

RESPONSE TO THE REPORT "ABORIGINAL COMMUNITY GOVERNMENT"
DON DUNSTAN (JULY, 1989)

This paper has been prepared by Anangu Pitjantjatjara ("AP") in response to the Report by Don Dunstan of July, 1989 entitled "Aboriginal Community Government".

1. In general AP welcomes the report, since it once again highlights some very salient points about Aborigines and Local Government. These points have been made previously, in particular in the Self Report (1985) and by Martin Mowbray in his work for the Central and Northern Land Councils. These are, very basically -

- That Aboriginal people are not getting a fair deal when it comes to local government type services, in particular that there is no equality in funding for Aboriginal communities or in the services and amenities provided to them

- That there is a need for greater coordination and a more flexible approach to the delivery of services and amenities for Aboriginal communities, in a culturally appropriate manner

2. These points are issues of fundamental importance which must be redressed. AP's main concern is that these issues are redressed in the most efficient and culturally appropriate way.

AP has read with interest the various local government type options put forward in the Dunstan Report (Section Seven) since in some respects the present, and pre-existing, policy of AP in relation to local government coincides with those options.

The AP policy is clearly set out in the Report "Uwankara Palyanyku Kanyintjaku" of December 1987 which states:-

a. That the role of AP be expanded as a co-ordinating and resource body to Anangu Communities in housing, essential services, health, education, welfare and other services on the AP Lands.

b. AP's role as the Anangu regional management body for AP lands in administering the provision of services be recognized in connection with funding of AP and providing administrative, technical and financial resources for its expanded role.

c. The various services, the responsibility of AP, to include -

- health, welfare, education and TAFE, building and public works, air transport, enterprises, legal and anthropological services
- the planning, provision and maintenance of all houses and permanent structures on AP Lands

- essential services: water, sewerage, electricity and refuse disposal
- the operation and management of all community stores, using Anangu Winkiku Stores

The above policy accords in many respects with, three of the options put forward in the Dunstan Report -

- * Option 7.2 - Modified Discrete Aboriginal Community Government Option
- * Option 7.3 - Regional Option and
- * Option 7.6 - Retain Status Quo Option: Provide access to Local Government Fund Option

2. Not only does the policy accord in many respects, but AP is already carrying out many of the functions of a local government body. In particular it already has by-law making powers in relation to the consumption of alcohol, petrol sniffing and the control of gambling on AP lands.

Some of the functions that AP carries out are as follows:-

Housing supervision health services (through Nganampa Health), Educational Committee, Works management, and control of permits.

(We return to this issue later in the submission.)

3. Before AP considers the Dunstan options in greater detail and, given the above, there are matters of considerable importance which must be spelled out for a better understanding of the position of AP in relation to the local government issue. These matters are:-

- * Self determination
- * Flexibility
- and * Funding

a. Aboriginal self-determination.

This is of the utmost importance and is the basis upon which any changes to structures or funding should be made. This is the whole rationale for Land Rights and has been accepted as such by both Commonwealth and State Governments.

In the Northern Territory the dangers for Aboriginal Communities in accepting local government structures, from the point of view of self determination, have been looked at by the Northern and Central Land Councils and many drawbacks have been uncovered.

3.

In particular it has been realized that there is a possible conflict between the powers of a local government body and those of the traditional owners over the use of land.

This situation would not merely be confined to the Northern Territory. In South Australia in the AP situation the functions and powers of a local government type body, separate from AP may well clash with those of AP over the use of land and there would be considerable danger that decisions relating to land use would be taken out of the hands of the traditional owners where they rightfully belong.

AP's functions (as set out in S6 of the Pitjantjatjara Land Rights Act 1981) are as follows:

(a) to ascertain the wishes and opinions of traditional owners in relation to the management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions

(b) to protect the interests of traditional owners in relation to the management, use and control of the lands

(c) to negotiate with persons desiring to use, occupy or gain access to any part of the lands; and

(d) to administer land vested in Anangu Pitjantjatjara

In order to carry out those functions, AP has the power to

- sue and be sued
- to grant various leases and licences
- to buy and sell land outside the AP lands
- to enter into contracts
- to appoint and dismiss staff
- to deal with money
- to obtain expert advice on different AP matters
- to set up offices
- to make Rules for AP
- to do any other thing or take any other action that may be necessary for AP to carry out its functions.

government type functions and powers (in accordance with its stated policy) great flexibility would be achieved and maintained.

It must be emphasized that AP are already carrying out many of the Dunstan proposals e.g. co-ordination of essential services. In this context what has been stated above regarding self determination and the flexible way in which services have grown with demand is very important.

Control should as far as possible be maintained at the local community level, in terms of the needs required for those communities, but AP is certainly the most appropriate body on a regional level to coordinate this flexible arrangement.

In this regard the inter-relationship between the various communities and AP, between the various organizations themselves and AP should be understood, since it is a close one, and shows the degree of flexibility and coordination already existing, and which has built up with demand.

