

PASRAC 185.00

ABORIGINAL COMMUNITY
GOVERNMENT

A REPORT BY DON DUNSTAN

ADELAIDE
JULY, 1989

Printed in the public interest by S.A. State Aboriginal Affairs

PROGRAM FOR ABORIGINAL STUDENTS
ROSEWORTHY AGRICULTURAL COLLEGE



ABORIGINAL COMMUNITY GOVERNMENT

A REPORT BY DON DUNSTAN

Adelaide,
July, 1989

CONTENTSPAGESECTION ONEINTRODUCTIONSECTION TWOBACKGROUND

- 2.1 Commonwealth Reports
- 2.2 South Australian Reports
- 2.3 Western Australian Report
- 2.4 Aboriginal Lands Trust Act, 1966
- 2.5 Pitjantjatjara Land Rights Act, 1981
- 2.6 Maralinga Tjarutja Land Rights Act, 1984
- 2.7 Outback Areas Community Development Trust Act, 1978
- 2.8 Associations Incorporation Act, 1985
- 2.9 Local Government Act, 1934 (as amended)
- 2.10 Commonwealth Aboriginal Councils and Associations Act, 1976

SECTION THREE

- 3.1 Advantages of Culturally Appropriate Local Government
- 3.2 Constraints on Introduction of Successful Aboriginal Local Government Structures

SECTION FOURTHE REVIEW PROCESS

- 4.1 South Australia
- 4.2 Commonwealth
- 4.3 Western Australia
- 4.4 Queensland
- 4.5 Northern Territory

SECTION FIVEFINDINGS

- 5.1 Aboriginal Communities
- 5.2 Mainstream Local Government Authorities
- 5.3 Aboriginal Lands Trust Act Review
- 5.4 Outback Areas Community
- 5.5 Northern Territory
- 5.6 Queensland

SECTION SIXABORIGINAL ENTERPRISESSECTION SEVEN

- 6.1 Discrete Aboriginal Community Governments Option
- 6.2 Modified Discrete Aboriginal Community Governments Option
- 6.3 Regional Option
- 6.4 Mainstream Option
- 6.5 Commonwealth Aboriginal Councils and Associations Act Option
- 6.6 Retain Status Quo: Provide Access to Local Government Funds Option
- 6.7 Retain Status Quo: No Access to Local Government Funds Option

SECTION EIGHTCONCLUSIONS



SECTION ONE

INTRODUCTION

In March, 1989, Cabinet approved the terms of reference of the project as follows:-

"Consultation to occur with Aboriginal communities and specific interest groups on development of culturally appropriate local administrative structures for Aboriginal communities in the following areas:-

- . the Pitjantjatjara Lands;
- . the Maralinga Lands;
- . the Aboriginal Lands Trust Lands."

Cabinet indicated that the project should direct attention at access to Local Government Grants Commission funding by Aboriginal Communities, recognising that the Commission's present methodology for grants determination may not adequately take into account the unique circumstances which apply in Aboriginal communities.

In June 1988, I was appointed as a part-time adviser by the State Government to consult with the above Aboriginal communities in South Australia on the concept of community government, to review the operation of local government-type legislation in Queensland and the Northern Territory and to report back to the Government on optional approaches to the introduction of community government in South Australia.

Progress reports were made to the Ministers of Aboriginal Affairs and Local Government who had joint responsibility for the project and to the Human Services Committee of Cabinet.

The concepts of "community" or "local" government (used interchangeably in this report) with their corollaries of "self-management" or "self-government" immediately bring into focus a number of issues. No matter how "culturally appropriate" would the opportunity for community government, if accepted by communities, nevertheless result in a departure from their own traditions and be an imposition of white values and notions of administration? How much autonomy could realistically be provided given bureaucratic requirements for accounting and audit? Are Aboriginal communities in South Australia ready for self-management and the concomitant implication of Aboriginalisation of their administrative structures? Or would community government mean a continuation of reliance on (or even a proliferation of) white advisers?

Given the small size of Aboriginal communities in S.A., another issue to be addressed is that of economies of scale. Would a community of two hundred people, for example, have sufficient resources effectively to manage the new administrative procedures inherent in community government? Or would communities be better served by regional groupings which provided

better economies of scale and a stronger voice in dealing with governments. Conversely, would this distract from decision-making at the local level and distortion of local priorities? How would Aboriginal local government structures relate to the proposed Aboriginal and Torres Strait Islander Commission Regional Councils?

The answer to many of these questions is unpredictable. Experience has tended to show that Aboriginal communities work best where decisions are made locally. If decisions come from afar, Aborigines tend to feel neither involved nor responsible. It must be remembered that traditionally decisions were made by consultation and involvement of the people concerned. Aboriginal society never developed a system of representative government. Representative institutions have been from time to time devised for Aborigines by Europeans who apply European concepts to management of Aboriginal people. These institutions often have not worked, or have produced tensions and diversions within Aboriginal communities unforeseen by the proponents. If decisions are to have community support, involvement of the local communities in decisions affecting them needs to be maximised. If it is not, the decisions are likely to meet indifference and totally to lack the community social reinforcement essential to make them work. I would, therefore, caution that the proposals outlined in this report should only be proceeded with after extensive consultation with communities and that if they support the introduction of legislation, it must be flexible to accommodate the different circumstances of Aboriginal communities in South Australia. Community government should be introduced slowly, with adequate support (finance, training, personnel) and communities and government must understand that mistakes will be made.

No doubt the proposals in this report for a special form of local government for Aboriginal communities will also evoke condemnation by some elements of our still prejudiced society. Questions will be raised as to the need for special legislation and why Aboriginal communities should not come under the same local government provisions that apply to other Australians. Such arguments, based on outdated assimilationist attitudes, would fail to recognise the enormous disadvantages of Aboriginal communities in social, political and economic terms. Special laws are needed to restore some balance of rights and justice to the Aboriginal population.

In considering the current circumstances of Aboriginal communities in S.A., it is necessary to take account of their post-contact history. From early occupation by force of lands they had occupied for over 40,000 years, through genocide, protection, assimilation, removal of their children and the paternalism of missionaries (albeit some more enlightened than others) and marginalisation into a minority group, the surprising aspect is that Aboriginal people have survived at all, let alone retained a will to survive and a sense of pride in their culture and a sense of their own identity.

The official Government policies of self-determination and self-management introduced in the early 1970s have generally been unsuccessful. It remains to be seen whether more recent policies of Aboriginal independence and

self-government and the proposals for Aboriginal and Torres Strait Islander Commission and a Treaty or Makarata will prove more successful.

Although South Australian Aboriginal communities are relatively advantaged compared to their counterparts in some other States in securing title to their lands, as Mr. Justice Woodward made clear in the Report of the Aboriginal Land Right Commission, land rights alone will not result in any real Aboriginal economic betterment. One can only unhappily note that the physical condition of the Pitjantjatjara people living on the lands of Pitjantjatjara Anangu has if anything deteriorated since 1979 (the date of the A.P.A.) rather than improved. The situation on those lands detailed in the Bonner and the U.P.K. reports can only give cause for dire concern. Land rights are essential to Aboriginal culture. Economic betterment, however, is another and in most cases separate question, and there the provision of training, (in management, accounting, marketing, technical expertise relevant to the enterprise) and the provision of discretionary capital are fundamental requirements.

The enlightened policies enunciated in the Commonwealth's Aboriginal Employment Development Policy in 1987 provide a more effective basis for Government support for Aboriginal communities, in accordance with their traditions, chosen way of life and cultural identity. However, it is not clear that the promises held out by this policy have been realisable to date, mainly due to the maze of bureaucratic procedures which need to be followed to secure funding. It is equally unclear whether the funding commitment to A.E.D.P. when the Policy was announced has been provided. Recent negotiations between the Commonwealth and the South Australian Government to secure funding commitments through A.E.D.P. for Aboriginal employment and training initiatives suggest otherwise.

The physical conditions of communities, the health status of their residents, inadequacy of housing and education, and the level of unemployment, remain an appalling indictment on our society. Aboriginals live in a third world environment inside the borders of the so called "lucky country". Without a solution to those problems, the way forward for Aboriginal people will be slow indeed. At the same time, it is also incumbent on Aboriginal communities to take responsibility for improving their position and take advantage of opportunities presented.

The solutions to these problems are not always contingent on more funds. Solutions so far have often emanated from competitive bureaucracies which are remote and unco-ordinated. There is a need for more flexible funding strategies by both levels of Government (including block grants and three year funding cycles) to enable Aboriginal communities to devise their own solutions and a clearer delineation of Commonwealth and State responsibilities in Aboriginal affairs. Access to untied local government funds from Commonwealth and State sources, development of opportunities for small-scale self-help enterprises tied to adequate training are other issues referred to in this report.

I would like to thank the Councils of the Aboriginal communities and Local Government Authorities visited in S.A. for their patience and assistance in providing information and presenting their views on the concepts being discussed. I would also like to thank all of the other people in Queensland and the Northern Territory (particularly the Aboriginal communities visited), South Australia, Western Australia and Canberra who contributed their views.

I should particularly like to thank Sue Briton-Jones for her constantly excellent work in pursuit of this project.

DON DUNSTAN
ADVISER ON ABORIGINAL COMMUNITY GOVERNMENT

/ /89

SECTION TWO

BACKGROUND

A number of Commonwealth and State Reports have directly or indirectly made recommendations regarding the need for Aboriginal community government and better provision of local government services.

2.1 Commonwealth Reports

2.1.1 The Self Report: National Inquiry into Local Government Finance (1985)

That report stated that local councils throughout Australia do not generally cater adequately for Aboriginals although their general purpose grants are in part calculated on the basis of Aboriginal populations residing within their boundaries.

The Inquiry recommended that:-

- (i) "incorporated Aboriginal communities be given access to local government funds and that there be a separate program of funding for Aboriginal communities that are not incorporated;
- (ii) in respect of the unincorporated areas, suitably representative community bodies should be eligible for grants in exceptional cases subject to agreement between the Commonwealth and State Governments".

The Inquiry stated that their conclusions were:-

"We are unable to offer advice on whether, in general, Aboriginal communities should be constituted as separate local government units but we do support the inclusion of such communities within the local government systems of the States by one or other of these means.

We can see considerable advantages in enabling a distinctive Aboriginal community, if its members so wish, to manage its own local affairs as a properly constituted local council. However, there are also problems about the viability of such units, as purveyors of basic local services, since even the best placed Aboriginal local governments are unlikely to number more than a few hundred each. We would nevertheless accept that economic viability need not be a paramount objective in these circumstances.

Where an Aboriginal community is judged sufficiently viable to be constituted a local government council, we consider that it should be treated as a normal local

government for all purposes. Provided that such a body is properly constituted and elected, and possesses comparable functions to those of other local governments, it should be eligible for Commonwealth equalisation funds and for other specific subsidies available to local governments. However, we must caution that this goal cannot be realised if an Aboriginal local council is too small or artificially constructed to function at all effectively, and in such circumstances, Aboriginal advancement may be more effectively promoted within the context of existing local government institutions."

2.1.2 The Miller Report: Report of the Committee of Review of Aboriginal Employment and Training Programs (1985)

The Report recommended that:-

- (i) "A study should be instituted to consider the appropriate means whereby Aboriginal communities, while maintaining their distinctive character, could have effective access to the benefits local governments provide for the members of non-Aboriginal communities and to the resources, financial, administrative and professional, enjoyed by those governments.
- (ii) The Commonwealth should enter into early discussions with relevant State/Territory Governments aimed at encouraging the incorporation of Aboriginal townships as local governments. These local governments should be compatible to other local government bodies, but special provision should be made to preserve Aboriginal cultural identity.
- (iii) In considering the recommendations of the National Inquiry into Local Government finance, the Commonwealth should adopt guidelines covering the provision of Commonwealth assistance to local government in areas of significant Aboriginal population. These guidelines should embody principles of equalisation that ensure local government is accountable for providing both services and employment opportunities to the Aboriginal population of the area. The Commonwealth should consider the establishment of a local government ombudsman to consider complaints of discriminatory neglect."

