**Autonomy rights in Torres Strait:**
**From whom, for whom, for or over what?**

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**No. 215/2001**

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# Abbreviations and acronyms

| | |
|---|---|
| ABC | Australian Broadcasting Corporation |
| AGPS | Australian Government Publishing Service |
| AIATSIS | Australian Institute of Aboriginal and Torres Strait Islander Studies |
| ANU | The Australian National University |
| ATSIC | Aboriginal and Torres Strait Islander Commission |
| CAEPR | Centre for Aboriginal Economic Policy Research |
| HRSCATSIA | House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs |
| IAC | Island Advisory Council |
| ICC | Island Co-ordinating Council |
| NAC | National Aboriginal Conference |
| s. | section (of Constitution) |
| TSIAB | Torres Strait Islander Advisory Board |
| TSRA | Torres Strait Regional Authority |
| TSRC | Torres Strait Regional Council |
| TUP | Torres United Party |

## Summary

In recent years, Torres Strait Islanders have made a number of calls for greater governmental autonomy within the Australian federal system. This paper examines a number of these calls and government responses to them. It observes that progress towards greater autonomy has been slow and difficult and relates this to unresolved issues pertaining to three underlying analytic questions: from whom, for whom and for or over what is autonomy being sought?

The paper argues that there have been, and still are, difficult unresolved issues relating to all three questions which Torres Strait Islanders need to address if autonomy is to be progressed. It also argues that the Australian federal system can accommodate greater autonomy in Torres Strait, though it will require some real innovation in Australian federal governance.
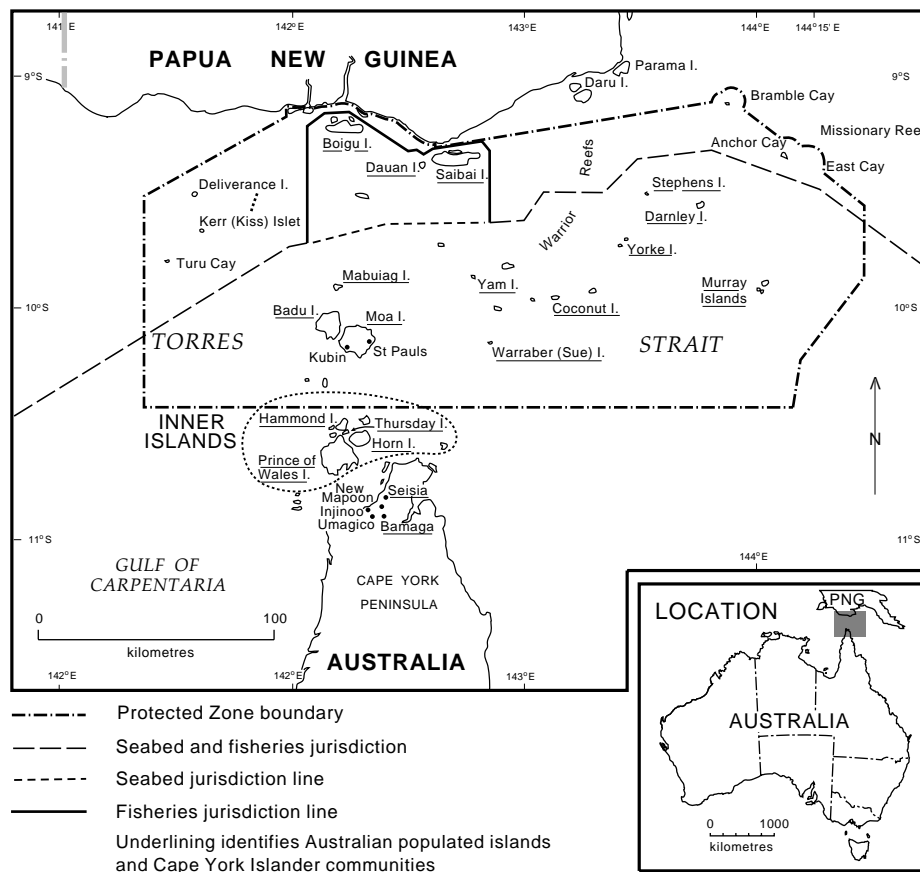
## Acknowledgments

## Introduction

Torres Strait is a confined area of islands and sea between Cape York, the Australian mainland's northernmost promontory, and Papua New Guinea's Fly River Delta and Western Province (see Fig. 1). The Indigenous inhabitants of the area are known today as Torres Strait Islanders, although this term had no currency prior to colonial settlement as the inhabitants were more attached to individual islands and were divided into three language groups. Colonial settlement began in earnest in the 1860s and 1870s, with the arrival of pearlers and missionaries. The initial British claim to Australia in 1770 had not covered Torres Strait, and it was not until 1872 and 1879 that the islands and sea were annexed to the Australian colony of Queensland.

### Fig. 1. The Torres Strait Region



- — · — · — Protected Zone boundary
- — — — Seabed and fisheries jurisdiction
- - - - - - Seabed jurisdiction line
- ———— Fisheries jurisdiction line
- Underlining identifies Australian populated islands and Cape York Islander communities

In pre-colonial times, the 4–5,000 inhabitants of Torres Strait had more links with their Melanesian horticulturist cousins to the north than with the rather different Australian Aboriginal hunter-gatherers to the south. With incorporation

into the colony of Queensland, however, Torres Strait's political future became more linked to the south. After the federation of Australia in 1901, both the Commonwealth of Australia and the State of Queensland could claim a jurisdictional interest in Torres Strait; though initially it was the Queensland State government which took the greater interest.

In the first half of the twentieth century, the Queensland State government established a dual system of local government in Torres Strait. One element was a mainstream local government, known as Torres Shire, established under the Queensland local government Act. This provided local government for the centre of colonial settlement in Torres Strait on Thursday Island (Waiben). The second element of the dual system was Island Councils established for the other 15 or so islands of the Strait with permanent Indigenous inhabitants. The populations of these 'outlying' communities remained almost exclusively Indigenous, apart from a few missionaries and supervisory State government employees. Control over Islanders under this dual local government system was substantial, and movement away from the outlying communities to the colonial centre of settlement in the Strait, or to places further afield in Australia, was severely restricted.