By way of example the members of the Executive of AP are the Chairpersons of the various communities.

- The chairpersons of the various communities are Executive Members of the Nganampa Health Service.

- The Health Committees of the various communities are the community councils for the time being.

- A cooperative exists Anangu Winkiku Stores (AWS) for the more efficient operation of community stores, (buying, retailing, training, employment etc). The AWS Executive is the same as the AP Executive.

In this way the wishes of traditional owners who make up executive and ordinary membership are constantly taken into account. There is a statutory requirement to do so.

The re-location of the AP office away from Alice Springs to a more central location on the AP lands by August 1990 should enhance the responsiveness of that office to local needs and ensure a sufficient degree of control at a local community level.

It must be emphasized that the present system reflects Aboriginal aspirations since it has mostly grown out of Aboriginal aspirations for change.

Unfortunately the flexible approach is reflected neither in mainstream local government type structures or funding and Anangu are concerned that any move towards a local government type structure would have major drawbacks both in terms of flexibility, community control and funding.

(4) The legislation makes it quite clear that AP is the body designed to have control over the AP lands. Any derogation of that control by way of the imposition of a separate local government body with the consequent potential conflict of powers, would not be in the best interests of the traditional owners of that land. It certainly would not lead to the desired result of greater flexibility and efficiency in service delivery. Conflict would arise in dealings with government and other bodies.

Another factor to be considered, is that although it may seem on the surface that there is a proliferation of Aboriginal groups and service providers operating on the AP lands, it must be realized that the growing number of organizations which have been set up to meet the various needs of Anangu is a very important part of self-determination. In terms of regional organisations it is important to note that the AP Executive is the executive for all these bodies and matter can dealt with at AP meetings.

It has been recognized that Aboriginal people have at times very specific and different needs to white Australians. These specific needs have resulted over the years in Anangu obtaining the necessary resources and in building up the skills to service those needs. CLC and NLC have pointed in particular to the skills built up in outstation resource centres in the NT.

(5) Many of the initiatives taken by Anangu themselves and for which funding has been specially provided would almost certainly not have been taken had the communities been under any existing form of local government. Anangu have in addition maintained considerable autonomy and flexibility in this way.

The Government paper "Aboriginal Participation and Equity in Local Government" states:-

"In some ways this complex structure may offer more autonomy than local government. Local Government is subject to fairly close control by legislation, regulations and formal administrative means".

AP does not deny that benefits flow from adopting a coordinated approach to the resourcing and service provision of the various bodies. To a large extent this has already taken place and is discussed later in this submission. It must be emphasized, that the AP policy is totally consistent with the ideals of Anangu self-determination.

b. Flexible approach

AP agrees that a flexible approach to local government type issues is essential. This need has been acknowledged by everyone who has written on this subject, including Dunstan.

(6) AP feels strongly that by increasing its local

AP wishes to emphasize its concern that the imposition of another structure would be to the detriment of Anangu generally in that it would lead to loss of autonomy, confusion and less flexibility, particularly when all the machinery currently exists.

(c) Funding

The whole area of funding for Aboriginal community councils in relation to local government type functions needs to be looked at very closely. The following points are very important -

a. If AP is to take on the role of a local government body, there must be untied funding to maintain flexibility.

Funding should be provided to AP under the Local Government (Financial Assistance) Act 1968, as a local governing body. The Federal Minister on the recommendation of the State Minister for Local Government could declare AP to be a local governing body for the purposes of obtaining funds. Submissions have already been made in this regard.

7 b. Mowbray has pointed out that in the NT most of the funding has been provided for essential services. Government funding has reflected the perceived notion that the local governing body has been the provider of essential services only. As has already been pointed out, Aboriginal people have specific needs which will not adequately be catered for by way of provision of funding for essential services eg priorities between spending on outstations as opposed to larger communities.

Aboriginal needs will only be met by untied funding giving greater flexibility to the provision of needs.

c. Mowbray has also made the point that there is a danger of self-determination being confused with self-sufficiency. He has pointed out that the drive by the NT Government to get Aboriginal community councils to become local government bodies was directed more towards making those councils self-sufficient than towards self-determination. Self-sufficiency relates to the ability of community councils to raise their own revenue in the same manner as mainstream local governments, through rates etc.

For Aboriginal communities truly to take part in any form of local government, as has been appreciated by the Dunstan Report, there must be horizontal equalization in all funding. This means that funding is given with regard to need. It is unrealistic to expect communities to raise their own revenues through rates and taxes.

Mowbray has pointed out that if Aboriginal communities were European communities with the same number of pensioners etc. they would be heavily subsidized. As it is, there is no subsidisation and extremely limited revenue raising capacity.

The Dunstan Report recognizes the difficulties which would face Aboriginal communities in raising their own revenues. The report does however include a section on "Aboriginal Enterprises". Whilst AP acknowledges that enterprise is essential if Anangu are to become economically independent, there is a danger that funding may somehow become tied to economic activities on the lands. This notion is strongly resisted because no where in the mainstream do communities have to rely on enterprises to fund local government services.