2.1.3 Aboriginal Participation and Equity in Local Government: A Discussion Paper Issued by the Commonwealth Minister of Aboriginal Affairs (1987)

That paper made the following points:-

"The relationship between Aboriginal communities and local government must be considered in the context of existing systems of 'local governance' in those communities and fundamental questions concerning the autonomy of Aboriginal communities and the most appropriate structures and systems for them to organise their affairs. Aboriginal opinion on these matters will be an important element in the implementation of any policy on Aboriginal involvement in local government.

The Commonwealth has constitutional powers in Aboriginal affairs but not in local government which is generally a State/N.T. responsibility. The co-operation of State/N.T. Governments will be required if policies are to be implemented successfully and this should be pursued actively through forums such as the AAC and the Conference of Local Government Ministers.

Equity in the local government system may be obtained for Aboriginal communities by:-

- assisting existing local government bodies to become more responsive to the needs of Aboriginal communities within their boundaries; or
- establishing Aboriginal-controlled local government bodies in those remote communities where it is appropriate to do so and where the Aboriginal community so desires.

Existing local government bodies may be made more responsive to Aboriginal needs in a number of ways including:-

- increasing the participation of Aboriginal people as electors and councillors;
- establishing wards and ward management or urban area committees to cover Aboriginal communities;
- encouraging State/N.T. Governments to implement affirmative action programs to ensure that local government discharges its responsibilities to Aboriginal citizens; and
- amending the arrangements for the provision of Commonwealth financial assistance to local government to ensure that Aboriginal communities benefit from it.

The establishment of distinct local government bodies in Aboriginal communities by State/N.T. Governments should only proceed after consultation and agreement with those communities. There is a need to ensure that:-

- appropriate systems and structures are developed;
- adequate support and training programs are in place; and
- sufficient and appropriate finance is provided.

Issues concerning the rateability of Aboriginal land, the control of community assets and the urban/rural classification of Aboriginal communities must be considered in pursuing the above objectives.

Aboriginal interests should be represented in State/N.T. Local Government Associations and the Australian Council of Local Government Associations. Consideration should also be given to the establishment of associations of Aboriginal local governments and Aboriginal local government councillors.

The Department must be able to advise communities on these matters to assist them to reach decisions on the form and extent of their participation in local government."

2.1.4 Always Anangu: A Review of the Pitjantjatjara and Yankuntjatjara Aboriginal Communities in Central Australia (1985) (the Bonner Report)

In relation to the development of a culturally appropriate local government model for the Lands, the Review made the following recommendations:-

- "That the Commonwealth and South Australian Governments agree in principle to consult with Anangu Pitjantjatjara and Yankuntjatjara on the development of a culturally appropriate local government model.
- That culturally appropriate local government be pursued by the passage of a general enabling statute which would provide a capacity for Anangu to shape their own legislation - in a similar theoretical fashion to the Northern Territory model.
- That Anangu and Government agencies agree on the merits of minimising services in the Lands with a view to:-
 - administration of homelands and community centres within the same structure or local council;

- defining the extent of A.P. responsibility (as the Regional Council);
- incorporating special purpose organisations within the local council and/or the regional council (e.g. store, health clinic); and
- defining the relationship of resource agencies to community government councils so that they are able to operate increasingly on a fee-for-service basis.

That the provision of funding be initially based upon:-

- access to mainstream local government finance provided through Commonwealth and State instrumentalities;
- the S.A. Government instituting special measures to provide funding for water and electricity supplies and the A.P. road.

And work is immediately commenced by D.A.A., in conjunction with the South Australian Office of Local Government to develop a suitable funding formula to reflect the special cultural features of an Aboriginal local government authority.

That a comprehensive general training strategy be developed to equip people with the skills to understand and operate the system.

That the system for administering and accounting for all grants be made uniform and the procedures for handling funds be common to all councils linked into the training program.

That the councils' current administrative procedures and associated financial management be substantially revised, and standardised across the Lands and integrated into the comprehensive training program.

That the Department of Aboriginal Affairs (and ultimately ATSIC) commission the development of an appropriate information system to enable the rapid processing of current information between community centres.

That A.P. consider seeking the assistance of relevant unions to advise in the structuring of an appropriate administrative infrastructure and industrial conditions.

That every effort be made to minimise the number of agencies interacting with communities."

2.2 South Australian Reports

2.2.1 Procter Report: Report of the Committee of Review of the Delivery of Human Services in the Aboriginal Community in South Australia (1987)

That report recommended "that the State Government institute a review of the structures and arrangements for community management in the communities in Aboriginal Lands, in particular, the feasibility of introducing culturally appropriate "local government" arrangements in those communities. This would include the role of the Aboriginal Lands Trust in this respect."

2.2.2 Report of the Aboriginal Land Trust Act Review (1988) (an "in-house" report)

This Report recommends that the proposed Aboriginal Lands Council of South Australia be a statutory body established on a basis similar to the Outback Areas Community Development Trust. This would enable the Lands Council to tap into an additional source of funding. It would assist to remove some of the anomalies which currently exist.

The functions of the Lands Council if so established would include a function of obtaining funding for Local Government in Aboriginal communities. It should be able to make grants or loans to Aboriginal Community Councils and otherwise to foster the development and work of those councils. It should have the power to carry out such functions of a local governing body in relation to its area as might be conferred or assigned to a Local Government Authority under the Local Government Act. This would enable the Lands Council to make by-laws for the benefit of particular Lands Trust communities at their request. This is a power which the communities have sought for some time. It would give the local communities greater power through its elected council over things like traffic, consumption of alcohol, possession of firearms, control of pets, control of noise and nuisance and the like.

2.3 Western Australian Report

The Western Australian Department of Local Government has recently produced a report on "Remote Aboriginal Communities and Local Government". The objective of the project was to develop appropriate

structures of local government for remote communities, taking into account that all Aboriginal communities in W.A. are within incorporated local government areas. The structures proposed are as follows:-

• "Mainstream Option

Mainstream refers to the trend that existing local governments provide municipal services within the locality. It is particularly appropriate for both urban and remote areas. The State is divided into 138 constituted local authorities and the whole population within municipalities can participate as members and expect equitable service provision. This option can be implemented under existing provisions with ministerial approval to expend municipal funds on reserve lands.

• Modified Mainstream Option

This option requires that the mainstream option be amended to operate without approval.

• Contractual Option

In this option, the delivery of municipal works is contracted to either the local authority or the remote community. The local authority purchases services from the community or the community may purchase services from the shire. This was the preferred option. An advisory committee would be an integral part of the decision-making process. Current regulations allow local governments to accept tenders and proposals considered to be the most advantageous and for advisory committees.

• Community Option

The community option is based on a unit of delivery which has some of the powers of the local authority delegated to it. It is an appropriate structure for local participation in urban and remote areas for a variety of service provision. In the case of remote Aboriginal communities, the cultural requirements are met along with a mechanism that allows for development under the umbrella of the shire.

• General Option

General allows for the inclusion of local governments whose constituents may be Aboriginal. The existing provisions can accommodate the formation of Aboriginal shires. This option could be introduced in larger communities where economies of scale would be an advantage.

Regional Option

Where delivery is co-ordinated and arranged by a joint co-operative approach amongst Aboriginal organisations or local governments or both."

2.4 Aboriginal Lands Trust Act, 1966

This was the first land rights legislation in Australia. The Trust initially had three members appointed by the Government and provision was made for it to hold any lands acquired by it in trust for all the Aboriginal people of the State. With the establishment of the Trust, all unoccupied parcels of Crown land designated as reserved for Aborigines, were immediately transferred. Other small parcels of land occupied by Aborigines and a number of reserves of disparate size and function which were manned by Government offices of missionaries, were subsequently transferred. The Trust has also purchased other lands with its own funds. Currently, 543, 642 hectares are vested in the Trust.

The communal character of the title provided in the legislation was considered to be one of the great advances of the legislation, as it provides the flexibility which avoided the difficulties experienced in the United States, Canada and New Zealand resulting from fragmentation of title and difficulties in the calculation of inheritance of tribal assets. The title provided was inalienable so that land could only be sold with the consent of the Minister and the approval of both Houses of Parliament. The legislation, under a 1973 amendment provides for royalty payments on minerals to be passed to the Trust.

Provision was not made in the legislation for by-laws.

The Trust leases its major land holdings to the local incorporated Aboriginal communities (Yalata, Kooniba, Umoona, Davenport, Point Pearce, Point McLeay, Gerard, Nepabunna) for a term of 99 years. The total population of Lands Trust communities is approximately 1,082.

The Trust currently has only 1.5 staff.

2.5 Pitjantjatjara Land Rights Act, 1981

This Act vested 10,190,000 hectares of land in inalienable freehold title to Anangu Pitjantjatjara, constituted of all Pitjantjatjara people. The legislation made provision for an Executive Board, establishment of a Constitution, prohibited entry to the lands by outsiders without authorisation and provided rights to minerals to Anangu Pitjantjatjara. Provision is made for royalties to be paid into a fund, with one-third payable to A.P., one third to the Minister of Aboriginal Affairs for the advancement of Aboriginal people in the State generally, and a third to the General Revenue of the State.

By-law making powers are provided in the Act and have been used to prohibit alcohol, other substances and gambling on the lands.

The Office of Anangu Pitjantjatjara is currently based in Alice Springs and has a staff of approximately five people employed for the purpose of administering the Act. The main communities are Pipalyatjara, Kalka, Amata, Ernabella, Indulkana, Mimili, Fregon, and Kermore Park. There are approximately 100 homelands in the A.P. lands. The population of the Pitjantjatjara Lands is approximately 2,000.

(The Pitjantjatjara Council, also based in Alice Springs, has a staff of approximately 16 people. It acts as a resource body in providing services to the Pitjantjatjara, Yankunyatjara and Nganyatjara communities in South Australia, Western Australia and the Northern Territory.)

2.6 Maralinga Tjarutja Land Rights Act, 1984

This Act vested 7,642,000 hectares of land in inalienable freehold title to Maralinga Tjarutja, constituted of all the traditional owners of that land. The provision of the Act were modelled on those of the Pitjantjatjara Land Rights Act.

By-law making powers were provided and have been used in respect of prohibition alcohol on the lands.

The Lands are administered by Maralinga Tjarutja Office at Ceduna which has a staff of three people employed for the purposes of administering the Act.

The only occupied area of the Maralinga Lands is the homeland of Oak Valley with an existing population of approximately 100-150.

2.7 Outback Areas Community Development Trust Act, 1978

The Trust provides services and facilities in conjunction with local residents and generally fulfils the role of a local governing body for towns in the unincorporated areas of the State. The Trust receives Commonwealth local government funding through the State Local Government Grants Commission.

However, the legislation specifically excluded application to Aboriginal reserves, the Maralinga Lands and the Pitjantjatjara Lands. The population of the Trust area is approximately 10,000. The townships of Marree, Oodnadatta and Copley have substantial Aboriginal populations and are included as townships under the auspices of the Trust.

2.8 Associations Incorporation Act, 1985

This Act provides for incorporation of associations formed for:-

- . a religious, educational, charitable or benevolent purpose;
- . the purpose of promoting or encouraging literature, science or the arts;
- . the purpose of providing medical treatment or attention, or promoting the interests of persons who suffer from a particular physical, mental or intellectual disability;
- . the purpose of sport, recreation or amusement;
- . the purpose of establishing, carrying on, or improving a community centre, or promoting the interests of a local community or a particular section of a local community;
- . conserving resources or preserving any part of the environmental, historical or cultural heritage of the State;
- . the purpose of promoting the interests of students or staff of an educational institution;
- . political purposes;
- . the purpose of administering any scheme or fund for the payment of superannuation or retiring benefits to the members of any organisation or the employees of any body corporate, firm or person;
- . the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry.