In the second half of the twentieth century, control over Islanders and their living locations was gradually relaxed. Many Islanders took the opportunity to move to the centre of colonial settlement in Torres Strait on Thursday Island, or to places further south in Australia, particularly along the north Queensland coast. Partly through intermarriage with other groups as a result of this migration, the population of Islanders grew rapidly during the second half of the twentieth century to perhaps four or five times the pre-colonial level. Islanders living 'away' from Torres Strait also came to outnumber those living at 'home'; the latter seeming to remain around the 5–6,000 level (see Fig. 2). Even though controls over Islanders were relaxed, other aspects of the dual system of local government in Torres Strait remained intact. Eligibility for elected office on Island Councils continued to be restricted to Indigenous people who had two years residence on the particular island.[1] Those who moved south consequently had some difficulty in continuing their participation in the political life of their home islands, although from the mid 1960s they could vote for local, State and Commonwealth representatives in the areas of Queensland where they were residing. Those who moved to Thursday Island also had difficulties. They too could vote from the mid 1960s for representatives in the Queensland and Commonwealth parliaments, but were unable to vote at the local government level for either their home Island Council or for Torres Shire, as the latter had been in the hands of a non-elected administrator since 1952 and did not become elected again until 1991.

With this background in mind, let us turn to January 1988, as the bicentenary of British settlement in Australia was being celebrated in Sydney and elsewhere around Australia. In Torres Strait on Thursday Island a meeting of Islanders was declaring themselves to be an 'independent people' who did not accept the 'system of laws, politics and economy' imposed on them by 'the British colonial forces'

**Fig. 2. Torres Strait Islanders: Geographic distribution 1880–1996**
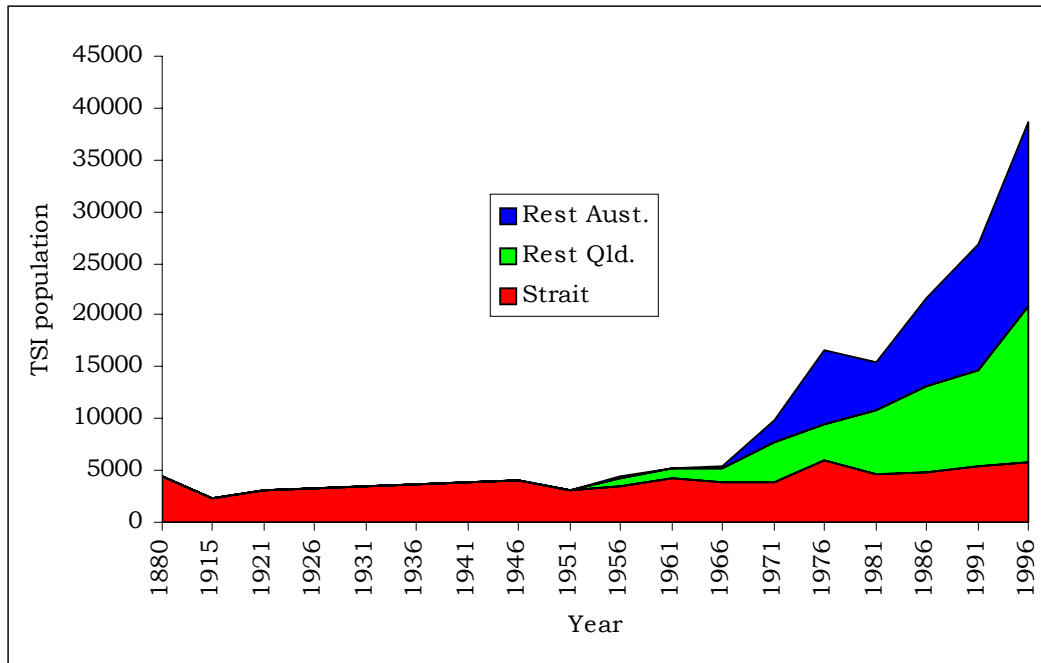


and who were 'entitled to full recognition' of their own 'institutions, culture and territories' (O'Rourke 1988: Attachment A). This 'statement of principle', or 'call for sovereign independence' as it was later called, built on another statement made six months earlier by the chairman of the Island Co-ordinating Council (ICC)—the overarching organisation of the by then 17 Island Councils in Torres Strait, sanctioned by the Queensland State government (O'Rourke 1988: 1).[2] In this earlier statement, the ICC had reconfirmed 'its longstanding resolution to claim sovereignty over the land, sea and air in Torres Strait' and demanded that 'all existing crown land and leases on crown land be vested in the ICC for the benefit of immediate and future Torres Strait Islanders'. It had also declared that 'the ICC must control all funds to the Torres Strait through direct grants from Treasury' with 'no involvement by other departments in the disbursement of funds' and that 'the ICC must have the right to raise revenue in the same manner as a State or Territory' (O'Rourke 1988: Attachment B).

These statements in July 1987 and January 1988 were, in many ways, quite strong assertions of political autonomy rights for Torres Strait and Torres Strait Islanders. The autonomy being sought appeared to be within the Australian federation, but it was at a reasonably high level, roughly commensurate with that of the existing Australian States and Territories and involving a claim of Indigenous sovereignty.

The autonomy sought by Torres Strait Islanders in 1987 and 1988 was not granted, either by the Australian Commonwealth government or by the Queensland State government. In the years since, however, both those governments have had to revisit the issue of greater autonomy for Torres Strait in the face of persistent, if fairly gentle, demands. In 1993, for example, in a prestigious nationwide Boyer lecture, the then Chairman of the ICC, Getano Lui (Jnr), called for a 'new status' for Torres Strait within the Australian system of government, perhaps to be negotiated by the centenary of federation in 2001. He wondered about the possibility of a 'specific island territory' and noted that Australia already had three such entities in Norfolk, Christmas and Cocos-Keeling islands, each with their own 'tailor-made local constitutions'. There is 'no reason', he argued, 'why a Torres Strait regional government cannot be devised' (Lui 1994: 69–70).

