table 2).

Table 2. Population of constituent islands/communities in Torres Strait as measured in the 1991 Census.

Islands/communities ^a	Number
Outer Islands	
Boigu	249
Saibai	248
Dauan	124
Yam	233
Darnley, Stephens	256
Murray	327
Yorke	249
Badu	485
Mabuaig	184
Moa	351
Coconut, Warraber	314
Inner Islands	
Thursday	2,652
Hammond, Horn	693
Prince of Wales, Friday	111
Cape Islander communities	
Seisia	103
Bamaga	776

a. Some of the smallest communities are grouped together for census collection purposes. However Arthur (1990) suggests that the island with the smallest population at that time was Stephens Island with a population of 40.

Clearly the representation of the very different sized constituent parts within a Torres Strait regional government confederation will over the next few years become something of an issue. Larger communities may feel significantly under-represented by equal numbers of representatives from constituent local organisations, while smaller communities may feel equally threatened by any move towards population-based representation. Middle ground alternatives are possible and may need to be further explored.

These issues concerning other authorities, constituency and confederal representation are all likely to be important in future negotiations for a Torres Strait regional government. It is unlikely that they will be easily resolved, but neither can any be ignored. In relation to the last in particular, Islanders will find themselves traversing well-trodden Australian ground. The Australian federation dealt with similar issues about the size of confederating communities a century ago and has dealt with them ever since. Indeed the rationale of Australia's federal structure is largely to do with the bringing together of separate political communities of significantly different sizes. It can, as Australia's larger nation-building suggests, both be achieved initially and persist on a relatively long-term basis.

Some consequences of a changed constituency

If, as the previous section suggests is possible, Torres Strait regional government moves to a more general residential constituency, rather than one restricted to Islanders and Aborigines as with the TSRA, there are some consequences of this which need to be foreshadowed.

The most obvious of these consequences is that both the negotiations for a Torres Strait regional government and the product of those negotiations would almost certainly move outside the Commonwealth's ATSIC structure. Negotiations would probably need to be undertaken between Torres Strait representatives and the Commonwealth and Queensland Governments at first ministerial levels. The outcome of those negotiations might well be complementary statutes of the Queensland and Commonwealth parliaments devoted specifically to Torres Strait regional government. These statutes would, in all likelihood, supersede present provisions of a number of existing acts, including the provisions of the ATSIC legislation relating to the TSRA and the Queensland Community Services (Torres Strait) legislation.

While some within ATSIC may be wary initially of the possibility of Torres Strait regional government moving outside the ATSIC structure, they may in time come to accept it. This development would not mean that Torres Strait Islanders generally, or those in the Strait, would move outside the ATSIC structure. Islanders could remain part of ATSIC's jurisdiction, while the Torres Strait regional government did not. Indeed this divergence

of paths for the two constituencies may provide ATSIC with an opportunity to further develop its specifically Torres Strait Islander representative structure, the TSIAB. At present the members of this body, apart from its chairperson, are ministerially-appointed. But there is no reason why, like other ATSIC officebearers, they could not be directly elected. With a Torres Strait regional government established in its own right, the role of TSIAB, or its descendant, within ATSIC would become more important.

The other reason that some within ATSIC may initially be wary of the idea of the TSRA moving outside the ATSIC structure, has to do with ATSIC's own regionalism. Undoubtedly the presence of the TSRC and now the TSRA have been useful to those within ATSIC promoting a more general regionalism agenda. The Strait has provided an obvious first case for pushing ATSIC's regionalism ever further and will in time be an important lobbying point for those in other regions who wish to follow (see for example, Yu 1994). The existence of the TSRA will unleash pressures within ATSIC for stronger regionalism elsewhere and will be cited as both demonstration and precedent. However, the TSRA need not stay within ATSIC indefinitely for this demonstration and precedent effect to be useful to the regionalism lobby. A few years may well be enough, after which time a Torres Strait regional government may also become a useful precedent for those pursuing a regionalism agenda.