The Act is administered by the Corporate Affairs Commission which keeps a record of incorporated associations. The Act gives the Commission powers to require production of body by an association, provides that the rules of an incorporated association are binding on its members, provides for the powers of an incorporated association, prescribes the manner in which contracts may be made and provides for the keeping of accounts and auditing of associations.

In South Australia, Aboriginal communities on Aboriginal land have councils established under the State Associations Incorporation Act. This legislation does not provide legal status as local government bodies nor does it enable communities to pass by-laws. (The situation in the Pitjantjatjara and Maralinga Lands differs in that by-laws can be made under their land Rights Acts.) Funding to Aboriginal councils is made by a plethora of Commonwealth and State

agencies which is unco-ordinated and complex in terms of differing accounting requirements. The problems of council operations are compounded by the large number of separately incorporated associations within communities (e.g. housing associations, health organisations, cattle operations, community stores, various enterprises). Some of these incorporated bodies, registered under the Corporations Act, have created problems for communities where shareholding has got out of the control of the community (e.g. at Point McLeay). Profits which should accrue to the whole community can be retained solely by individual families.

2.9 Local Government Act, 1934 (as amended)

In relation to local government authorities in the incorporated areas, the State has prime constitutional authority to establish those systems of local government, but the Commonwealth provides general purpose financial assistance for local government under the Local Government Financial Assistance Act, 1986. Funds provided under the LGFA Act are distributed to each State according to its proportion of the total Australian population. (Although all Aboriginal people are counted for the purpose of calculating the proportion of Commonwealth income tax revenue returned to the State, Aboriginal people living on Aboriginal lands are currently not recipients of their share of these funds.)

The South Australian Local Government Grants Commission makes recommendations to the State Minister of Local Government on the allocation of funds among councils in the State. The allocations are made in accordance with principles approved by the Commonwealth Minister responsible for Local Government.

The principles of "disability factor funding" and "horizontal equalisation" (among others) apply. "Horizontal equalisation" means that each local government body should have the capacity to provide a similar level of service as the average standard for councils of the same type - providing they make an equivalent fund-raising effort subject to their capacity to do so. "Disability factor funding" is provided to councils on the basis of disabilities such as number of Unemployment and Social Security Benefit recipients, length of roads, infrastructure requirements, etc.

Under the LGFA Act, funds are distributed between councils on the basis of horizontal equalisation taking disability factors into account, providing that each council received a per capita minimum grant. Grants made under the LGFA Act must be untied, i.e. no conditions can be imposed on disbursement: councils are free to use the grants as they choose.

It is not considered that provision of local government status to the Pitjantjatjara communities under the Local Government Act (S.A.) would be appropriate as the provisions of the Act and associated regulatory powers would overburden those communities with unnecessary procedural requirements.

LGSs in S.A. are generally responsible for:-

- . local road construction and maintenance;
- . garbage collection;
- . street lighting;
- . urban and environmental health planning including the giving of approvals and the enforcement of provisions under the Building Act;
- . local aerodromes;
- . recreation and cultural services;
- . some welfare services.

LGA's receive their funding from:-

- . LGFA Act funding through the State Grants Commission (untied grants);
- . rates and charges;
- . Commonwealth specific purpose grants (e.g. roads, aerodromes, employment schemes, aged person, community arts);
- . State specific purpose grants (e.g. roads, recreation, libraries, cultural facilities, electricity (country areas) subsidies);
- . fines;
- . charges for services;
- . sale of assets;
- . port and trading activities;
- . loans, loan repayments, interest on loans.

In South Australia, on the basis of the 30% per capital calculation, mainstream councils receive the following range of funds:-

- . minimum per capita = \$12.075;
- . average per capita = \$45.00;
- . maximum per capita = \$274.00.

(Recipients of funds from the Outback Areas Community Development Trust receive an average of \$33.00 per capita.)

2.10 Commonwealth Aboriginal Councils and Associations Act, 1976

This Act provides for incorporation of Aboriginal councils and associations. Incorporation under the councils section of the Act would provide local government status but, to date, no Aboriginal council in Australia has been incorporated under that section. The Act is currently under review by the Department of Aboriginal Affairs.

SECTION THREE

3.1 Advantages of Culturally Appropriate "Local" Government Status

The theoretical advantages of culturally appropriate local government status to Aboriginal communities in South Australia would include:-

- recognised independent legal status;
- access to Local Government Grants Commission untied funding through the Local Government Financial Assistance Act;
- greater access to other Commonwealth and State local government specific purpose funding programs;
- improved co-ordination of service delivery;
- greater potential powers to levy and collect service charges;
- regulated access to concessional loans for infrastructure development;
- improved mechanisms for establishing and controlling enterprises;
- the ability to attract a broader range of staff (e.g. in schools, health clinics, community councils) and develop a viable administrative infrastructure within the local community;
- access to community management training for Aboriginal communities;
- the capacity to make and endorse by-laws;
- the capacity to disburse funds according to community rather than government priorities, thereby achieving authentic community control.

However, it has to be recognised that there are significant differences between Aboriginal communities and mainstream local government authorities, particularly in relation to their capacity to levy and collect service charges and fines, attract loans and in their access to attract general purpose grants. Aboriginal communities in South Australia also vary in their aspirations, capacities, size, social composition and economic circumstances. Therefore any mechanism for "local government" for these communities would need to take into account their differences and legislation (if agreed to by communities) would need to be sufficiently flexible to accommodate these differences and allow communities to mould the structure of local government to fit their own circumstances.

3.2 Constraints on Introduction of Successful Aboriginal Local Government Structures

In numbers of the communities, those who would normally have been community leaders have left them to live in towns, and in consequence in some communities, (though not the majority of them) it is difficult to find enough people to provide a community council capable of determined decision making.

3.2.1 Population Base

The relatively small population bases of South Australian communities raises the question as to whether they would have a sufficient pool of human resources to support community government at the local level of any significant range and scope.

Many Aboriginal community residents are highly mobile which impacts on the level of human resources available, as does the homelands movement in the Pitjantjatjara Lands particularly, which reduces community populations.

3.2.2 Social Composition

Most communities have high dependency ratios (with large numbers of the population being under eighteen years of age) and very high unemployment rates.

Some are more traditionally oriented communities (e.g. Pitjantjatjara and Maralinga communities), others are non-traditional communities in rural and remote areas. The residents of Point Pearce, Point McLeay, Kooniba and Gerard are descendants of a number of traditional groups from much wider areas brought together by missionary administration. The Yalata people are descendants largely of those groups who came together at the mission at Coldea Soak. Davenport has largely been a camp for a transient population coming together at a city point at a crossroads in the North - at times there have been as many as six language groups among the 200 odd population.

Uncoona is a fringe community in an outback mining community, and draws its population from a variety of traditional groups and their descendants.

3.2.3 Education and Training

Many of the communities in question have substantial numbers of non-literate untrained adults which means that they have limited skills required effectively to operate local government systems.

3.2.4 Economic and Physical Circumstances

Apart from high unemployment rates, some communities have limited economic potential in view of the paucity of their physical environment. This does not apply uniformly: some communities have substantial physical resources for economic development which have largely been undeveloped.

3.2.5 Physical Infrastructure

The communities in South Australia have an extremely poor level of physical infrastructure (roads, power, water, sewerage, housing), thus the range and scope of effective local government in individual communities would be circumscribed by the backlog of physical infrastructure required. The first priority will always have to be a safe and healthy living environment. It is clear that in the past ten years Queensland, with its very much larger Aboriginal population, has spent per capita vastly in excess of South Australia on providing improved physical conditions for Aboriginies. By comparison, the level of physical infrastructure in Queensland, in particular, is very impressive. This has enabled communities to devote resources to community development initiatives and development of economic bases which has allowed them to become viable political units.

3.2.6 Finance

Fiscal constraints are another problem for communities in South Australia. Low rateability of their land, the level of unemployment and lack of personal income, their need to become annual petitioners to State and Federal Governments for funding circumscribes their capacity to become financially viable. Unless they can capitalise on economic resources where those are available, and unless Governments introduce three year funding cycles to enable certainty about ongoing funding which would enable forward planning, their financial limitations will continue.

Experience in Queensland and the Northern Territory has shown that access to local government funds has primarily been through untied Grants Commission funding. It is also questionable whether disability factors have been fully taken into account. Access to specific purpose local government funding has also been limited. If Aboriginal local government proceeds, it is incumbent on the S.A. Local Government Grants Commission to ensure that disabilities are properly taken into account and that horizontal equalisation is properly applied.

A commitment from the State and Commonwealth Governments that cutbacks in their funds will not occur by virtue of communities' access to local government funds is also essential.

3.2.7 Community Administrative Structures

Many communities are effectively controlled by their non-Aboriginal "Community Advisers". As a group they are much maligned. Some are truly self-seeking with their own personal agendas, others are well meaning but lack the experience or cross-cultural personal skills to effectively serve their communities, while others adopt a role of being there to facilitate the aspirations of the community and its development. In the short term, reliance on white advisers is likely to continue but it is important that Aboriginal community members are provided with the skills and training so that they achieve real self management.

3.2.8 Central Administrative Infrastructure

If Aboriginal local government proceeds, it will need to be supported through a viable central administrative structure (either the State Department of Local Government or the Office of Aboriginal Affairs) with sufficient staff who have the experience and personal qualities to deal with Aboriginal people and support them in setting up local government structures. The central administrative functions could be taken over in due course by the reconstituted land - holding body (see section on Aboriginal Lands Trust below).

3.2.9 Functions Exercised by Government Agencies

Some of the functions which could be exercised by a community government will be circumscribed by functions already exercised by government agencies (e.g. health, education and training, welfare, essential services). A community government could only take up the function to the extent that a government agency is not already providing the service.

3.2.10 Functions Exercised by Community Incorporated Associations

As mentioned previously, large numbers of separately corporate organisations (associations and companies) have been established within communities (e.g. housing associations, health organisations, cattle and farming operations, community stores, various enterprises). The scope of community governments will depend on the extent to which such associations are prepared to cede such functions to the community government, or to ensure effective accountability to and involvement of the community government.

3.2.11 Aboriginal and Torres Strait Islander Commission

The future of ATSIC is currently unclear but if it proceeds, there are some features which may complicate the effectiveness of community government. The basic thrust of ATSIC is the establishment of regional councils through which the Commonwealth will allocate funds for decision at the regional level to individual communities. South Australia will have five and a half regions (Adelaide, South-East, North, Eyre Peninsula, Far West and Far North - which is part of the Central Australia Region).

Instead of Commonwealth funds going directly to communities based on individual cases, decisions will be made at the regional level as to the level of funding each community receives.

This could result in inequitable treatment of some communities. Another problem is that regional councillors from communities will not necessarily be members of their community council and may give advice at the regional level which is not in accordance with the community councils' agendas.

ATSIC will not affect the allocation of local government funds to communities but it is unclear, at this stage, how State Government agencies will relate to the regional structures. This has obvious implications for State agency funding to individual communities.

SECTION FOUR

THE REVIEW PROCESS

4.1 SOUTH AUSTRALIA

4.1.1. Communities on Aboriginal Lands

All communities in South Australia were consulted on the concept of Aboriginal community government, with the exception of communities in the Pitjantjatjara Lands. Communities visited were Point Pearce, Point McLeay, Gerard, Meningie, Davenport, Nepaburra, Umoona, Yalata, Kooniba and Oak Valley. All of those communities expressed interest in the concept subject to further consultation on how it would work in practice.

A General Meeting of Anangu Pitjantjatjara was also attended at Pipalyatjara in the Pitjantjatjara Lands. At that meeting, A.P. indicated that they did not wish to be consulted any further on community government as they are presently preoccupied with ATSIC and the Treaty.

At the General Meeting, communities were very poorly represented; mainly homelands people attended. The influence of white advisers from A.P. and the Pitjantjatjara Council on the debate at that meeting was also obvious. Thus the views expressed by A.P. are not necessarily indicative of a consensus of opinion of community members. Permission to discuss the issues with individual communities was not forthcoming.