The idea of autonomy in Torres Strait has persisted over recent years, but the centenary of Australian federation has come and gone, with only slight progress towards a new governmental status. In this paper we look at some of the issues that have arisen in this recent quest for autonomy in Torres Strait and at why progress towards that goal has been somewhat slow and difficult. The discussion is organised to address three analytic questions (which overlap to some degree): from whom, for whom, and for or over what is autonomy being sought? We begin, however, with some more background discussion of calls for autonomy and existing and suggested governance structures both before and since 1987–88.

## Calls for autonomy, and existing and proposed governance structures

The call for autonomy in 1987–88 was not the first made by Torres Strait Islanders. Between 1976 and 1981 the issue was raised persistently by the Torres United Party (TUP), an organisation which by its own account was 'formed by Islanders to represent the traditional island communities of Torres Strait, and Torres Strait Islanders forced to lived on mainland Australia in search of employment' (Beckett 1987: 204). As those living away from Torres Strait have become an increasingly significant proportion of Torres Strait Islanders in recent years, there have, at times, been related tensions in the autonomy movement. Although the TUP claimed to represent both geographic parts of the Islander population, it was in fact primarily an organisation of people living away. It was based in the city of Townsville on the Queensland coast, over 1000 kilometres south of Torres Strait and, as it had few resources, its engagement with Islanders in the Strait was inevitably limited.

The leader of the TUP, Carlemo Wacando, was in fact in dispute with the Island Council on his native Erub (Darnley Island), while at the same time pursuing a claim of Islander sovereignty over Erub in the Australian courts (Beckett 1987: 205). That court case was eventually lost in 1981, in a judgment of the full bench of the High Court of Australia, and with the loss both the TUP and Wacando faded

from the political scene. Another court case quickly arose, however, this time claiming common law title to land on Mer (Murray Island), rather than sovereignty. Again the case was primarily pursued by an Islander living in Townsville, Eddie Mabo, who was also in dispute with the Island Council on his home island (Beckett 1994).[3] Mabo's court case, however, was successful; although it did take until 1992 to be finalised and Mabo did not live to hear the revolutionary High Court judgment which recognised common law native title in Australia (Sharp 1996; Stephenson & Ratnapala 1993). Mabo's name is now a symbol of calls for Torres Strait Islander recognition and autonomy, and indeed for the recognition of Indigenous peoples' institutions more generally within the Australian legal and political systems.

One salient feature of the 1987 and 1988 calls for autonomy, in comparison with these others, was that they had the backing of elected Islander politicians located within the Strait, as well as that of self-appointed Islander activists based on the Australian mainland.[4] Those making the calls were elected members of the Island Councils, long established and recognised by the Queensland State government. On one account, these Island Councils had had some degree of 'control' or 'autonomy' over individual island affairs since the late 1930s (Beckett 1987: 55). Some within those Island Councils had also, since that time, been sanctioned to come together as an officially-recognised overarching group, the Island Advisory Council (IAC). But they had not, in the past, made much use of the IAC as a platform either to speak out to Australia on Torres Strait affairs as a whole or to demand changes to their governmental status within the Australian federation. With the transformation of the IAC into the ICC in 1984, this seemed to change. The Island Council chairpersons, who were all now part of this reformed, State-government-endorsed political structure, were beginning to enunciate their own calls for greater autonomy for Torres Strait, including from the very State government that had created and sanctioned the ICC. This was a significant act of political development and assertiveness. However, it was, in many ways, events at the Commonwealth, rather than the State level of Australian government which were giving rise to this assertiveness, and on which it would have its greatest impact. It is to these events at the Commonwealth level that we now turn.

The Australian Commonwealth Labor government elected in March 1983 had not enjoyed particularly good relations with Indigenous people during its first two terms in office. It had backed away from an election commitment to uniform national land rights and in the process had also disbanded the National Aboriginal Conference (NAC), a national government-sponsored elected Indigenous advisory body which had been in existence since 1977. After its re-election for a third term in July 1987, the Commonwealth Labor government set about repairing its relations with Indigenous people. It developed the idea of an Australia-wide elected Indigenous people's commission, which would be built from a regional representative base and have significant executive power in Commonwealth Indigenous affairs. Torres Strait was identified as one potential and rather unique region for the new commission. In the process of agreeing to be part of Labor's new commission, the Torres Strait Indigenous leaders convinced

the Commonwealth to make members of the existing State-endorsed ICC also members of the new Commonwealth body, rather than having direct separate elections as in all the other regions. The members of the ICC would thus become representatives not only on an established Queensland State government Islander body but also on a new Commonwealth government Indigenous body, the Torres Strait Regional Council (TSRC) of the national Aboriginal and Torres Strait Islander Commission (ATSIC).[5]

There was, however, a shortcoming with this representative arrangement, which related to Indigenous people living in areas of Torres Strait not covered by the Queensland government's ICC and Island Council system. Since 1984, the ICC had had an eighteenth member, who was not an Island Council chairperson, but rather was elected to represent Indigenous people living on the northern half of Thursday Island.[6] But increasing numbers of Indigenous people were also beginning to live on the southern side of Thursday Island, and on two other nearby islands without Island Councils, and they too needed to be represented on the new Commonwealth body. Two directly elected positions on the TSRC were created to represent these people, so that the TSRC would have 20 members, compared to the 18-member ICC.