ATSIC may not, in the end, have much choice about whether a Torres Strait regional government moves outside it. Islanders in Torres Strait have used ATSIC over the last few years to advance their own claims for greater regional autonomy and ATSIC, in turn, has used the Islanders to advance its own internal regionalism. However, if Islander leaders in the Strait see their future interest in greater regional autonomy as better pursued outside the ATSIC framework, they will no doubt begin to move in that direction. The marriage between Islander aspirations for regional autonomy and the ATSIC structure has only ever been one of convenience; in which the Islanders have, in many ways, dictated the terms. Since 1988, when Islanders convinced the Commonwealth to take on the existing ICC, with slight additions, as ATSIC's new TSRC, Islanders in the Strait have largely been establishing the parameters of debate and the Commonwealth has been responding. Islanders in the Strait will no doubt attempt to continue this pattern in their negotiations for Torres Strait regional government. If this means moving outside the ATSIC structure, there seems little doubt they will.

A second consequence of a Torres Strait regional government changing to a more general residential constituency would be that the process of negotiation and settlement would, in large part, move outside current debates about the possibility of the recognition of inherent rights of Aboriginal and Torres Strait Islander self-government either through constitutional change or some other means (Nettheim 1994; Brennan

1994). The settlement would become simply a matter of ordinary legislation and Queensland/ Commonwealth intergovernmental agreement. No change to the constitution, nor any major new recognition of inherent indigenous rights to self-government would be required.

It is interesting, in this regard, that Lui explicitly mentions the possibility of constitutional change, alongside regional government, in his 1993 Boyer lecture. As a board member of the Constitutional Centenary Foundation, Lui clearly doesn't dismiss the possibility of constitutional change which in some way recognises the special position of Aborigines and Torres Strait Islanders in Australia. However, Lui's relative emphasis on the two possibilities in his Boyer lecture seems to suggest that he sees regional government through normal legislative and intergovernmental means as the more likely channel for meeting Torres Strait aspirations for greater regional autonomy. Given Australia's rather paltry record on formal constitutional change (Crisp 1983: 40-57; Coper 1988: 333-64; Galligan and Nethercote 1989), this would seem a prudent strategy.

If the people and organisations of Torres Strait do opt for a more general residential form of regional governance achieved through normal legislative and intergovernmental means, they may however find themselves not always lauded by those who regard constitutional or other recognition of indigenous rights as a worthwhile project; just as Nunavut has not always been praised by those fighting for the recognition of inherent indigenous rights of self-government in Canada.¹⁵

A concluding note: Torres Strait and Australian federalism

It would appear that governance in Torres Strait is likely to be significantly further reshaped in the next few years and that a Torres Strait regional government may well be the likely outcome. If this does occur, developments in the Torres Strait may eventually be seen as another piece of evidence in favour of recent interpretations which are far more supportive and approving of Australian federalism than many in the past (Galligan 1992). One strand of this emerging thinking has suggested that Australia's highly 'concurrent' brand of federalism, with State and Commonwealth Governments being active in most substantive policy areas, has given many groups in society a greater ability to influence public policy in directions they desire by manoeuvrings between the various levels and arenas of government (Gerritsen 1990). Islanders in the Torres Strait may soon be seen as one more such group.

It can be noted in closing, that long-time observer, Jeremy Beckett, has already suggested that a 'new politics' emerged in Torres Strait from the 1970s when the Commonwealth, as well as the Queensland Government, became involved in Islander affairs. Beckett has argued that this

'condominium' of governments gave the Islanders 'more leverage than they would have had, dealing with a single government'. While Islanders in the 1970s turned to the Commonwealth for more resources to free them from the controls of the Queensland Government, they, at the same time, turned back to the Queensland Government for support when the Commonwealth threatened to divide the islands of Torres Strait in the process of granting independence to Papua New Guinea (Beckett 1987: 187-201). The developments of the late 1980s and 1990s would seem to represent a continuation of this 'new politics'. The Commonwealth and its new ATSIC arena have provided further opportunities for Islanders in the Strait to pursue their general goal of regional autonomy, as too have the common law and the courts through the *Mabo* decision. Islanders in the Strait may now be outgrowing the ATSIC arena in their quest for greater regional autonomy. However the new politics of the Torres Strait, involving greater manoeuvrability between the multiple arenas of State and Commonwealth Government, would seem in general to be continuing.