4.1.2 Communities in Non-Aboriginal Lands

Although outside the terms of reference of the project, at the invitation of the Aboriginal communities at Marree and Oodnadatta, meetings were held with those communities to explain the project. Marree and Oodnadatta come under the auspices of the Outback Areas Community Development Trust.

4.1.3 Mainstream Local Government Councils

Meetings were held with the relevant mainstream councils which have Aboriginal communities on Aboriginal lands within their boundaries to explain the project, seek their views, and obtain information on the level of services they provide to the communities.

Councils visited were District Council of Meningie (Point McLeay), District Council of Central Yorke Peninsula (Point Pearce), District Council of Murat Bay (Kooniba), District Council of Coober Pedy (Umoona) and the Corporation of the City of Port Augusta (Davenport). Gerard community is in an

anomalous situation in that it is bounded by three Local Government Authorities but not within the boundaries of any of them. A further anomaly is that it is not entitled to services through the Outback Areas Community Development Trust as that body is precluded by its legislation from accepting responsibility from provision of services to an Aboriginal reserve. Meetings were not held with the relevant local government authorities because of this anomaly.

4.1.4 Outback Areas Community Development Trust

A meeting was held in Adelaide with the Chairperson and Executive Officer of the O.A.C.D.T. to discuss the project and seek their views on the appropriate mechanism for providing local government services to Aboriginal communities on Aboriginal lands.

4.1.5 Local Government Association

A meeting was held with the President and General Secretary of the L.G.A. in Adelaide to explain the project, seek their views and support for the project.

4.1.6 Aboriginal Lands Trust Act Review Team

Meetings were held with the Chairman and a member of the Aboriginal Lands Trust Act Review Team to discuss these issues of common concern to both projects.

4.1.7 Government Agencies

Meetings were held with the State Department of Local Government, the Department of Aboriginal Affairs and the Office of Aboriginal Affairs to exchange views on the issues involved.

4.1.8 Government Ministers

Progress reports were made to the Human Services Committee of Cabinet and to the Ministers responsible for the project, i.e. the Minister of Aboriginal Affairs and the Minister of Local Government.

2 COMMONWEALTH

A meeting was held with the Commonwealth Office of Local Government in Canberra to seek information and exchange views on the issues involved.

3 WESTERN AUSTRALIA

A meeting was held with the Western Australian Department of Local Government to obtain information on the progress of their report on

"Remote Aboriginal Communities and Local Government" and provide information on the progress of the current project in S.A.

4.4 QUEENSLAND

Meetings were held with the Queensland Department of Community Services and Commonwealth Department of Aboriginal Affairs in Brisbane the Minister for Community Services and the Member for Cook, and visits were made to seven Aboriginal communities (Kowanyama, Arakun, Edward River, Weipa South, Hopevale, Wujul Wujul, Yarrabah) to determine how they are operating under the Community Services (Aborigines) Act and the Local Government (Aboriginal Lands) Act.

4.5 NORTHERN TERRITORY

Meetings were held in Darwin with the Northern Territory Office of Local Government, the Commonwealth Department of Aboriginal Affairs the Northern Land Council, the Minister for Local Government, the Leader of the Opposition and the Aboriginal members of the Legislative Council. Visits were made to three Aboriginal communities (Palarumpi, Milikapiti, Dagaragu) to determine how they are operating under the Part VIII - Community Government, of the N.T. Local Government Act. Visits were also scheduled to Ngukurr and Borroloola but due to opposition by the Northern Land Council did not proceed.

SECTION 5

FINDINGS

SOUTH AUSTRALIA

5.1 ABORIGINAL COMMUNITIES

5.1.1 Administrative Structures

In Section II of this report, reference was made to the incorporation of community councils under the State Associations Incorporations Act and the disadvantages inherent in that status (no access to local government funds, no provision for by-laws [with the exception of the Maralinga and Pitjantjatjara communities], the large number of Commonwealth and State funding sources for services which are unco-ordinated and complex in terms of differing accounting requirements, and the problems created by the large number of separately incorporated associations).

In a number of instances, non-Aboriginal Community Advisers in effect control community business. The objective of "self-management" will remain long-term until Aboriginal people are in a position to resume control over their communities.

The main requirement, if proposals in this report for Aboriginal community government proceed, is for a long-term training strategy for Aboriginal people in communities (their council members, employees and other residents) to enable them to assume the responsibilities inherent in "local government".

The other area to be addressed is financial accountability. Presently, Aboriginal councils and their staff, given the lack of training they have had in financial management, are not in a position to administer their wide range of financial responsibilities. This is compounded by the large number of Commonwealth and State funding agencies, all with differing accounting requirements and annual funding cycles.

Training in financial management, standardised and simplified accounting systems, introduction of three year funding cycles and a rearrangement of the respective roles of Commonwealth and State areas of responsibility in Aboriginal affairs are all matters that need to be addressed to alleviate some of these problems.

5.1.2 Economic Conditions

The Aboriginal communities in S.A. have become almost totally reliant on externally-based welfare systems such as Unemployment Benefits, Social Security entitlements and a range of health, education, housing, employment, training and essential services programme.

Some communities e.g. Gerard, Kooniba, Yalata, Pt. Pearce have developed viable enterprises, some of which are now returning, or have potential to return, profits. Other communities Point MacLeay, Pt. Pearce, Nepabunna have substantial physical resources which are mostly unused, not used to their full potential or have got out of the hands of the local community. Other communities (Umoona, Kooniba, Point MacLeay, Davenport, Nepabunna) have developed proposals for enterprises which may or may not get off the ground.

To achieve economic independence and lessen dependence on the welfare system, Aboriginal communities must develop community-based employment, enterprise and development strategies. Mechanisms include enterprises which have the potential to become commercially viable in the medium term, and programs which focus on increasing self-sufficiency and income generation (including adapted traditional activities such as cultivation of "bush tucker", plus arts and crafts and tourist ventures).

There is considerable potential for enterprise and employment within Aboriginal communities. For them to be successful requires an entrepreneurial function able to assemble expertise, engage management, ensure adequate training and capital. The capital could be provided by the Aboriginal Development Corporation or its successor body. Local communities, however, do not have the capacity to provide the rest. The re-organised Lands Trust body would seem the appropriate body, but that means it would need funding and manpower it has not so far been given. There is a need for a land assessment and capability survey of each reserve to assess its economic potential and the development of management strategies for land use. Once communities have been provided with information on the range of potential community-based employment, enterprise and development activities, the communities themselves need to make their own decisions on those they consider most appropriate and for which they have the human resources to undertake the task, in conjunction with a central, entrepreneurial support body.

5.1.3 Health

Many reports have documented the appalling health status of residents of some Aboriginal communities in S.A. (high levels of diabetes, renal diseases, respiratory problems, trachoma, skin diseases, gastric diseases, hypertension, dental disease, alcoholism and binge-drinking). The causative factors are many: inadequate power, water, sewerage, general hygiene problems, poor diet and social problems, and in the Pitjantjatjara lands failure to adopt hygiene practices needed in their changed, (i.e. more settled and static), existence.

Unless the health status of communities is addressed, it is unrealistic to expect sick people effectively to manage their own communities. More money is not necessarily the answer. There is a need for a redirection of resources from the curative to the preventative model of health care, providing opportunities for people to resume a more traditional diet and engendering in community residents responsibility for taking care of their own health.

It must be said that apart from alcoholism and alcohol related health problems, the health of Aborigines in the Lands Trust communities in the main populated areas of the State is markedly better than that of Aborigines elsewhere.

5.1.4 Services

The range of services provided by Commonwealth and State agencies, Aboriginal controlled organisations and private contractors has been dealt with exhaustively in other reports. Until such time as rationality can be introduced into the division of responsibilities between the Commonwealth and State, the problems of lack of co-ordination, overlapping and duplication of functions and inability of communities to manage their affairs effectively will continue.

5.1.5 Attitude to "Local Government"

All of the communities visited except A.P. expressed an interest in the concept of Aboriginal local government subject to further discussion on how it would work in practice and what options would be available.

5.2 MAINSTREAM LOCAL GOVERNMENT AUTHORITIES

Local Government Authorities visited and the Aboriginal communities within their boundaries are as follows:-

Corporation of the City of Port Augusta (Davenport)
 District Council of Central Yorke Peninsula (Point Pearce)
 District Council of Meningie (Point MacLeay)
 District Council of Murat Bay (Kooniba)
 District Council of Coober Pedy (Umoona).

As mentioned previously in this report, the District Council of Berri was not visited because of the anomalous position of Gerard Aboriginal community which is bounded by three Local Government Areas but not within the boundaries of any of them. Nevertheless, Gerard relates most closely to the District Council of Berri and, from all accounts, has a good relationship with that council.

5.2.1 Payment of Rates

All communities paid a minimum rate to their Local Government Authority.

Details of rates paid in 1988/89 are as follows:-

Davenport to Port Augusta

\$1,660 (population 350-400)

Point Pearce to Central Yorke Peninsula

\$9,420 (population 250)

\$4,037 (Narrunga Farm)

Kooniba to Murat Bay

\$679 (1987/88) (population 150)

Uncoona to Coober Pedy

\$3,060 (population 110)

Point MacLeay to Meningie

\$5,437 (population 114)

\$3,000 (farmland)

In the context of services provided by LGAs, as outlined below, it is clear that Aboriginal communities are receiving very little in return for payment of rates.

Most councils considered that as community residents used services within the local town/city, these services constituted the benefits community residents received in return for payment of rates.

Obviously, if the Aboriginal communities were non-Aboriginal, they would be receiving a far better deal.

5.2.2 Local Government Services Provided by Local Government Authorities

Local government services provided by LGAs (with a few exceptions) were very minimal. The general attitude of most Councils was that Aboriginal reserves are private land and that Councils are therefore constrained in providing services. Legally, this is not the situation. Under the Local Government Act, there is no restriction on Councils incurring expenditure on private lands for payment."

Another problem raised by Councils was that roads and other physical assets within reserves are owned by the community which limits councils' ability to expend funds on them, the principle being that councils can only incur expenditure on assets owned by them.

Some councils considered that as D.A.A. provided many local government type services, this exonerated them from responsibility.

Details on services provided by the respective councils to the reserves is provided below.

Port Augusta to Davenport

- . issuing of building permits;
- . assistance by the Health Surveyor;
- . some construction work on a contract basis.

Central Yorke Peninsula to Point Pearce

- . maintenance of roads within the community;
- . kerbing and sealing of roads supervised by council using Aboriginal labour and funded by D.A.A.;
- . reimbursement of \$2,000 (from rates) to the community to pay ETSA for street lighting;
- . issuing of building permits.

Murat Bay to Kooniba

- . issuing of building and planning permits;
- . some maintenance of recreation facilities;
- . some cleaning up of dump.

Cooper Pedy to Umoona

- . grading of roads;
- . street lighting;
- . electricity;
- . water supply.

Meningie

- . issuing of building permits;
- . bulldozing of dump.

It is essential that Aboriginal communities have access to services at a level equal to those provided to the wider community. As stated elsewhere in this report, LGAs are receiving funds from the Local Government Grants Commission based on their Aboriginal populations. Aboriginal communities are not receiving their share of local government funds or services.

5.2.3 Aboriginal Employment by Local Government Authorities

The level of Aboriginal employment by Local Government Authorities was very low (or non-existent) in comparison with total workforce numbers.

Councils have taken few initiatives to promote wider employment opportunities for Aboriginal people using council resources or in co-operation with State and Commonwealth employment programs (particularly the Aboriginal Employment Development Program).

The figures provided below relate to Aboriginal employment from within the whole Local Government Area and are not specific to employment of Aboriginals from the Aboriginal reserves (for which figures were unavailable).

Port Augusta

7 (total workforce 116, including casuals)

Central Yorke Peninsula

None (total workforce 25, including casuals)

Murat Bay

2 (total workforce 20)

Coober Pedy

None (total workforce 36)

Meningie

None (total workforce 22)

Those Aboriginals who are employed by LGAs are mainly employed in the outside labour force on a part-time or casual basis.