In 1994, in response to further Islander pressure, the TSRC was upgraded within ATSIC to become an authority. The new Torres Strait Regional Authority (TSRA) was unique within the ATSIC system Australia-wide (see Sanders 1995). It represented a significant new form of political autonomy for Indigenous people in Torres Strait, but it was not one with which many Islanders were finally or fully satisfied, nor one which was anything like a State or Territory within the Australian federation. The push for greater autonomy in Torres Strait continued, and in 1996 a newly elected Coalition Commonwealth government responded by establishing a Commonwealth parliamentary inquiry into greater autonomy for Torres Strait, to be carried out by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HRSCATSIA). The first two terms of reference for HRSCATSIA were to inquire into 'whether the people of the Torres Strait would benefit from a greater degree of autonomy' and 'if so, what forms a greater degree of autonomy should take'. HRSCATSIA's third term of reference was concerned with the 'implications' such greater autonomy might have for 'Torres Strait Islanders resident outside the Torres Strait region' and whether ATSIC or TSRA should 'represent the interests of such residents' (HRSCATSIA 1996: 1).

When HRSCATSIA reported to the Commonwealth Parliament in August 1997, it recommended the establishment of a 'Torres Strait Regional Assembly' which would represent 'all residents of the Torres Strait' and be a joint statutory creation of the Commonwealth and Queensland parliaments (HRSCATSIA 1997: 52). The proposed body, HRSCATSIA argued, should replace not only the ICC and the TSRA, but also the Torres Shire. The Island Councils, however, were to be left in place, funded through the assembly. The proposed assembly would thus become a general representative institution, open to all residents, for the whole of Torres Strait. It would also be a local government for the major centre of mixed

population settlement on Thursday Island and an overseer and funder of Island Councils in outlying areas. Support for this suggestion of multiple roles for the proposed assembly was not forthcoming; Islanders from a number of different organisational and geographic contexts were unsure that this was the way to proceed.

Islanders associated with Torres Shire did not like the idea of the Shire disappearing as a local government, while the Island Councils remained. Nor did they like the idea of the proposed regional assembly acting as a local government for Thursday Island but having a majority of its elected members from outlying areas with their own separate Island Council local governments (see Sanders 2000). HRSCATSIA did not seem to appreciate that Islanders had become attached to Torres Shire as a local government institution during the 1990s. Although the Shire had once been dominated by non-Indigenous interests, it had proven, since its re-election in 1991, to be increasingly open to Islander interests. The Mayor since 1994 had been an Islander, and so too had about half the councillors. Torres Shire was slowly changing and Islanders living on the islands which it serviced were becoming as supportive of it as those in the outlying communities were of the Island Councils.

Islanders were also uncertain about the idea of opening up the regional representative body to non-Indigenous residents. The ICC and the TSRA represented only Indigenous residents of the Strait and kept other residents at a distance; Torres Shire was their avenue of representation. The change to a single general residential constituency for the proposed assembly would be a significant shift and Islanders were unsure about its possible implications. They wondered whether non-Islander interests might come to dominate the proposed assembly, as they had once dominated Torres Shire, and if numbers of non-Islanders were to grow whether the balance of power might change over time. They wondered about what safeguards there would or could be against such non-Indigenous population growth.

A third area of uncertainty was the relationship between the proposed assembly and Islanders living on the mainland. In response to its third term of reference, HRSCATSIA suggested that the representation of these Islanders' interests should remain within ATSIC, where they already had an Australia-wide Torres Straight Islander Advisory Board (TSIAB) in addition to a general right of regional council representation in the areas in which they resided. The chairperson of TSIAB could, HRSCATSIA suggested, be given 'observer status' on the proposed assembly in order to facilitate 'links' between Islanders living at home and away (HRSCATSIA 1997: 65). But this was hardly likely to appease Islanders living on the mainland, who wanted to get out of ATSIC altogether and also wanted far stronger links with the homeland.[7] So another area of dissatisfaction and uncertainty about the HRSCATSIA proposal was also evident.

In light of these reactions, the Commonwealth government's official response to the HRSCATSIA report, in June 1998, was to support 'in principle' a 'combined body' to take over the 'functions' of the ICC and TSRA, but to leave in place the

Torres Shire (Government Response 1998: 4). In the euphemistic language of governments, this was in fact a significant disowning of the HRSCATSIA proposal. Even more telling was the ensuing comment that the Commonwealth 'would want to see an effective process of consultation undertaken before any moves are made to change existing arrangements' (Government Response 1998: 4). Three years on, and with very little happening, it is perhaps fair to say that the HRSCATSIA proposal for a Torres Strait assembly has effectively lapsed. There has still, however, been some interest among Islanders in progressing the autonomy issue.

In March 1998, a group was formed comprising the chairpersons of the ICC and TSRA, the Mayor of Torres Shire and a number of other Islanders. In March 1999, referring to itself as the Torres Strait Autonomy Task Force, this group organised a three day meeting on autonomy on Thursday Island. Over a hundred Islanders attended, most from the Strait, but some also from the mainland. The group then attempted to carry out further consultations and to report to the ninth annual national Torres Strait Islander workshop held in October 1999. These workshops had, in the past, been dominated by Islanders living away from Torres Strait and had never, until 1999, been held in the Strait. Given the strength of feelings about autonomy however, a late decision was made to hold the ninth workshop on Thursday Island and it became perhaps the biggest meeting ever of Islanders living both in the Strait and away. The meeting was, in many ways, a national reunion for Torres Strait Islanders. But progress on the autonomy issue was slow, or perhaps even non-existent. There were too many unresolved issues, too few actual proposals, and insufficient structure for ideas about autonomy to be seriously progressed. The meeting was useful, in and of itself, in bringing Islanders together and in showing that they were still interested in autonomy. But it also showed that Islanders were having trouble articulating and resolving several sets of issues surrounding autonomy. We now turn to a discussion of some of these troubling issues under our three analytic headings.

## From whom?

One basic question for any autonomy movement is: from whom is autonomy being sought? The answer, in the Torres Strait case, would seem to be from both the Australian Commonwealth and the Queensland State governments. Most of the engagement on autonomy over recent years has, however, been with Commonwealth instrumentalities, such as the HRSCATSIA inquiry. Engagement with the Queensland government has been notably lacking, which suggests some strategic lack of clarity in directing calls for autonomy and seeking constructive engagement.