AP considers there should be greater coordination of funding arrangements between the various funding bodies. The new Regional Councils of ATSIC working in conjunction with AP could provide such coordination. (See below).

4. Dunstan Report Options

The position put forward by AP would provide a flexible structure capable of meeting the unique requirements of Aboriginal communities.

The Dunstan Report options 7.2, 7.3 and 7.6 (Section Seven) in many respects accord with AP's position and policy. Taking the points raised in the above options, AP wish to emphasise the following:-

(a) AP already has by-law making powers. AP has made by-laws in relation to the control of alcohol consumption and gambling on the AP lands. By-laws are made by Regulation and the Minister could by Regulation give the power to AP to make by-laws in connection with local government type functions. Additional Regulations are required to extend the range of by-laws to control such things as planning, building and other local government type issues.

To ensure that control is maintained at a community level so far as possible, communities could request AP to make by-laws specifically relating to local community issues. As Frank Brennan states: "Local communities should be able to ask AP to approve and pass by-laws relating to local community areas" eg. control of dogs at Ernabella, but allowing other communities an unlimited numbers of dogs (F Brennan S J Aug 1988) (Option 7.2).

(b) Mobilisation of funding and advice on establishment of enterprises.

AP has the power (S6 Pitjantjatjara Land Rights Act 1981) to call in experts whenever required to provide any required advice and expertise. The provision of legal expertise is provided by the Pitjantjatjara Legal Service which is normally involved in the setting up of all enterprises.

(c) AP has sufficient powers and functions under the Land Rights Act to carry out the coordination of delivery of, and mobilisation of funding for, essential services and the powers and functions with regard to policy making in relation to health, education, welfare employment and training. (Option 7.2)

In this regard it should be noted that there have been major innovations in delivery of health and welfare on the AP lands in that there are now Nganampa health Clinics in all communities.

As already stated AP is closely integrated with the Nganampa Health Service in that the members and the Executive of AP and Nganampa Health are the same. The Health Committee in each community is the Community Council for the time being

(d) With regard to training, training for store workers is carried out by AWS. AWS also assists in the employment and oversight of store managers and other staff. As already stated, the Executive of AWS is the same as that for AP

Responsibility for training in other fields could be taken over by AP through similar structures or coordinated through AP.

(e) Law and order can be dealt with by way of by-laws. The Pitjantjatjara Legal Service already provides and coordinates legal advice to the communities and to individuals through itself and through the SA Aboriginal Legal Rights Movement eg AP has recently commissioned a Review of the By-Laws, Court System, Police Aid Scheme and customary law.

(f) The expectation of an Aboriginal local governing body raising revenue through rates and taxes has already been explored. This is unrealistic and funding should reflect this. Funding from other areas should not be precluded if funding is provided to AP as a local government body.

5. In connection with AP's powers and functions regarding local government, mention should be made of the Aboriginal and Torres Strait Islander Commission (ATSIC).

The ATSIC Act 1989 provides for Regional Councils which have the following functions:

- "to formulate, and revise from time to time, a regional plan for improving the economic, social and cultural status of Aboriginal and Torres Strait Islander residents of the region;
- "to assist, advise and co-operate with the Commission, other Commonwealth bodies and State, Territory and local government bodies in the implementation of the regional plan;

- "to make proposals, in accordance with section 97, for Commission expenditure in relation to the region;"

The Regional Council for the Pitjantjatjara Lands includes the AP Lands, Oodnadatta and Cooper Pedy.

It is important that the Regional Councils not make recommendations in connection with the Pitjantjatjara Lands without proper input from Communities in that area. In this regard it has already been proposed by AP that the Regional Council, once set up, sets up a sub-committee for the AP lands which would consist of the existing AP Executive (Community Chairpersons).

It is hoped that the new Regional Council working in close conjunction with AP could provide an efficient forum for the coordination of funding on a regional level for service delivery, taking into account the requirements of the various pre-existing organizations and the real needs of the Aboriginal people living on the AP lands.

6. In summary, AP wish to re-emphasise the following:

- The need to constantly bear in mind the concept of Aboriginal self-determination and to implement changes consistent with this.
- The necessity to maintain flexibility in any system of local government, both by way of funding and in the means of service delivery.
- The acceptance in principle by the government, in accordance with the stated AP Policy, of the role of AP as a local government type body with access to local government funds and to support AP existing request in this regard. The form in which these funds may be made available can be discussed at a later stage.

7. AP notes Recommendation 3 of the Dunstan report:-

"Consultation with the residents of all communities should occur before final recommendations are made."

AP considers it appropriate and strongly emphasises the necessity of the government consulting with it prior to any steps being taken or legislation enacted which will in any way affect the current situation as it pertains to AP and the communities.

AP
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