5.2.4 Consultation/Community Relations between Local Government Authorities and Aboriginal Communities

Apart from Central Yorke Peninsula, none of the LGAs had established regular consultation mechanisms with the respective Aboriginal communities. Port Augusta Council had some dealings with the Port Augusta Aboriginal Community Affairs Panel (the jurisdiction of which is wider than Davenport community), Meningie Council has established an Aboriginal Liaison Committee (not specific to Point MacLeay) and Coober Pedy Council has established a joint committee with the Aboriginal community in Coober Pedy (not specific to Umoona) on drinking in public places.

Central Yorke Peninsula council appeared to have made considerable efforts through the Central Yorke Peninsula Liaison Committee with Point Pearce community. The Committee was established in 1981 and chaired by the Chairman of the Council. The Council's Chief Executive Officer acted as Secretary, two ward Councillors attended, and other membership included representatives of Point Pearce community, and a number of Government agencies. In the council's view, this Committee had not worked due to non-attendance by the Aboriginal community representatives.

There are a number of positive steps LGAs could take to improve their relationship with Aboriginal communities within their boundaries. These include:-

- appointment of an Aboriginal liaison officer or community worker to establish liaison with the Aboriginal community, in providing information to both the community and council officers;
- training in local government processes and community development skills, training for Aboriginal committees/organisations;
- public awareness campaigns for Aboriginal communities regarding council sources and disbursement of council income;
- provision of local government services, both human and physical to the Aboriginal community;
- employment of Aboriginal people in council workforce and promotion of wider employment opportunities within the community at large, using council resources and in co-operation with State and Federal employment programs;
- improvement of the quality of Aboriginal housing by maximising services available (water, sewerage, roads, etc.), monitoring health and building regulations (not used punitively but as a leverage to improve standards by attracting State and Federal funds);
- promotion of Aboriginal history and heritage by commissioning documentation of Aboriginal history, co-operation with national parks services to develop maps of LGAs indicating known Aboriginal heritage sites, etc.;
- encouraging Aboriginal participation in local government by assisting Aboriginal people to register with the State Electoral Commission, encouraging participation as candidates and electors in local government elections, establishment of joint consultative bodies with Aboriginal communities/organisations.

Such initiatives would be important if an Aboriginal community opted for the "mainstream option" outlined in Section ... of this report. However, there would also be an onus of responsibility on Aboriginal communities to take advantage of opportunities presented and to work more effectively with the LGAs.

5.2.5 Local Government Authorities' Attitudes to Provision of Local Government Structures for Aboriginal Communities

The LGAs visited uniformly held the view that Aboriginal communities within their boundaries should be brought within the mainstream of the existing LGA rather than by establishment of separate Aboriginal local government bodies. Nor did they support the concept of a regional Aboriginal local body (e.g. the Aboriginal Lands Trust) providing local government services for individual communities. Councils were concerned about losing their Local Government Grants Commission per capita grants for the Aboriginal populations of the reserves.

In response to the suggested mainstream option, which included creation of special Aboriginal wards for Aboriginal reserves with provision for one or two Aboriginal Councillors, LGAs raised issues such as the need to retain a democratic election system and the small population size of Aboriginal communities not justifying creation of separate wards. These are not particularly convincing arguments.

Most of the LGAs indicated that if Aboriginal communities were to be provided with the level of local government services provided to other residents, they would have to be rated on the basis of separate allotments as an ordinary town. If this was to occur, rates could increase ten-fold. On this basis, however, there would appear to be sufficient financial savings to the main existing service provider (DAA) to pay those rates on behalf of the communities.

5.3 ABORIGINAL LANDS TRUST ACT REVIEW

A draft report has been prepared by the Aboriginal Lands Trust Act Review which contained a number of recommendations of common concern to both that Review and the current project. Meetings were held with the Chairman of the Review Team, Mr. Bob Ware and a member of the Review Team, Mr. Garry Hiskey. A number of attempts were made to meet with the Aboriginal Community members, Colin Cook and Val Power, but meetings did not eventuate.

It should be noted that the draft report is an in-house document and has not received Government endorsement at this stage.



The main recommendation of the ALT Act Review of relevance to the current exercise were:

- granting of inalienable freehold and communal title to existing A.L.T. communities (rather than leasing from the ALT),
- ability for individual community members to acquire freehold title for residential purposes,
- a new Aboriginal Lands Council of 22 members to replace the existing A.L.T. of members.
- the new Aboriginal Lands Council would have local government status (similar to the Outback Areas Community Development Trust).
- the functions of the new A.L.C. would include seeking funds for and providing the A.L.T. communities and other incorporated Aboriginal communities with the provision of facilities and services to those communities.

Comments are provided below on each of these proposals:

5.3.1 Granting of Inalienable Freehold and Communal Title to A.L.T. Communities

Disputes within communities can be deep-seated and bitter. The unhappy experiences in the last eighteen months at Port Pearce demonstrate just how severe these can be, and with what disastrous consequences for the community. Control of property can be used in faction fights within communities in a way which requires resolution.

A disinterested body such as the Lands Trust can do this better than recourse to court procedures which can be long, expensive and inconclusive. However, it is clear that for notions of amour-propre, local communities should feel they hold their own title. Since all title of the Lands Trust is a special statutory one, a further statutory title to the communities, with the Trust still acting as trustee to ensure proper compliance with terms of a deed or grant could be devised, and should meet the problem. This special statutory title could be similar in form to the Deeds of Grant in Trust which operate in Queensland, but with a specific overseeing role retained by the proposed Aboriginal Lands Council.

The argument that the Aboriginal Development Commission seeks to divest itself of title and that therefore the Land Trust should do likewise, overlooks the fact that the A.D.C. is meant to function as a development bank, whereas the Lands Trust is to hold and preserve the Aboriginal Lands in Aboriginal hands. They are not like functions.

5.3.2 Individuals to Acquire Freehold Title for Residential Purposes

It must be remembered that the original Lands Trust structure was devised after an examination of Maori, Canadian and U.S.A. Indian land rights provisions where enormous problems had developed through allowing fragmentation of title. Great libraries of documents had to be searched to find who had some degree of title to what.

The idea of having one body holding all the land in trust for all the Aboriginal people was devised to avoid these problems, and the problems which arose from local disagreements and family feuds which frequently occur within the Aboriginal communities.

The problems of individual title have already cropped up in Victoria. There the land at Framlingham and Lake Tyers was transferred to corporations which had shares parcelled out among the families resident on or connected with the land. There are now ongoing battles as to who has a right to what shares and the say in the corporations and the rights over the land that this implies. The benefits of the Land Trust system in contrast are obvious.

The wish of some people for sufficient security of title to what they borrow money for is wholly understandable, as well as the view of the A.D.C. that it must have some realisable security for a loan in the case of the borrowers defaulting on repayments. In fact, however, a proposal to allow excision of inalienable land and then a restricted resale in default on a loan in respect of it, does not provide either better likelihood of lending institutions investing, or better title than a long-term lease. A formally-executed and long-term lease with the right of the lessor to re-enter, take possession for breach or default, is as good a security as the elaborately devised Queensland proposal.

The Queensland proposal had not been acted on in any of the communities visited in that State and was opposed by most community councils.

There is a fundamental inconsistency between inalienable title and the idea that land is a disposable asset which because it is disposable, may form a realisable security, and that inconsistency is not coped with by the Queensland system.

If a title is let on a perpetual or long-term lease, and the lessee defaults, how can the lessor realise on the property? By sale, it is suggested, to another member of the community. Inalienable title cannot be sold off to non-Aborigines. Where in the community will another buyer be found? What tensions would rise if one were found?

5.3.3 New Aboriginal Lands Council of 22 Members

The proposal was that the 22 members be nominated by existing A.L.T. communities (8 members), Ceduna, Port Lincoln, Whyalla, Port Augusta, Quorn-Hawker, Oodnadatta, Maree, Copley-Leigh Creek, Murray Bridge, Meningie, the South-east (11 members), and three from the metropolitan area (total 22 members). Another proposal was that Anangu Pitjantjatjara and Maralinga

Tjarutja be entitled to nominate three persons each. (It is unlikely that Anangu Pitjantjatjara in particular and Maralinga Tjarutja would seek representation on the A.L.C. They already have their own land holding bodies and are more cohesive groups both geographically and in tribal group affiliations). The proposal would result in an A.L.C. of 28 members.

The proposed Land Council of 22 or 28 members is supposed to be a broadly representative body. How would it relate to the regional councils to be created under ATSIC? While the central body remains a land-holding body representative of occupants of the lands and carrying out some local government functions, there is no essential duplication of interest. Once it is a generally representative body there is. One way of resolving this would be to have the regional councils of ATSIC nominate the ALC members other than those nominated by the Lands Trust communities.

5.3.4 Aboriginal Lands Council to have Local Government Status

If the broadly-based A.L.C. was to have local government status, would it also be providing local government services to Aboriginal communities in the metropolitan area and major towns (e.g. Murray Bridge) and for the Maralinga and Pitjantjatjara communities? In relation to major towns and the metropolitan area, it would appear more appropriate for existing mainstream local government authorities to accept greater responsibility for provision of services to their Aboriginal constituents. It would be unlikely that the Pitjantjatjara and Maralinga communities would want the A.L.C. to be the local government body for their communities.

In the options outlined later in this paper, an alternative approach to local government status is proposed for the A.L.C.

5.4 OUTBACK AREAS COMMUNITY DEVELOPMENT TRUST

Discussions were held with the Chairperson and Executive Officer of the O.A.C.D.T. regarding the options for towns having substantial Aboriginal populations which are currently served by the Trust.

In the N.T., the Community Government legislation provides for community government in "open towns", i.e. those with substantial Aboriginal and non-Aboriginal populations.

If community government legislation is proceeded with in South Australia, towns such as Oodnadatta, Maree and Copley could be provided with community government status under the legislation (as opposed to the mechanism under the O.A.C.D.T. Act).

The advantages of this option are:-

- Aboriginal communities in open towns would potentially be treated more fairly.

The disadvantages of this option are:-

- Aboriginal representatives on "community governments" being dominated by non-Aboriginal members;
- potential opposition from non-Aboriginal dominated Progress Associations (and dominated partly by non-Aboriginal people not resident in the town itself, e.g. pastoralists).

The Chairman of the Outback Areas Community Development Trust suggested, as an alternative, the recognition by the Trust of Aboriginal incorporated bodies in towns serviced by the Trust for the purpose of receiving grant applications from them, as well as from the Progress Associations.

Recent correspondence from the Chairman indicated that the Trust has now resolved to recognise the three Aboriginal organisations in Copley, Maree and Oodnadatta for its purposes, giving equal recognition and status to these groups to that given to the three Progress Associations.

This is supported as the preferable option for those communities.

Discussion was also held as to whether it would be appropriate for the O.A.C.D. Trust to operate as a Local Government services support body for Aboriginal Communities at present excluded from its operation. Their view was strongly that it was inappropriate, and that a like function should, in relation to Aboriginal Communities, be exercised by a revised Aboriginal Lands Trust.

5.5 NORTHERN TERRITORY

5.5.1 COMMUNITY GOVERNMENT LEGISLATION

Community government legislation was introduced in the Northern Territory in 1978 as Pt. VIII of the Local Government Act. The legislation applies not only to Aboriginal communities but also to "open towns", i.e. those towns having mixed Aboriginal/non-Aboriginal populations.

The legislation is administered by the Northern Territory Office of Local Government.

The N.T. legislation is inherently flexible in providing communities the opportunity to express their preference in relation to the area covered and boundaries, aspects of the

electoral system such as eligibility to vote, eligibility to run for Council, number of councillors, the way the Council is selected (e.g. by wards, or some other non-spatial grouping such as language, class or skin group or equal number of male/female councillors, or a combination of these factors).

Councils can also assume a wide variety of functions and can determine which functions they wish to take on incrementally. The legislation is in the form of enabling legislation, the detail being established in "community government schemes" (constitutions).