Notes

1. In this paper, for the purposes of brevity, the term Islanders will be used for Torres Strait Islanders.
2. As Arthur (1994: 3) notes there is some doubt about the veracity of Torres Strait Islander identification in the census.
3. Two local representative structures in former Queensland Aboriginal reserve communities, at Aurukun and Mornington Island, were in fact given a formal local government-type status somewhat earlier than this in rather controversial circumstances in 1978 (see Tatz 1979: 66-81).
4. There has, in fact, long been an informal Tamwoy Council and the person elected as Tamwoy's ICC representative is regarded locally as its chairperson. However, the organisation is not formally incorporated under any act of the Queensland or Commonwealth parliaments. When the Tamwoy people wished to receive public funds and undertake substantial ventures, notably housing construction, they became incorporated as a community association called the Tamwoy Development Association.
5. On the successful pursuit of this desire by Islanders in the late 1930s see Beckett (1987: 55).
6. An early, unsuccessful legal challenge was mounted in the case of *Smallwood vs Queensland* (1985 1 Queensland Reports: 477-81). For a recent article which still contests the post 1984 franchise arrangements see Poynton (1992).
7. Interestingly, the earlier granting of local government-type status to local representative structures at Aurukun and Mornington Island, discussed in footnote 3, was done from within the local government portfolio, although under a separate *Local Government (Aboriginal Lands) Act 1978*.
8. Although the case was put to it, the EARC was not convinced that residents of Aboriginal and Island Council areas should be able to vote in the larger, more

conventional encompassing Queensland local governments. The EARC argued that the 'implications' of such an arrangement for the 'independence of Aboriginal and Islander Council communities' was 'not clear'. The EARC was, on the other hand, convinced of the 'critical importance' of Aboriginal and Island Councils 'being treated as of equal status' to more conventional local governments. To this end it recommended that maps of local government boundaries in Queensland show Aboriginal and Island Councils as separate local government areas, that population figures for the Aboriginal and Island Council areas be separately identified and that the Local Government and Community Services Acts be amended to allow for joint agreements between Aboriginal or Island Councils and the more conventional local governments. Only the last of these three recommendations has been brought into effect by the 1993 overhaul of the Queensland Local Government Act.

9. Originally, the regional council was incorrectly gazetted as the Thursday Island Regional Council, though this was quickly changed by the Regional Council itself (TSRC 1991: 13). Some recent ATSIC material continues, rather confusingly, to refer to the area by the Thursday Island region label (for example, ATSIC 1993a: 6).
10. The area of Thursday Island from which the Tamwoy representative to the ICC is elected appears to be somewhat larger than the area known locally as Tamwoy. It also includes other places on the northern half of Thursday Island, notably Rose Hill and Applin (see Map 2). This in effect leaves the southern half or main commercial area, known as Port Kennedy, as the area of Thursday Island not represented on the ICC.
11. The three predominantly Aboriginal communities on the tip of Cape York were not included in ATSIC's Torres Strait region, but rather were included in a region extending southwards down the Cape.
12. This statement needs to be qualified slightly. In communities where Island Councils operate, the franchise, as noted above, in fact extends to all people who would normally be eligible to vote under the Queensland Local Government Act. However, as also noted above, the ability to nominate for office on Island Councils is restricted to Aborigines and Islanders who have resided continuously in the area for not less than 24 months. See *Community Services (Torres Strait) Regulations 1985*, s8.
13. Stephens is in fact the first mayor of Torres Shire, the previous incumbent having been referred to as Shire Chairman.
14. Debate on this issue was evident in the work of a recent ministerial committee reviewing the electoral processes of the TSRA (Mosby and Beckett 1994). Following that review a ministerial decision was made to allow the number of members of the TSRA to be increased in the future to 23. This will allow some room for manoeuvre on the confederal representation issue.
15. Chief Ovide Mercredi of the Canadian Assembly of First Nations was quite critical of the Nunavut governance structure on these grounds when in Australia for a conference on The Position of Indigenous People in National Constitutions in June 1993 (see Council for Aboriginal Reconciliation/Constitutional Centenary Foundation 1993).