The official government response to the HRSCATSIA inquiry did include some statements from the Queensland government, as well as those from the Commonwealth. However, the Queensland government statements tended to be fairly negative, citing major 'difficulties' with the idea of the abolition of Torres

Shire and even 'difficulties' with the 'amalgamation' of the ICC and the TSRA (Government Response June 1998: 4–5). The points raised were legitimate concerns and suggested that the Queensland government ought to have been involved from the beginning in the design and conduct of a Torres Strait autonomy inquiry, rather than just in responding to one commissioned by the Commonwealth. Knowing that the autonomy they sought was as much from Queensland as from the Commonwealth, Torres Strait Islanders should never have supported a parliamentary inquiry commissioned solely by the Commonwealth. Some specially designed joint forum was required, if the autonomy issue was to be progressed.

Another dimension of the 'autonomy from whom' question has been the involvement of the Torres Strait in ATSIC since 1990. Once Torres Strait had allowed itself to be drawn into ATSIC, much of the energy of the autonomy movement was then directed at getting out of ATSIC again. This has occurred slowly, with the formation of the TSRA under the ATSIC legislation in 1994, the granting to the TSRA of a one-line budget separate from that of ATSIC in 1997, and progress towards separate legislation for the TSRA outside the ATSIC legislation during 1999 and 2000. This has been a lengthy process which was not foreseen, or indeed necessary, at the time of the 1987 and 1988 calls for autonomy. During the HRSCATSIA inquiry, there were in fact more submissions from Islanders about getting out of ATSIC, than about any other form of autonomy (see Sanders & Arthur 1997: 1). Gaining autonomy from ATSIC has clearly been a major issue of the last decade, which has somewhat displaced the previous aim of gaining greater autonomy from the Commonwealth and Queensland governments.

## For Whom?

The Torres Strait Islanders most dissatisfied with ATSIC are those living away from Torres Strait, who are directed to participate in ATSIC primarily through the regional councils in the areas in which they reside. They feel swamped, in these regions, by Aboriginal interests and also cut off from Islander interests in the Torres Strait homelands.[8] The presence within ATSIC of TSIAB, the appointed Australia-wide Torres Strait Islander advisory structure, seems to do little to allay this dissatisfaction. Islanders living away from the Strait were the ones who made most submissions to the 1996–97 HRSCATSIA inquiry and the ones who wanted most strongly to 'take the TSI out of ATSIC' (see Sanders & Arthur 1997). But the position of these Islanders within ATSIC, and in relation to the Torres Strait, has not changed in ten years; nor did the HRSCATSIA inquiry have any good suggestions about how it could or should change. It has been Torres Strait Islanders living in the Strait who have been successful in 'getting out' of ATSIC over the last ten years, not those residing further south on the Australian mainland.

## Table 1. Populations of Torres Strait Region, 1996 Census

| Locality | Torres Strait Islander & Aboriginal (A)[a] | Total (B) | A/B % |
|---|---|---|---|
| **Inner Islands** | | | |
| Thursday Island (Waiben): | | | |
| South side | 795 | 1498 | 53.1 |
| North side | 862 | 974 | 88.5 |
| Horn Island (Ngurapai) | 274 | 476 | 57.6 |
| Prince of Wales Island (Muralug) | 35 | 99 | 35.4 |
| Torres Shire sub-regional sub-total | (1966) | (3047) | (64.5) |
| Hammond Island (Keriri) (1 IC)[b] | 192 | 201 | 95.5 |
| Sub-regional total | 2158 | 3248 | 66.4 |
| **Outer Islands** | | | |
| North western group: | | | |
| Boigu (1 IC) | 227 | 243 | 93.4 |
| Dauan (1 IC) | 120 | 126 | 95.2 |
| Saibai (1 IC) | 243 | 272 | 89.3 |
| Sub-regional total | 590 | 641 | 92.0 |
| Western group: | | | |
| Badu (1 IC) | 527 | 562 | 93.8 |
| Moa (2 ICs) | 399 | 443 | 90.1 |
| Mabuiag (1 IC) | 174 | 180 | 96.7 |
| Sub-regional total | 1100 | 1185 | 92.8 |
| Central group: | | | |
| Masig, Kodal (Yorke Islands) (1 IC) | 250 | 283 | 88.3 |
| Warraber (Sue Island) (1 IC) and Poruma (Coconut Island) (1 IC) | 348 | 391 | 89.0 |
| Lama (Yam Island) (1 IC) (estimate) | 150 | 150 | 100.0 |
| Sub-regional total | 738 | 824 | 89.6 |
| Eastern gropu | | | |
| Mer, Waier, Dowar (Murray Islands) (1 IC) | 405 | 414 | 97.8 |
| Erub (Darnley Island) (1 IC) | 204 | 225 | 90.7 |
| Ugar (Stephens Island) (1 IC) | 86 | 92 | 93.5 |
| Sub-regional total | 695 | 731 | 95.1 |
| **Cape York Islander communities** | | | |
| Bamaga (1 IC) | 609 | 754 | 80.8 |
| Seisia (1 IC) | 117 | 184 | 63.9 |
| Sub-regional total | 726 | 938 | 77.4 |
| Regional total[c] | 6064 | 7615 | 79.6 |

*See notes on page opposite.*

Tensions in the autonomy movement between Islanders living in Torres Strait and those living away are very real. Population growth, time since migration, and the relative numbers of Islanders now living away (see Fig. 2), all make it unrealistic to believe that Islanders could ever or would ever all return. But there is still a common sense of history and identity among Islanders, which gives those living away a strong claim to somehow be involved in Torres Strait affairs. Even Islanders living in the Strait do not wish to deny this claim, for it is the 'oneness' of Torres Strait Islanders which is a major part of their sense of being a cultural and political community within Australia, a 'nation within' as Indigenous communities within settler majority societies are increasingly being called. But Islanders living at home are apprehensive about the degree of influence Islanders living away could have on Torres Strait affairs, given their relative numbers. Not much imagination or inventiveness in institutional design has yet been applied to this difficult issue. The HRSCATSIA suggestion, of leaving mainland Islanders and TSIAB in ATSIC while allowing the chairperson of TSIAB observer status in the proposed regional assembly, was inevitably going to be unsatisfactory to mainland Islanders. Something far more innovative and imaginative will be required if the tension between mainland and homeland Islanders is to be mitigated, and we remain convinced that there are possibilities to be explored (see Sanders & Arthur 1997).