The functions of a community government, as determined by the community, are set out in the Community Government Scheme and can include the following:-

- commercial development;
- communications;
- community amenities;
- education or training;
- electricity supply;
- garbage collection and disposal;
- health;
- housing;
- relief work for unemployed persons;
- roads and associated works;
- sewerage;
- water supply;
- welfare;
- raising of revenue in accordance with this part; or
- such other matters as are approved by the Minister.

The Act gives community governments the power to levy rates and charges, requires approval of schemes by the Minister after exhibition and consultation, sets out requirements relating to financial administration and makes provision for by-laws. Ministerial power to dissolve councils is established in the Act.

Community government status for communities did not automatically follow introduction of the legislation, rather, communities came under the legislation at their own request. To date, approximately 14 communities have accepted community government status and an equal number are "in the pipeline".

All major (i.e. not including homelands) communities not under the legislation have been declared as local governing bodies for the purposes of the Local Government Financial Assistance Act, i.e. access to local government funds is not contingent on acceptance of community government status. However, it is understood that the Northern Territory Government has stated that after 30th June, 1990, communities which have not accepted community government status will not be eligible for Commonwealth grants distributed through the N.T. Local Government Grants Commission.

The N.T. legislation represents an attempt to find a form of Government for Aboriginal communities which are considered to be too small to be incorporated into full municipal government and an attempt has been made to incorporate cultural considerations.

5.5.2 CRITICISMS OF THE NORTHERN TERRITORY LEGISLATION

Mowbray

Martin Mowbray, then employed by the University of New South Wales, was engaged by the Northern Territory Central and Northern Land Councils to report on the effect of the Northern Territory Community Government legislation. In his report "Black and White Councils: Aboriginals and Local Government in the Northern Territory", July 1986, Mowbray identified many critical aspects of community government; the major issues being as follows:-

- (i) Mowbray's main criticisms are levelled at the Northern Territory Government's failure to provide appropriate finance and decision-making responsibilities, the lack of adequate attention given to training of Aboriginal people to take on community management, and the legislative provisions for Ministerial intervention to dissolve councils, approve their constitutions, and appoint their staff.

Although these Ministerial powers exist under the Act, there have been no cases of Ministerial intervention to dissolve a council and communities visited had not experienced problems relating to approval of their constitutions or appointment of staff.

- (ii) Mowbray asserts that "centralised and autocratic policy planning continues to prevail". He argues that in some respects (such as the extension of the electoral franchise, the right to contest elections by Europeans, and rigorous accountability to the Northern Territory Government), the legislation may bring relatively less autonomy than incorporation under other legislation.
- (iii) The Northern Territory Government, Mowbray states, "accepts as given the lower standards of amenities and services in Aboriginal settlements" relative to other local authorities.
- (iv) Mowbray argues that community government councils are regarded by the Northern Territory Government as a means only of ensuring the supply of essential services.
- (v) Pensioners and unemployment and CDEP recipients in Northern Territory Aboriginal communities do not receive concessions and subsidies enjoyed by those people in mainstream local government authorities, (e.g. municipal rates, electricity, water and sewerage, bus, travel, air fares, motor vehicle registration, Housing Commission rent, etc.).
- (vi) Aboriginal community governments are disadvantaged comparative to mainstream LGAs in their ability to raise and receive revenue from a number of sources and enjoy less flexibility in disbursement of funds they receive.
- (vii) Aboriginal community governments in the Northern Territory have much greater financial disabilities than mainstream LGAs which is not reflected adequately in their share of Local Government Grants Commission funding.
- (viii) Aboriginal communities also have expenditure disabilities given that white employees in their communities are exempt from service charges (garbage, water, electricity).
- (ix) Mowbray states that the principle of fiscal equalisation has not been extended to community government councils and that they have been penalised by successful revenue-raising initiatives which have been matched by equivalent reductions in Government grants.

5.5.3 Northern Land Council

The Northern Land Council argues that the community government legislation derogates from the powers afforded traditional owners under the Commonwealth Aboriginal Land Rights Act. The community government legislation, it is argued, in providing

powers to community governments to develop community government schemes related to functions performed on the land, is in conflict with the ALR Act. This Act provides powers to Land Trusts as owners of the land. This assertion had not been legally challenged to date.

Notwithstanding this criticism, the officers of the NLC, with whom I met, were unable to provide any convincing examples of situations where conflict between the two Acts had arisen.

Another cause of opposition by the NLC is philosophical, that community governments are created under the umbrella of an inferior level of Government (a "neophyte government") to the Commonwealth Government which is the only level of Government able to negotiate Aboriginal sovereignty. The NLC see acceptance of community government as undermining Aboriginal ability to argue sovereignty in international law. They also claim that the N.T. legislation gives excessive Ministerial control over community government councils and that the N.T. Government has imposed fiscal constraints on communities by virtue of access to local government funds.

Criticisms were also made of what they perceived as pressure being put on communities to accept community government status and inadequate consultation with communities on drafting of Community Government Schemes. The information provided by communities visited was that the consultation process by the Office of Local Government had been extensive and helpful.

It is also alleged that communities are pressured into accepting a model which is standard and does not reflect community needs. The constitutions of local governments which I examined belie this - it is evident that communities have had an effective input and are able to obtain constitutions which differ quite markedly and reflect the wishes and needs of local communities in a culturally appropriate way.

Another criticism by the NLC is that what a council is empowered to do is quite different from what it has the resources to do. Whilst recognising the significant financial disabilities of Aboriginal communities, the same thing could also be said of mainstream local government authorities.

One of the major concerns of the NLC appears to be that community government councils threaten the power base of the Land Councils in the Territory. Power at the local level could undermine the considerable control exercised by the Land Councils, which is currently being challenged by groups of communities who wish to break away from the existing Land Councils and establish new ones which reflect their views. The NLC is no doubt influenced in this view by the Territory Government's hostility towards the Land Councils and its campaign for replacement of the Land Rights Act with its own legislation.

The NLC, Central Land Council and Pitjantjatjara Councils are co-signatories of a resolution forwarded to the Commonwealth opposing any form of Aboriginal local government. The Land Councils see community government as a threat to their own power base.

The NLC is encouraging communities in the Territory to incorporate as local government bodies under the councils section of the Commonwealth Aboriginal Councils and Association Act.

5.5.4 Findings from Communities

Observations on the success of the legislation are constrained by the limited number of communities visited. However, the three communities visited appeared to be operating well, the councils were in control of community business and had a good understanding of the legislation and had effective administrative infrastructures. Physical infrastructure was also more developed than that in S.A. communities.

Two of the communities (Palarumpi and Milikapiti) were on Melville Island thus English fluency was high due to close contact with the white population in Darwin. The other council (Dagaragu) south west of Katherine, was a more traditional community with less English fluent members and had only recently accepted community government status. Nevertheless, the council appeared to be operating well.

Again, there are differences with S.A. communities in that N.T. communities tend to be larger (300 - 1,000), the exception being Wallace Rockhole, a homeland with a population of 100 (not visited).

The three communities visited had a range of viable enterprises, staff had receiving some training and provision of services in the two communities on Melville Island also appeared to be superior to that provided in South Australian communities.

5.5.5 Batchelor College

A visit was made to Batchelor College, south west of Darwin, which is an Aboriginal community college set up by the N.T. Government to provide, amongst other things, certificate and diploma courses for Aboriginal community members on community management, office administration and business management. The physical infrastructure and range of courses offered was impressive. Facilities are also provided for students to bring their families to live on campus while they are studying. However, staff complained of staff shortages, funding cutbacks on courses and financial assistance to students and their families by the N.T. Government.

5.6 QUEENSLAND

5.6.1 Legislation

- The relevant statutory provisions in Queensland are:-
 - the Local Government (Aboriginal Lands) Act, 1979;
 - the Land (Aboriginal and Islanders Land Grants) Amendment Acts of 1982 and 1984;
 - the Community Services (Aborigines) and (Torres Strait Islanders) Acts, 1984;
 - the Aboriginal and Torres Strait Islanders (Land Holding) Act, 1985.

The Community Services Act was introduced in 1984 and 30 Aboriginal and Islander communities immediately came under the Act and gained access to untied local government funds. The Act is administered by the Department of Community Services. The Act charges the councils with the provision of municipal services within their boundaries and the power to make by-laws. Responsibilities include roads, sewerage, building standards, town planning, land sub-division, parks and gardens, recreation and sporting facilities, aerodromes and transport services. In addition, the Aboriginal councils have responsibility for housing, electricity, police and enterprises.

The legislation provides for the establishment of Aboriginal councils, election procedures, provides that the council area is not rateable for the purposes of the Local Government Act, that Department of Community Services Officers act as Executive Officers of the council until expiration of three years of commencement of the Act, makes provision for by-laws and constitutions, and sets out provisions relating to financial administration. An interesting aspect of the legislation is the requirement that the council clerks must be Aboriginal.

The Local Government (Aboriginal Lands) Act applies to only two Aboriginal shires (Arakun and Mornington Island) and is a mainstream local government model and more complex than the Community Services legislation. Those councils receive a normal share of Local Government Grants Commission funding. The Act is administered by the Department of Local Government.

The Land (Aboriginal and Islanders Land Grants) Amendment Act is the mechanism by which Deeds of Grants in Trust have been granted to communities under the Community Services legislation. The Deeds of Grant in Trust in effect provide inalienable freehold title to the community council areas.

The Aboriginal and Torres Strait Islanders (Land Holding) Act is the mechanism whereby individual community members can take out long-term leases (excisions) to purchase their own homes or set up enterprises. Use of this legislation is being strongly encouraged by the Queensland Government, but in the communities visited, with little success.

5.6.2 Findings from Communities

With the exception of Arakun, the communities were observed to be operating effectively with local government status. Particularly impressive was the degree of understanding of the legislation by council members, their political astuteness, the administrative infrastructure and effectiveness of councils, their relationship with government funding agencies and the physical and economic infrastructure (including a wide range of viable enterprises) of the communities.

Although there is a requirement in the Act that Department of Community Services staff (who act as Executive Officers to the councils) withdraw from communities after three years from the commencement of the Act (i.e. 1987), this has not happened uniformly in all communities, thus the role of "outsiders" while diminishing is occurring slowly. Aboriginalisation of the councils will occur more slowly than anticipated.

The situation of Arakun Shire Council was markedly different. As noted above, the legislation under which it operates is a mainstream model which is complex in its nature for an Aboriginal community. The community is run by a white Shire Clerk and Deputy Shire Clerk, and numbers of white people are involved in running enterprises in the community.

The Council itself is made up of an Aboriginal Chairman and members, meetings are held on very formal lines, with the Shire Clerk effectively controlling the power. The infrastructure of the Council offices was very sophisticated (similar to that one would see in any municipal council). Enterprise developments were numerous, but generally run by white people. The school facilities were of a higher standard than most city schools anywhere in Australia, yet school attendance was as low as 20%. Inter-racial tension in the town was also much more evident than in other communities visited.

The Shire Council was granted a 50 year renewable lease over community land.

There are very significant differences between Queensland and S.A. communities. Queensland communities visited had population bases in the range of 400 - 1,000 (cf S.A.: 100-400). English literacy is high (as a result of the Queensland Government policy of assimilation and monolingualism in schools), and the Queensland Government has poured millions of

dollars of State funds into physical infrastructure in communities. The Queensland communities are more stable and less transient than most South Australian communities (particularly the more traditional communities). This has an impact on educational achievement, continuity of Council membership and staff and community commitment to Council business.

Thus the viability of the communities as political units cannot by any means be attributed solely to the local government legislation. Councils were, however, supportive of the Community Services legislation and considered it had improved their effectiveness and self-management.

One problem uniformly raised by communities in Queensland was the lack of control over access of outsiders to their lands. Main roads within their communities are public roads, not under community ownership. This means that they are open in a way which S.A. communities currently are not, and which would be resisted by most communities. This does, however, raise the problem of road maintenance under the local government option referred to later in this report.