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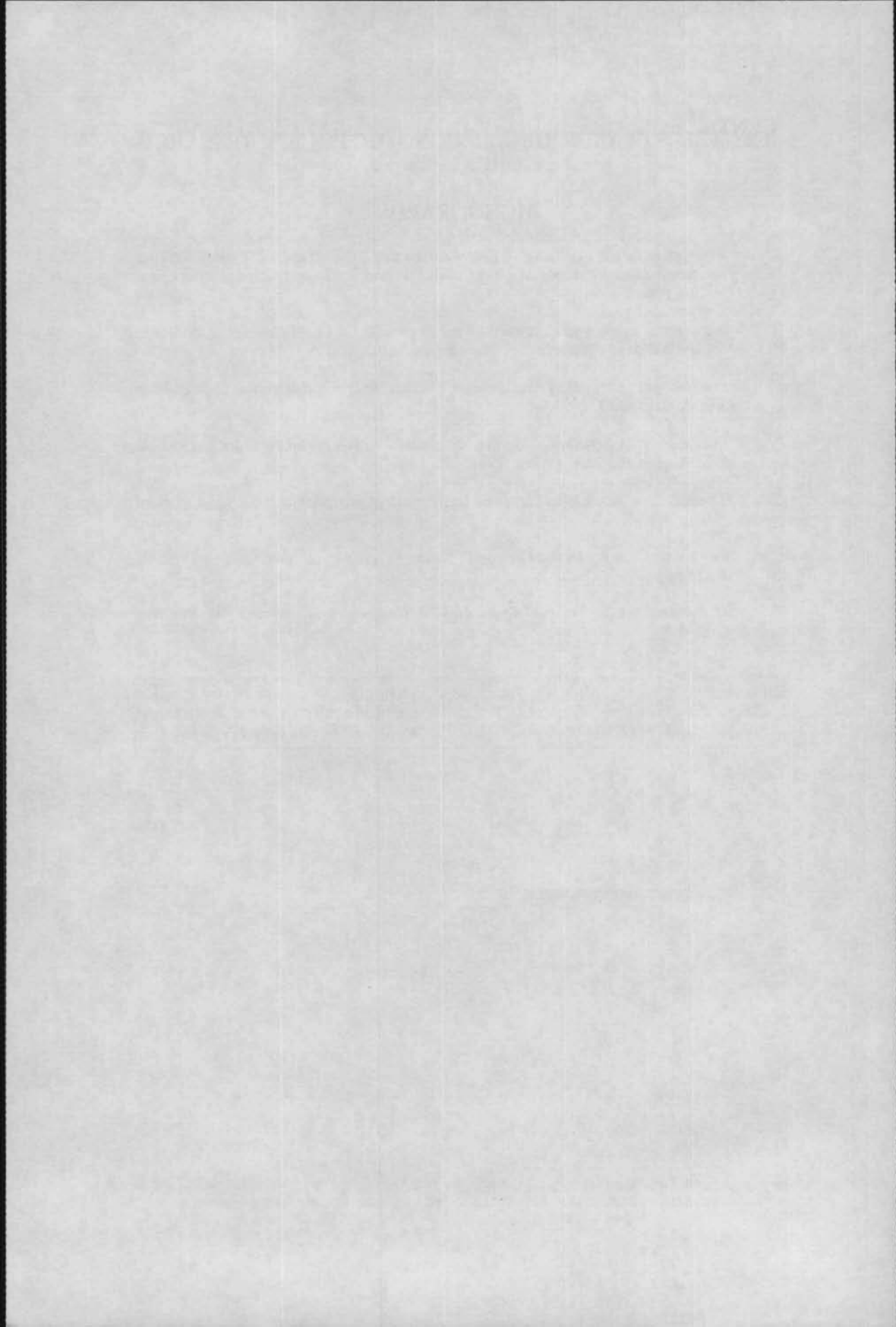
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