Non-Indigenous people living in the Strait present another dimension of the question, autonomy for whom? This is particularly the case in the 'inner' island area covered by Torres Shire, where non-Indigenous people constitute up to a third of the total population (see Table 1). Some of these people are transient employees of both public and private sector organisations, with no particular

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Notes:     (a) The 1996 Census allowed Indigenous Australians to identify as Aboriginal, Torres Strait Islander or both. Of the 6064 self-identifying Indigenous Australians in the Torres Strait region, 5396 (89.0%) identified as Torres Strait Islander, 304 (5.0%) identified as Aboriginal and 364 (6.0%) identified as both. In sub-regional terms, the numbers identifying as either Aboriginal or both were significantly above these averages: on Horn Island (Ngurapai) (8.4% Aboriginal, 12.0% both), on the south side of Thursday Island (Waiben) (5.2% Aboriginal, 13.6% both) and in Kubin community on the western side of Moa Island (2.2% Aboriginal, 19.4% both). This reflects the fact that Ngurapai and Waiben are regarded as traditional Kaurareg Aboriginal land, not Islander land, and that Kubin was used as a resettlement location for Kaurareg Aboriginal people during the years when colonial settlement was trying to minimise the numbers of Islanders and Aborigines on Thursday Island and to a lesser extent, on Horn Island. Small numbers of people who did not identify as Torres Strait Islander and/or Aboriginal also did not positively identify themselves as non-Indigenous. This 'not-stated' number constituted 5.3 per cent in the Torres Shire sub-region and 2.0 per cent elsewhere. If some of these are Aboriginal or Torres Strait Islander, then the percentages of total populations that are Torres Strait Islander and/or Aboriginal could increase by up to these amounts.

          (b) IC = Island Council.

          (c) Regional totals are slightly greater than the sum of localities/sub-regions due to people counted as residents of the region who could not be allocated to a locality.

Source:   ABS Census of Population and Housing 1996.

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political or economic attachments to Torres Strait. But some are long time residents with strong attachments. Again not much imagination or inventiveness of institutional design has yet been applied to considering how to include these people in Torres Strait political structures—beyond Torres Shire—while also safeguarding Islander interests. HRSCATSIA's insistence on a general residential constituency, not only for the proposed regional assembly but also for Island Councils, was again somewhat unhelpful (HRSCATSIA 1997: 52, 61). It left no room for manoeuvre over different periods or types of residence and it inflamed rather than allayed Islander fears of potential non-Indigenous domination. Ironically, in practice Torres Strait Islanders tend to acknowledge and respect the presence of long-term non-Islander residents, often saying that they too are now 'indigenous'.

A final dimension of the 'for whom?' question has to do with the autonomy of individual islands and their existing Island Councils. As already noted, Island Councils have, on one account, enjoyed considerable autonomy and control over their individual island affairs since the late 1930s. In pre-colonial times also, individual islands were fairly fiercely independent. So it is perhaps not surprising that Islanders from particular islands and Island Councils are sometimes as much concerned with maintaining and enhancing their own island's autonomy as they are with any centralised Torres Strait autonomy. Mer (Murray Island), in the far east of Torres Strait, has been particularly strong in this regard and has sometimes envisaged becoming a 'territory' in its own right (see submission 9 to the HRSCATSIA inquiry, 1996). The scale and number of individual islands and their populations (see Fig. 1 and Table 1), would make multiple island territories in Torres Strait difficult for either the Commonwealth or the Queensland governments to envisage or handle. However, the autonomy of individual islands within Torres Strait does need to be addressed and ensured, if overall autonomy for Torres Strait is to be achieved. It is significant that the March 1999 meeting of the Torres Strait Autonomy Task force declared its support for 'a centralised, culturally appropriate governing structure' for Torres Strait, while also seeking to 'maintain all existing local government structures and their responsibilities' (Task Force 1999).

## For or over what?

The final analytic question relates to the range of matters for or over which autonomy is being sought. The most common model appealed to is that of Territory status. Territories within Australian federalism typically have quite a high degree of control over areas such as health, education, policing, town planning, physical infrastructure, natural resource management and community services—areas which are often thought of as State-type concerns. Control over other matters such as taxation, income support, customs, immigration, defence and foreign policy, which are often thought of as Commonwealth-type concerns, is usually more restricted, although in particular circumstances it may be negotiable.

Torres Strait is a culturally and geographically distinct border region, and this provides the sort of circumstances in which it could be envisaged that control over some of these Commonwealth-type functions might be negotiated. Indeed there are already some quite particular and unusual Commonwealth jurisdictional arrangements in place for Torres Strait, which could be cited as precedents and built upon. Most of these arise from a treaty signed with Papua-New Guinea in 1978, just three years after its grant of independence from Australia, and ratified in 1985. The Torres Strait Treaty kept the previously claimed islands and people of Torres Strait within Australia, up to the Papua-New Guinea coastline, but granted Papua-New Guinea sea-bed jurisdiction to a line near the middle of Torres Strait and a similar fisheries jurisdiction, except for an area stretching north to the three Australian inhabited islands north of this line (see Fig. 1). The Treaty also established a Torres Strait Protected Zone, covering some Papua-New Guinea islands and the 'outer' Torres Strait islands, in which free movement of people and conduct of activities, such as fishing, were permitted for traditional purposes. The Treaty thus established a relatively open border region with some degree of international movement and resource sharing. For ongoing management of issues, the Treaty also established a Joint Advisory Council reporting to the Australian and Papua New Guinea foreign ministers. Three of the nine Australian representatives on this Council must be Torres Strait Islander representatives, and by convention they have been elected Island Council chairpersons. These Torres Strait Treaty arrangements have thus given Torres Strait Islanders the beginnings of an 'international personality', which is one possible indicator of autonomy (Hannum & Lillich 1981).