Another significant problem of Aboriginal local governments in Queensland is the divided powers of Aboriginal and non-Aboriginal Police. Aboriginal Police do not have the power of arrest other than for minor by-law breaches.

Already in South Australia, the provision of police aids, nominated by the local community, trained by and under the control of the Police Force, has proved a successful and useful development in the Pitjantjatjara Lands. With the institution of local government on Aboriginal Lands Trust and Maralinga Lands this operation should be extended. The communities all want the power to make enforceable rules concerning alcohol, public violence, vandalism and public nuisances. If the rules are to be enforced police assistance is necessary. The worst problems occur at Yalata, where there is a considerable lead time in getting the police to the spot, and where the social problems are the worst of any community. Not all communities will want or need police aids, but some will find them a real benefit. While Community Councils should be able to nominate recruits for Training and employment as police aids, their employment and control should be solely in the hands of the Police Commissioner. The seemingly divided control in Queensland has produced numbers of problems and hindered effectiveness.

Most of the communities visited did not support the concept of granting of long term leases to individuals in their communities (as provided under the Aboriginal and Torres Strait Islanders (Land Holding) Act). They saw no need to purchase their own homes as they consider that they already own them and asked "why should we borrow money to buy our houses? They are ours already."

SECTION SIX

ABORIGINAL ENTERPRISES

It is vital that Aboriginal communities develop their own enterprises and employment bases. If they are simply to subsist on social services of one kind or another, (unemployment benefits, C.D.E.P. schemes, family, infant, single parents payments etc) the communities are perpetuating the hand-out system which has produced societies of professional paupers. This will continue the imprisonment of aborigines in a self-perpetuating culture of poverty, productive of on-going social unease.

Under the Lands Trust system very considerable resources, presently not used, or not used to capacity, exist for Aborigines in the State.

The resources are briefly reviewed below:

1. FARM RESOURCES

Agriculture and pastoral pursuits are today not labor-intensive in Australia, so are unlikely to provide a high level of employment for Aborigines. But land belonging to the Trust or Trust communities could provide more employment and return profits to the communities which would be available for funding other employment and training under takings.

(a) PT. MCLEAY

Several parcels of farm lands are owned by the Lands Trust and were leased to the Pt. McLeay Council which sub-leased to the Ralkon Agricultural Company. The Company also occupied land purchased by the Aboriginal Development Commission. The shareholding arrangements of the Company were such that control by the Community Council was not properly protected, and the Company got effectively into the hands of the Rigney family, which then operated the farm. Under the Ralkon management the operation and maintenance of the farm seriously deteriorated. It did not provide either employment for Pt. McLeay residents or any resources by way of cash contributions to the Pt. McLeay Community. Protracted legal proceedings have occurred in an endeavour to correct this situation over a period of 15 years and with legal costs in excess of \$300,000. At the time of writing a settlement which will return control of the farm to the Community Council has just been concluded.

(b) PT. PEARCE(i) NARUNGA FARM

The community has leased this to a company of which it is the beneficial owner, Narunga Farming Co. Its structure is as follows:-

The company is managed by Bullough Rural Management. They have succeeded in getting the farm developed to use

by the company of most of the farmlands at Pt. Pearce. Two blocks are still share-farmed by local European farmers. The financial position of the company is sound - it has paid off most of its debt to the A.D.C., has \$200,000 in reserves, and last year paid rent of \$36,000 to Pt. Pearce Community and recorded a further profit of \$37,000, in what was a poor year on Yorke Peninsula.

However, the constant complaint of the management is:

- i. Directors appointed by the community rarely turn up to meetings of the Board. The community, despite full quarterly written reports, does not know at Council level, let alone at grassroots level, what is happening.
- ii. Generally, the farm employs 3 to 4 people from Pt. Pearce. The management has not been able to get them involved in consistent training programs (as opposed to other areas in which its services are used by Aboriginal communities).
- iii. Despite continued appeals by management, it has not been possible to recruit from Pt. Pearce a trainee manager for the undertaking who will remain in employment and complete training.
- iv. When laborers are sought to undertake field work at times of need, Pt. Pearce residents refuse on the grounds of uncomfortable work in poor weather for which the award rate is not so much better than unemployment relief as to make it worthwhile.

It is clear that a training program on the necessity of community support for the enterprise which can return money to all the residents is necessary at Pt. Pearce. It is also clear that a revised Lands Trust needs to operate a central entrepreneurial function through which it can take over the work presently done by Bullough Rural Management because Mr. Bullough was stated he can only continue for two years.

(ii) WARDANG ISLAND

Wardang Island, originally part of Pt. Pearce, was taken from the community without compensation and leased for sandmining to B.H.A.S., which erected houses for staff and other installations. When the lease fell in, the Hall government leased it to a private developer as a tourist operation. Eventually the Dunstan Labor Government

bought the lease and returned the island to the Aboriginal Lands Trust. For some years it was leased to the Education Department as a school camp providing some employment for Pt. Pearce residents. Since the Education Department terminated its arrangement for the island it has been unused. One Pt. Pearce resident acts as caretaker.

This is a very considerable asset providing no benefit currently to Pt. Pearce. A revised Aboriginal Lands Trust could initiate feasibility studies for its development for aquaculture - it has been reported as having great potential for abalone farming. A number of feasibility studies of various enterprises have been undertaken over the years by the Aboriginal Development Commission but none have been pursued to date.

(iii) GERARD

The area of Gerard has a considerable potential for fish farming. The original attempts at farming yabbies was unsuccessful, but a staged development of the project has currently proved successful.

(iv) KOONIBA

The farmlands as yet have not been transferred to the Lands Trust. The lands are however farmed by the community, the Community Council directly employing a farm manager. Two Kooniba residents are employed as farmhands. The farm did provide profits to the community in 1986 and 1987 but as with most farming enterprises in the area, a loss in 1988.

(v) NEPABUNNA

Nantawarrina Station has been returned to the Adymyathanha people and leased to Nepabunna Community Council. It has some pastoral potential - in the past it has been known to carry 10,000 sheep and has an area of 580 sqkms. At the moment a small number of sheep for community purposes are run on it.

Mt. Serle is run by the Ottowarrapanna Council, which includes two representatives from Nepabunna, as well as representatives from Hawker, Quorn, Copley and Leigh Creek. The Council employs Bullough Rural Management as Consultants. Mr. Bullough says that training of Aboriginal hands has occurred here in a way he has not been able to achieve at Pt. Pearce. Two Nepabunna residents are normally employed at Mt. Serle. To date the enterprise has not done more than cover overheads.

(vi) YALATA

The considerable lands at Yalata are managed directly by the Community Council. There is a heavy accumulation of debts, and the prolonged drought has caused severe economic problems as for all such properties on Eyre Peninsula and westward.

(vii) OTHER ENTERPRISES

Most communities have potential to undertake, through a revised and better-empowered community management, enterprises which can provide employment for residents.

Attempt to date are reviewed below:

At Pt. McLeay the Community Council has established a motor repair works in the nearby town of Narrung, and has potential to expand this undertaking by a roadhouse and garage on the main road.

Potential exists for a tourist enterprise for boats using the lake, commercial fishing and a general store.

At Pt. Pearce, a welding workshop was established which appears capable of providing the basis for successful business with proper marketing and management. Trailers and other steel structures including school playground equipment have been produced and sold well.

The shop at Pt. Pearce has not been successful, as it appears most residents like to make the outing to Maitland or Port Victoria to do their shopping.

At Gerard, apart from the aquaculture undertaking the work of the local training centre in Glossop (The Gerry Mason Centre) has produced art and craft work which is of good standard and is finding a local and tourist market.

At Davenport, a youth employment program to produce vegetables for sale in the community has had a beginning, but needs some further expertise. (A very good vegetable-growing project was started under TAFE auspices at Poverty Flat near Ceduna, and for a while provided vegetables of excellent quality which found a ready demand in the general community, however when training funding ran out, the whole project collapsed).

At Yalata the Community Council runs a successful roadhouse and an artefacts sales outlet on the main highway.

Studies of Aboriginal enterprises across Australia (e.g. "Enterprises in Aboriginal Australia: Fifty Case Studies" by Jill Byrnes, "Economic Enterprises in Aboriginal Communities in the Northern Territory", A.N.U.) uniformly point out that failure of Aboriginal undertakings occurs from

- (a) lack of expertise and training in the work undertaken,
- (b) lack of management, accounting and marketing training,
- (c) lack of capital - many attempts have been initially under-funded.

There is a considerable potential, given the population and land resources available, for Aborigines to develop a number of related enterprises in the growth cultivation and sale of indigenous food resources. There is a world-wide market for kangaroo meat. The use of wattle, quondongs, cycad flour and other native food plants made popular by the A.B.C series in "Bush Tucker" and a number of books and magazine articles, has led some Australians of European descent into this business already. Given the nature of the tourist boom, and the widespread popularity of the use of widening food resources, a long-term development in the Lands Trust communities could provide a sound economic base for employment.

To achieve developments of this kind it will not be enough to provide consulting services, financial backing from the A.D.C. or its successor, and TAFE courses. A central enterprise agency specifically charged with creating and co-ordinating development of enterprises in Aboriginal communities is needed. It is suggested that, with proper funding and staffing this should be the revised Aboriginal Lands Trust, as recommended previously in this report.

SECTION SEVEN

OPTIONS

In considering the local government options available to Aboriginal communities in South Australia, the following issues had to be taken into account:-

- . Should Aboriginal communities be constituted as separate local governments or regional local government units, or would some communities be more appropriately served by incorporation within mainstream Local Government authorities?
- . How viable would separate Aboriginal local governments be given the small size of communities in South Australia and lack of human resources to effectively run separate systems?
- . The need to take into account the different circumstances and aspirations of the communities.
- . The extent to which optional systems could preserve cultural identity.
- . The extent to which the options would enable communities to gain access not only to untied local government funds but also the range of other Commonwealth and State specific purpose grants for local government, together with adequate resources, financial, administrative and professional, of mainstream local governments.
- . The extent to which Aboriginal local governments could effectively take on the municipal services role of other mainstream local governments, as well as responsibility for a wider range of service provision (e.g. health, education, training, housing, etc.).
- . The extent to which service delivery by communities could be improved through constitution as local government bodies.
- . How would separate or local Aboriginal local governments relate to the proposed Aboriginal and Torres Strait Islander Commission?
- . Apart from separate or regional Aboriginal local government units, what other options are available to communities to obtain access to local government funds?
- . The options put forward in this report do not pretend to answer all of the above questions. Extensive consultation with the communities and their regional organisations will be a crucial determining factor. The consultations will need to be more extensive than those to date. So far only the Community Councils have been consulted. The options paper will need to be published and sent to the communities, Local Government Authorities, and Aboriginal groups, time has to be given for discussion and consideration and then the communities given sufficient notice to enable input at meetings by all interested

residents. Other issues will need to be addressed by negotiation with State and Commonwealth agencies regarding which functions and the extent of funding they would be willing to cede to Aboriginal local governments and, in particular, information will need to be obtained from the Commonwealth about the relationship between Aboriginal local governments and the proposed A.T.S.I.C. Regional Councils.

The options identified in the course of the Review are set out below. They relate only to the Aboriginal Lands Trust and Maralinga Tjarutja communities, in view of the Pitjantjatjara communities' non-participation in this exercise.

7.1 DISCRETE ABORIGINAL COMMUNITY GOVERNMENTS OPTION

The main elements of this option include:-

- (i) Incorporation of communities as separate local government bodies through special legislation.
- (ii) Access to untied and specific purpose local government funds.
- (iii) The powers of such local government bodies could include:-
 - . normal municipal services (power, water, sewerage, garbage collection and disposal, roads, dog control);
 - . community amenities (recreation facilities);
 - . communications;
 - . enterprise development;
 - . employment, education and training;
 - . health and welfare;
 - . housing;
 - . law and order;
 - . revenue raising through rates and charges;
 - . control over access to their lands;
 - . by-laws.