Initially, Torres Strait Islanders were enthusiastic about these treaty-based arrangements, seeing themselves as having a greater say on many Commonwealth functions than had previously been the case. However, over recent years Islanders have begun to express some dissatisfaction with the arrangements, particularly on marine issues (see Kaye 1994). In his 1993 Boyer lecture, Getano Lui spoke of Torres Strait Islanders living with the 'effluents' of 'international shipping' and the 'mines' of Papua-New Guinea 'swirling around in the waters from which we gain our daily food' and of Islanders being 'frustrated' that although they believed the 'islands, reefs and seas of Torres Strait' to be theirs, they had 'almost no power to manage or protect them' or 'to receive the economic benefit they provide to others' (Lui 1994: 62–3). This last was probably a reference to commercial fisherman, who operate legally in the waters of Torres Strait under Commonwealth and Queensland licensing arrangements, but with whom there have been some heated Islander clashes in recent years.[9]

Islanders see the marine environment as central both to their life style and to economic development. This is hardly surprising given the pre-contact history of the area and the colonial experience of a buoyant pearling industry from the late 1800s to the early 1960s (Altman, Arthur & Bek 1994; Ganter 1994; Mullins 1995). If autonomy is to be progressed, therefore, it will almost certainly require some significant renegotiation of both Commonwealth and State jurisdictions relating to the marine environment and fisheries.[10] Islanders will be seeking

significantly greater authority and control over matters concerning the marine environment and fisheries. Other more exclusively Commonwealth jurisdictions, such as immigration, customs, taxation, and income security might also be pushed towards renegotiation, but these are probably less central to the Torres Strait Islander sense of identity and history and the emerging Islander view of autonomy.

Control over land is another central aspect of autonomy. Some progress on this front was made during the 1990s, following the recognition of native title in the Mabo judgement in 1992 and the passing of the *Native Title Act* by the Commonwealth Parliament in 1993. A number of difficult issues have arisen relating to native title in Torres Strait, such as relations between 'historical' Indigenous people who have moved to particular local areas within living memory and those whose associations go back far further. Progress has been made in resolving such issues and native title has now been recognised over several other islands in the Strait besides Mer. The native title claim and negotiation process, over land, will probably work its way to its conclusion over the next ten years and will itself have been a significant boost to Torres Strait autonomy. However, the potential of native title to advance autonomy in the all-important marine and fisheries area is, as yet, less clear.

There are also other matters, besides land and marine issues, which need to be addressed in discussions of autonomy. Control and authority over predominantly State matters, such as school and technical education, hospitals and community health services, policing, public housing, infrastructure, and town planning may also need to be addressed and significantly renegotiated in any push towards greater autonomy for Torres Strait. Although these State-type matters are perhaps less central to the Islander sense of identity, history, economic development, and political community than matters relating to land and the marine environment, they are still clearly seen as important. A number of regionalised, Queensland-government consultative and administrative arrangements are already in place in these areas, but are often seen as inadequate by Islanders and as not giving them ultimate authority. No doubt these too would need to be renegotiated in a push towards greater Torres Strait autonomy.

The small scale of Torres Strait operations in these State-type matters may lead a future Torres Strait government to seek linkages or service agreements with Queensland State government agencies. Service agreements are common between the small Australian island Territories and their neighbouring States, for example in the case of Cocos Keeling and Christmas islands and Western Australia. Similar service agreements between a Torres Strait territorial government and the Queensland State government would be a significant further step towards autonomy in these jurisdictional areas, replacing the current arrangements of regionalised, consultative Queensland State administration.

The existing island Territories within the Australian system of government have all been acquired by the Commonwealth during the twentieth century and come under the Territories power at s. 122 of the Commonwealth of Australia

Constitution (House of Representatives Standing Committee on Legal and Constitutional Affairs 1991). This Constitution also specifies at s. 123 that if the Commonwealth wishes to 'alter the limits' of a State, it must do so 'with the consent of the Parliament' of that State and 'the approval of the majority of the electors of the State'. For Torres Strait to become a Territory of the Commonwealth, there would have to be a Queensland-wide referendum. Whether Torres Strait would wish to pursue this path, and whether it would be able to interest the Queensland State government in such a referendum, is an issue which has not thus far been much raised or discussed in the autonomy debate. One alternative would be for Torres Strait to seek to become a territory of Queensland, rather than the Commonwealth, thus remaining a part of Queensland and *not* coming under the Commonwealth's Territories power. Such a move would lessen the danger of creating animosity in a State government with whom a Torres Strait territory might then be seeking service linkages and agreements. Australian States do not, at present, have any such territories, but this is not to say that they cannot. A territory within a State would be a truly innovative development in Australian federal governance structures.

Clearly these issues of the scope of autonomy relate very strongly back to those of autonomy from whom. Torres Strait Islanders would like to have more control and authority over existing jurisdictional responsibilities of both the Queensland State and Australian Commonwealth governments. But whether these two governments are willing to cede some of this control or authority has not yet been greatly explored. Being in a border region subject to an international treaty has, in one sense, already given Torres Strait Islanders a greater say in some matters than they might otherwise have been able to attain. But this geographic location may also set limits on the degree of control and authority which the Commonwealth, in particular, is willing to cede. The Queensland State government may also feel somewhat reluctant to cede authority, if only for reasons of hurt pride. Gaining greater autonomy is never an entirely easy or painless process. But this is no reason to stop trying, if current governance structures in Torres Strait are truly seen as inadequate.