(Note that the range of functions to be undertaken would be determined by communities, with the option to assume further functions when they are in a position to do so. The range of functions will also be circumscribed by the extent to which State and Commonwealth agencies are willing to cede their functions to the local level.)

- (iv) Representation on the Local Government Association (or a new Aboriginal Community Government Association).

The advantages of the discrete Aboriginal community government option would be:-

- . access to untied and specific purpose local government funds;
- . the ability to make by-laws to control behaviour and activities in communities;
- . reinforcement of control at the community level enabling a degree of self-determination/self-management;
- . improved legal status;
- . potential for improved administrative efficiency and improved relationship with Government agencies.

The disadvantages would be:-

- . some communities may have an inadequate pool of human resources on which to draw to support viable community governments;
- . cost to the State Government of providing the necessary training and central administrative support and possible political cost from non-Aboriginal Councils' opposition;
- . lack of adequate equipment to carry out normal local government servicing functions (e.g. for roads, power supply, sewerage and water supply).

7.2 MODIFIED DISCRETE ABORIGINAL COMMUNITY GOVERNMENTS OPTION

This option presents a variation on Option 1. It entails a division of powers between the discrete Aboriginal community governments and the revised Aboriginal Lands Trust (in respect of the Lands Trust communities) and Maralinga Tjarutja (in respect of Oak Valley).

Communities could decide to cede certain functions to the regional body, such as:-

- . by-law making powers;
- . mobilisation of funding and advice on establishment of enterprises;

- . co-ordination of delivery and mobilisation of funding for essential services (power, water, sewerage, street-lighting, roads, curbing, guttering, drainage, housing) using community labour or by using private, government or Local Government Authorities as contractors;
- . policy-making in relation to health, education, welfare, employment, training;
- . regional co-ordination of training functions, particularly those related to training of Aboriginal local government councillors and employees;
- . ceding to the regional body receipt of local government funding for disbursement to individual communities;
- . development of simplified budget and accounting systems;
- . representation by the regional body on the Local Government Association (or a new Aboriginal Community Government Association).

The advantages of this option would be:-

- . a division of powers and functions between the local and regional level to enable more viable political units, sharing of resources and facilities, and a stronger political infrastructure for dealing with Governments.

The disadvantages of this option would be:-

- . potential diminution of control at the local and regional level and factionalism resulting in inequitable treatment of some communities.

7.3 REGIONAL OPTION

Under this option the regional body (Aboriginal Lands Trust, as reconstituted, and Maralinga Tjarutja) would be constituted as the local governing body for their respective communities, along the lines of the Outback Areas Community Development Trust.

In the case of Maralinga Tjarutja, there is only one community at Oak Valley. Therefore the regional option would appear to be the appropriate model.

The regional body would have responsibility for the following functions:

- . normal municipal services;
- . by-law making powers;

- . control over access to communities;
- . delivery of services such as health, education, welfare, training, employment, housing;
- . communications;
- . enterprise development;
- . law and order;
- . revenue raising through rates and charges.

As with option 2, the regional bodies and communities (with the exception of Maralinga Tjarutja) could jointly divide which of the above functions should be delegated to the community level.

The advantages of this option would be:-

- . sufficient population base to ensure viable political units;
- . sharing of resources and facilities;
- . a stronger political infrastructure for dealing with governments.

The disadvantages of this option would be:-

- . diminution of control at the local level;
- . potential for factionalism to result in inequitable treatment of some communities;
- . potential liability of communities, given their physical separation and different circumstances, to develop a sense of corporateness through the regional structure;
- . the danger of regional bodies becoming remote from their constituents and developing into bureaucrats dominated by the more educated and articulate and non-Aboriginal advisers and employees.

7.4 MAINSTREAM OPTION

This option would involve the incorporation of the Aboriginal community within the relevant mainstream Local Government Authority (for those communities within the incorporated areas of the State).

The main elements of this option include:-

- (i) Instead of incorporation under the Associations Incorporation Act, communities would be established as statutory bodies under the reconstituted Aboriginal Lands Trust.

- (ii) Establishment of the Aboriginal reserves as separate words of the LGA, and the creation of the reserves as special Aboriginal townships within the local government area.
- (iii) Provision for one or two Aboriginal community members as Councillors on the LGA.
- (iv) Retention of powers over access to their lands by the Aboriginal community.
- (v) Retention of by-law making powers by the Aboriginal Community either made at the local level, or by request to the reconstituted Aboriginal Lands Trust or to the LGA.
- (vi) Retention of responsibility at the community level for establishment of enterprises.
- (vii) The functions exercised by the LGA in respect of the Aboriginal reserves would include:-
 - . planning and building permits;
 - . environmental health surveys;
 - . provision of essential services (power, water, sewerage, drainage, road making and maintenance, garbage collection and disposal);
 - . curbing and guttering;
 - . recreation facilities;
 - . streetlighting;
 - . cemeteries;
 - . noise abatement;
 - . vermin and weed control;
 - . performance of the same administrative functions currently exercised by Community Councils.

The LGA and the community could jointly decide whether certain of the above functions could be delegated to the Aboriginal community. Existing Community Advisers could fulfill the role of a LGA/Community Liaison Officer.

- (viii) Establishment of joint LGA/Aboriginal Community advisory and liaison committees to deal with issues of mutual concern, in particular the Aboriginal community's priorities and estimates of required funding in respect of their share of local government untied and specific purpose funds.

- (ix) Development of common budgeting systems by the LGA/Aboriginal community.

The advantages of this option would be:-

- . existing administrative infrastructure of LGA's;
- . making mainstream Councils accept responsibility for the Aboriginal population within their boundaries on which their level of LGFA funds is partly determined (there is little evidence of Councils actually providing services to Aboriginal communities within their boundaries, notwithstanding that their LGFA grant is based on their total population base, including Aboriginal people);

The disadvantages of this option would be:-

- . lack of sympathy of white-dominated Councils to the needs of Aboriginal communities;
- . denies Aboriginal self-determination/self-management.

The communities which may consider this option as the most appropriate are Davenport and Umoona. Gerard is another possibility. However, such decisions could only be taken after extensive consultation with all Aboriginal communities in South Australia (with the exception of the Pitjantjatjara communities).

7.5 COMMONWEALTH ABORIGINAL COUNCILS AND ASSOCIATIONS ACT OPTION

This Act was introduced in 1976 and provided for incorporation of Aboriginal Associations and Councils. Incorporation under the Councils' section of the Act would provide local government status but to date no Aboriginal Council in Australia has been incorporated under that section of the Act.

The Councils' section of the Act cannot, however, be used in an area to which local government extends. In South Australia that section could only apply to the Pitjantjatjara and Maralinga Lands, Yalata, Nepabunna and Gerard, which are outside of the local government incorporated areas.

The Commonwealth Act applies to Aboriginal Councils only, and by-laws under the Act may be made but are (a) difficult to provide since they are subject to tabling in Federal Parliament and motions for disallowance can be made by either House and (b) apply only to Aboriginals (thus they do not provide for control over non-Aboriginals residing or travelling through the community).

This option is being promoted by the Northern Territory Land Councils but it is understood that the current review of the Act set up by the Commonwealth had, as an objective, the repeal of the Councils

section of the Act. As local government is a function of State Governments, it appeared that the Commonwealth may have accepted the argument of some State Governments that this part of the Act should be repealed. However, more recent information indicates that the Commonwealth Minister of Aboriginal Affairs is reconsidering the proposal to repeal the Councils section of the Act, in view of the Land Council's position on this issues.

7.6 RETAIN STATUS QUD OPTION: PROVIDE ACCESS TO LOCAL GOVERNMENT FUNDS OPTION

Aboriginal Councils in S.A. incorporated under the State Associations and Incorporations Act could be declared by the State Minister of Local Government as "local governing bodies" for the purposes of the LGFA Act thereby providing automatic access to local government funds. In the N.T., all Aboriginal communities, notwithstanding whether they have accepted full local government status under the Community Government legislation have been provided with local government funds through mechanism. (However, it is understood that the N.T. is moving towards removal of local government funds to those communities which have not accepted Community Government status).

The advantages of this approach are:

- . automatic access to local government funds, certainty over funding enabling forward planning;
- . straightforward, not requiring new legislation.

The disadvantages of this approach are:-

- . it does not provide a mechanism for providing more coordinated administrative structures for Councils;
- . does not provide access to other legislative controls (e.g. by-laws).

7.7 RETAIN STATUS QUD OPTION: NO ACCESS TO LOCAL GOVERNMENT FUNDS OPTION

This is a "do nothing" option.

The advantages of this option are:-

- . may be more acceptable to some Aboriginal communities who are opposed to change.

The disadvantages of this option are:-

- . no access to local government and by-law making powers;
- . no improvement in local government status;

- . no improvement in service delivery;
- . no improvement in relationships with government agencies;
- . ongoing problems of incorporated Councils as documented in this report.

SECTION EIGHT

CONCLUSIONS

1. Aborigines are not receiving local government services in S.A. comparable to other members of the community, nor in accordance with need.
2. Present structures of Aborigine self-management are not satisfactory for the provision of such services. Additional funding and by-law making powers are required, but also a simplified mode of undertaking enterprises and taking advantage of C.D.E.P. funding to provide employment.
3. It is preferable to replace existing incorporated associations with statutory bodies having wider powers. Powers must include control over access to the community and to make by-laws controlling social behaviour.
4. The development of training schemes in a form which will be attended and used by council members and staff is urgently needed.
5. Aboriginal communities in South Australia are generally too small and inadequately resourced to carry out the whole function of local government entirely on their own. But such a function is possible in conjunction either with a central body such as a revised Lands Trust or in a special relationship with an existing Local Government Authority.
6. An appropriate way to proceed is by South Australian legislation after full consultation with the S.A. Aboriginal Communities on Lands Trust Lands and Maralinga Tjarutja. The Commonwealth legislation will not meet the already established need of those communities.
7. In considering a revision of the Lands Trust, provision should be made enabling it to have membership from ATSIC regional councils as well as from Lands Trust communities, and a central entrepreneurial support function.
8. The S.A. Local Government Grants Commission should be requested to establish a government system which would allow the adoption of any of the options ensuring that the system take into account disability factors and properly applies the principle of horizontal equalisation.

SECTION NINERECOMMENDATIONS

1. A simple explanation of the options with a list of advantages and disadvantages should be printed and circulated to all residents of Lands Trust communities and Maralinga Tjarutja.
2. A copy of this report should be provided to all those communities, the Local Governments concerned, the Local Government Association, the Aboriginal Lands Trust and to interested Aboriginal groups and organisations.
3. Consultation with the residents of all the communities should occur before final recommendations are made.
4. Upon a final report, legislation should be prepared in flexible form allowing communities to opt for a course to obtain local government services in a manner and at a pace which they see as best suited to their needs and aspirations.

UNIVERSITY OF ADELAIDE



25020500526

 R2
 356.9911
 D926a
S.A. MAP FOR INCLUSION IN REPORTTO INCLUDEPITJANTJATJARA LANDS AND AREA (HECTARES)

Communities: Pipalyatjara
 Amata
 Ernabella
 Indulkana
 Mimili
 Pregon
 Nalka
 Kenmore Park

+ Granite Downs

MARALINGA LANDS AND AREA (HECTARES)

Oak Valley

A.L.T. LANDS AND AREAS (HECTARES)

Yalata
 Kooniba
 Davenport
 Pt. Pearce
 Pt. McLeay
 Gerard
 Nepaburra
 Umoona

O.A.C.D.T. COMMUNITIES

Copley
 Maree
 Oodnadatta

LOCAL GOVERNMENT AREAS

Murat Bay
 Central Yorke Peninsula
 Pt. Augusta
 Meningie
 Coober Pedy
 Berri)
 Renmark)
 Loxten)

PLUS Demarcation Line of Incorporated/Unincorporated Areas of the State.

Call No. 185.00	Author Dunstan, D.
	Title Aboriginal Community Govt