## Autonomy, Australian federalism, and regional ethnic diversity: A concluding comment

Cheryl Saunders has recently argued that Australian federalism has played 'no role in moderating competing ethnic demands' and that it has been 'particularly unreceptive' to the claims of Indigenous people (2000: 266, 284). There is, she argues, 'a lack of a federal culture receptive to power sharing' and also some 'dominant competing influences' such as 'majoritarian decision making, formal equality and parliamentary sovereignty' (2000: 284, 269). More positively she argues that Australian federalism has played a role in addressing issues of geographic size; it offers 'a more local level of government' which contributes 'at least potentially to Australian democracy' (2000: 266). In Torres Strait, issues of ethnic diversity and geographic size come together; a small culturally distinctive

population based on a geographically distinctive region is making claims for greater autonomy.

Saunders did not deal with the Torres Strait autonomy movement in her survey of the handling of Indigenous issues by Australian federalism over recent years. Perhaps if she had, she might have been a little less pessimistic about the capacity of Australian federalism to deal with ethnic or Indigenous claims, particularly where they are based in distinctive regions. Some observers have, for some time now, been more positive about the capacity of Australian federalism to respond to Islander claims and interests. Islanders have been seen to use the condominium of Australian governments interested in their affairs to increase their political leverage (Arthur 1999; Beckett 1987: 185–201; Sanders 1995: 522). Islanders have at times turned to the Commonwealth for attention and assistance, and at other times to Queensland. They have subtly played the two governments off against each other, while increasing their own demands or defending themselves against some unwanted Commonwealth or Queensland government plan.

Torres Strait has not yet gained a degree of autonomy within Australian federalism which satisfies the protagonists of its autonomy movement. But it has made some progress towards greater autonomy and it is not primarily Australian federalism which has prevented it, or will prevent it, from making more. Islanders have a number of issues to sort out among themselves. They need to become much clearer about what it is they are seeking, from and for whom, and with whom they are seeking strategic engagements. Some recent accounts, *contra* Saunders, would suggest that Australian federalism does indeed have a quite strong 'power sharing' culture and that State and Commonwealth governments can indeed find collaborative and cooperative ways to work together on issues, if they are pushed to (for many examples see Painter 1998). Torres Strait Islanders perhaps need first to develop their own position and then to approach the Queensland and Commonwealth governments in tandem, if they are going to advance the autonomy issue. Using one government to protect yourself from another, while taking what you can from each, is one form of federal politics at which Torres Strait Islanders have excelled in recent years. But there are also times when collaboration rather than competition between the Commonwealth and a State government is required, and this may be such a time in relation to Torres Strait autonomy. These are strategic issues on which judgments can differ, but also on which judgments should be open to change.

The Torres Strait autonomy movement has not yet reached a settlement which is likely to satisfy Islander protagonists. It is unlikely, therefore that it will simply fade away. There is still much work to be done. Australian federalism can accommodate political claims arising from regional ethnic diversity, but it needs to be pushed to do so. If the Torres Strait autonomy issue is ever to be fully resolved, real innovation will be called for within Australian federal governance.

## Notes

1.  As well being restricted to Indigenous people, this is a far more stringent residential criteria than for general Queensland local government, which only requires a person to have three months residence in an area in order to have the right to stand for office.

2.  The number of Island Councils increased to 17 in the late 1940s when Islanders from north western islands, particularly Saibai, resettled on the tip of Cape York at the new communities of Bamaga and Seisia. Saibai, which is a delta island, had at the time experienced major flooding.

3.  Mabo's case was initially a claim for particular parcels of land for particular individuals. However, in the end it was dealt with as a claim for the whole of Mer on behalf of the all the Meriam.

4.  Kehoe-Forutan makes the point that in 1987 the ICC recruited an Islander who had been residing on the mainland for many years to work with their Independence Working Party Committee and who 'whether he realized it or not, was bringing with him to the political scene in the Islands, a very different political background and experience'. The result, she argues, was a shedding by Islander leaders of the 'normal diplomatic approach' in favour of greater 'utilization of the media' (Kehoe-Forutan 1988: 17).

5.  ATSIC initially had 60 regions, of which Torres Strait was one. In 1993, this was reduced to 36, but Torres Strait region remained as previously delineated. ATSIC regions are aggregated into 17 zones, each of which has a national Commissioner. Torres Strait is one of just four ATSIC regions which is also a zone and hence has its own national Commissioner. Most ATSIC zones are currently comprised of two or three regions.

6.  The centre of colonial settlement was on the southern side of Thursday Island. When Islanders were allowed to settle on Thursday Island from around the middle of the twentieth century, an area on the northern side of the island known as Tamwoy was set aside for them as a reserve.

7.  Dissatisfaction with ATSIC among Torres Strait Islanders living on the mainland is based on a perception that their interests within ATSIC within their residential regions are dominated by the more numerous Aboriginal Indigenous people. Australia-wide Torres Strait Islanders constitute approximately 10 per cent of the total Indigenous population, though in many of ATSIC's 36 regions they are far less than this. In a few regions around Cairns and Townsville in North Queensland the proportion of Indigenous people identifying as Torres Strait Islander rises to a quarter, or even more, but is still a minority. Only in the Torres Strait are Torres Strait Islanders a majority Indigenous population, where they constitute about 95 per cent of the Indigenous-identifying population and 75 per cent of the total residential population (see Sanders & Arthur 1997: 7; Table 1). Studies of this perceived domination of interests have had trouble finding hard evidence (Arthur 1998), but the perception is certainly strong among mainland Islanders.

8.  See note 7.

9.  One Islander, Ali Nona, was recently acquitted of armed robbery charges as a result of such a clash. He defended his right to take the fish from the commercial fisherman by referring to his traditional right to local fisheries.

10. Fisheries in the Torres Strait have since 1986 been managed as a joint Commonwealth–Queensland jurisdiction by a Torres Strait Protected Zone Joint Authority comprised of the Queensland and Commonwealth fisheries ministers. The Fisheries Management Committee of this authority has three Islander representatives, three members representing the Queensland Commercial Fishing Organisation, two Queensland government and two Commonwealth government members, and one scientific member.

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